WSR 26-01-011
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-08—Filed December 4, 2025, 10:33 a.m., effective January 4, 2026]

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

Purpose: Vancouver Lake: In 2024, the Washington state legislature passed HB 1226, which provided revisions to RCW 77.32.[0]10, thereby rescinding previous exemptions to fishing license requirements while fishing for smelt, crayfish, and common carp (i.e., a license is required to fish for these species following passage). However, HB 1226 provided an exception to the license requirement when fishing for common carp in Vancouver Lake. This exception was included based upon public comment received during legislative committee hearings. While the Washington legislature provided a clear exception to the license requirement for Vancouver Lake, questions about the implementation and enforcement of the rule have since arisen. Confusion around the license requirement originates in WAC that defines the fishing area for Vancouver Lake, which is included with a complex of state waters, defined as: "Vancouver Lake and all other waters west of Burlington-Northern railroad from Columbia River drawbridge near Vancouver downstream to Lewis River." Specifically, the Washington department of fish and wildlife (WDFW) enforcement staff are unclear where a fishing license would not be required in this area to fish for common carp, due to the ambiguity of the definition. Further, some anglers contend that the Vancouver Lake definition extends to all waters covered by the definition (Lake River in particular), which WDFW enforcement and department staff dispute. Amendments to WAC 220-312-030 (southwest) and WAC 220-220-160 (two-pole endorsement) are needed to provide clarity in the rules and alignment with RCW 77.32.[0]10.

Cle Elum River: The United States Bureau of Reclamation, in collaboration with Yakama Nation, WDFW, and other basin partners, is currently constructing an adult fish collection (AFC) facility at the base of Cle Elum Dam. Completion of the AFC will provide upstream passage for returning anadromous species as well as resident species that are entrained by the dam outlet and are attempting to return to the reservoir or its tributaries. Consistent with our statewide general rule (WAC 220-310-030(1)) to restrict fishing below dams, fishways, and other man-made barriers, a closure of the area downstream of the AFC is warranted to limit impacts to fish attempting to use the facility. Existing regulations allow fishing year-round under selective gear rules up to the base of Cle Elum Dam. Region 3 fish management is proposing to close a portion of the Cle Elum River downstream of Cle Elum Dam. This area is currently closed under an emergency regulation to prevent impacts associated with construction and dewatering of the river during the project work window. The proposed permanent closure would extend from the downstream face of the dam to the "Green Bridge" located approximately 2,000 feet below the AFC. While this is a greater distance than the 400-foot statewide general rule, use of the bridge as a landmark is supported by Region 3 enforcement program as an easily identifiable compliance point. Additionally, there is limited recreational angling use of this stretch of the Cle Elum River except for the stilling basin immediately below the dam.

Eastside Lakes: WDFW received a petition from the public to extend the fishing season from the fourth Saturday in April to September 30 to the fourth Saturday in April to October 31 on seven lakes in

eastern Washington (WDFW administrative Region 1). The list of lakes in the petition included Badger, Deer (Lincoln County (Co.), also known as Deer Springs), Fan, Fish (Spokane Co.), Fishtrap, West Medical, and Williams (Spokane Co.). This petition proposed extending the fishing season for each of these lakes by one month. The WDFW director chose to deny the petition but instructed staff to initiate rule making to extend the fishing season to October 31 annually on five of the seven lakes proposed in the petition. Two of the lakes were removed from consideration due to landowner or public use conflicts. The five lakes put forth for rule making were Badger, Fan, Fishtrap, West Medical, and Williams (Spokane Co.). After taking public comments during the rule-making process, additional opposition from Fishtrap Lake Resort was recorded. Because of the resort's proximity to WDFW's public access and resort owners' concerns around increased operating cost, public trespass, and increased liability, Fishtrap Lake will be excluded from the rule making, which will differ from what was reflected in the CR-102.

Citation of Rules Affected by this Order: Amending WAC 220-220-160 Two-pole endorsement, 220-312-030 Freshwater exceptions to statewide rules—Southwest, and 220-312-050 Freshwater exceptions to statewide rules—Eastside.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.04.020.

Adopted under notice filed as WSR 25-18-105 on September 3, 2025.

Changes Other than Editing from Proposed to Adopted Version: Eastside Lowland Lakes: The proposed change was to amend the fishing rules on these five lakes from open to fishing the last Saturday in April to September 30 to open to fishing on the last Saturday in April to October 31. Due to potential conflicts with public trespass on Fishtrap Lake Resort, Fishtrap Lake will remain under its current fishing rules, opening on the last Saturday in April and closing to fishing on September 30 annually (see further discussion in Section 4).

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 3, Repealed 0.

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

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

Date Adopted: December 4, 2025.

Kelly Susewind
Director

RDS-6595.1

AMENDATORY SECTION (Amending WSR 21-14-067, filed 7/2/21, effective 8/2/21)

WAC 220-220-160 Two-pole endorsement. Anglers who possess a valid two-pole endorsement may fish with two lines in all lakes and ponds open to fishing, with the following exceptions:

Water Body	County	
Para-juvenile Lake	Adams	
Headgate Pond	Asotin	
Columbia Park Pond	Benton	
Blackbird Island Pond	Chelan	
Aldwell Lake	Clallam	
Beaver Lake	Clallam	
Carrie Blake Pond	Clallam	
Dickey Lake	Clallam	
Lake Pleasant	Clallam	
Lincoln Pond	Clallam	
Sutherland Lake	Clallam	
Vancouver Lake	Clark	((~~Includes all other waters west of Burlington-Northern Railroad from Columbia River drawbridge near Vancouver downstream to Lewis River.~~))
Big Four Lake	Columbia	
Dayton Pond	Columbia	
Blue Lake	Cowlitz	
Castle Lake	Cowlitz	
Coldwater Lake	Cowlitz	
Lewis River Power Canal	Cowlitz	Includes old Lewis River streambed between Swift No. 1 powerhouse and Swift No. 2 powerhouse.
Merrill Lake	Cowlitz	
Silver Lake	Cowlitz	
Pit Lake	Douglas	
Ping Pond	Grant	
Mill Creek Pond	Grays Harbor	
Quigg Lake	Grays Harbor	Located at Friends Landing near Montesano.
Vance Creek Pond #1	Grays Harbor	
Gibbs Lake	Jefferson	
Horseshoe Lake	Jefferson	
Teal Lake	Jefferson	
Lake Sammamish	King	
Lake Union	King	
Lake Washington	King	Including that portion of Sammamish River from 68th Ave. NE bridge downstream.
Lake Washington Ship Canal	King	(Including Lake Union, Portage Bay, and Salmon Bay) Waters east of a north-south line 400' west of the Chittenden Locks to the Montlake Bridge.
Mill Pond	King	Auburn.
Old Fishing Hole Pond	King	Kent.
Portage Bay	King	
Salmon Bay	King	
Swans Mill Pond	King	

Water Body	County	
Koeneman Lake	Kitsap	Formerly Fern Lake.
Kachess Lake	Kittitas	
Keechelus Lake	Kittitas	
Kiwanis Pond	Kittitas	
Naneum Pond	Kittitas	
Cowlitz Falls Reservoir	Lewis	
Mayfield Lake	Lewis	Mayfield Dam to Mossyrock Dam.
Packwood Lake	Lewis	
Scanewa Lake	Lewis	Cowlitz Falls Reservoir.
Walupt Lake	Lewis	
Willame Lake	Lewis	
Cady Lake	Mason	
Cushman Reservoir	Mason	
Prices Lake	Mason	
Stump Lake	Mason	
Silvernail Lake	Okanogan	
Cases Pond	Pacific	
South Bend Mill Pond	Pacific	
Bradley Lake	Pierce	
De Coursey Pond	Pierce	
Ohop Lake	Pierce	
Tanwax Lake	Pierce	
Wapato Lake	Pierce	
Granite Lakes	Skagit	Near Marblemount.
Northern State Hospital Pond	Skagit	
Vogler Lake	Skagit	
Drano Lake	Skamania	January 1 through April 30 and July 1 through September 30.
Swift Reservoir	Skamania	From dam to Eagle Cliff Bridge.
Fortson Mill Pond #2	Snohomish	
Jennings Park Pond	Snohomish	
Monte Cristo Lake	Snohomish	
North Gissburg Pond	Snohomish	
Spada Lake	Snohomish	
Bear Lake	Spokane	
North Silver Lake	Spokane	
Lucky Duck Pond	Stevens	
Long's Pond	Thurston	
Munn Lake	Thurston	
Jefferson Park Pond	Walla Walla	
Lions Park Pond	Walla Walla	College Place.
Diablo Lake	Whatcom	
Gorge Lake	Whatcom	
Lake Whatcom	Whatcom	
Ross Lake	Whatcom	
Squalicum Lake	Whatcom	
Garfield Juvenile Pond	Whitman	
Clear Lake	Yakima	
Leech Lake	Yakima	White Pass area.
Mud Lake	Yakima	
Myron Lake	Yakima	

Water Body	County
Sarge Hubbard Park Pond	Yakima
Yakima Sportsmen's Park Ponds	Yakima

Anglers who possess a valid two-pole endorsement may fish with two lines in the following river sections:

River	County	Section
Chehalis	Grays Harbor	From Highway 101 Bridge in Aberdeen to South Elma Bridge (Wakefield Road): August 1 through December 31.
Columbia		Camas Slough: August 1 through December 31.
		From Highway 730 at Washington/Oregon to Old Hanford townsite powerline crossing: Year-round, except for sturgeon.
		From powerline crossing to Vernita Bridge: February 1 through October 15, except for sturgeon.
		From Vernita Bridge to Priest Rapids Dam: Year-round, except for sturgeon.
		From Priest Rapids Dam to Wanapum Dam: July 1 through October 15.
		From Wanapum Dam to Wells Dam: July 1 through October 15.
		From Wells Dam to Highway 173 Bridge at Brewster: July 16 through September 30.
		From Highway 173 Bridge at Brewster to the Corps of Engineers safety marker on the Douglas County shore to the rock jetty at the upstream shoreline of Foster Creek: July 1 through October 15.
Cowlitz	Lewis	From the boundary markers at the mouth upstream to 400' or posted markers below the Barrier Dam.
Lewis	Clark/Cowlitz	From a straight line running from a fishing boundary marker or from the outermost upland at the north shore of the Lewis River mouth, southerly across the Lewis River to a fishing boundary marker near the south shore upstream to the mouth of Johnson Creek.
Naselle	Pacific/Wahkiakum	From Highway 101 Bridge to the mouth of the South Fork: August 1 through January 31.

River	County	Section
Okanogan	Okanogan	From the mouth to Highway 97 Bridge immediately upstream of the mouth: July 1 through October 15.
Pend Oreille	Pend Oreille	
Palouse	Whitman	Mouth to base of Palouse Falls: June 16 through August 31.
Spokane	Spokane and Stevens	Lower Spokane River from mouth (SR 25 bridge) to 400' below Little Falls Dam.
Willapa	Pacific	From the city of South Bend boat launch to the 2nd bridge on Camp One Road: August 1 through January 31.
Wind	Skamania	Salmon and steelhead: Mouth (boundary line/ markers) to the Highway 14 Bridge: March 16 through June 30.
Yakima	Yakima	From Highway 240 Bridge to 400' below Prosser Dam: March 1 through October 31.

Anglers who possess a valid two-pole endorsement may fish for salmon with two lines in the following marine areas:

Description	Marine Area
Willapa	2-1. When permissible in WAC 220-313-070.
Port Susan and Port Gardner	Tulalip Terminal Area: May 1 through September 30.
Seattle/Bremerton Area	Sinclair Inlet: July 1 through September 30.
Hood Canal	12: South of Ayock only, excluding Hoodsport Hatchery zone: July 1 through September 30.
South Puget Sound	13.

RDS-6596.1

AMENDATORY SECTION (Amending WSR 25-13-087, filed 6/16/25, effective 7/17/25)

WAC 220-312-030 Freshwater exceptions to statewide rules—Southwest. (1) **Abernathy Creek and tributaries (Cowlitz County):**

(a) From 200 feet above Abernathy Falls to posted markers 500 feet downstream from the Abernathy Fish Technology Center: Closed waters.

(b) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(c) Selective gear rules, except: Use of barbed hooks is allowed.

(d) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(e) Salmon:
(i) Open November 1 through December 31.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(2) **Beaver Creek (Wahkiakum County):** Closed waters.
(3) **Blue Creek (Lewis County), from the mouth to Spencer Road:**
(a) From posted sign above rearing pond outlet to Spencer Road: Closed waters.
(b) Anti-snagging rule.
(c) Night closure.
(d) Open Saturday before Memorial Day through April 15.
(e) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 5; minimum length 8 inches.
(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(f) Salmon:
(i) Open August 1 through December 31.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(4) **Blue Lake (Cowlitz County):**
(a) Open the fourth Saturday in April through October 31.
(b) Selective gear rules.
(c) Release all fish.
(5) **Blue Lake Creek (Lewis County):** Selective gear rules.
(6) **Butter Creek (Lewis County):** Selective gear rules.
(7) **Canyon Creek (Clark County):** Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 5.
(8) **Carlisle Lake (Lewis County):**
(a) Open year-round.
(b) Landlocked salmon rules.
(9) **Cedar Creek and tributaries (tributary of N.F. Lewis) (Clark County):**
(a) From the Grist Mill Bridge to 100 feet upstream of the falls: Closed waters.
(b) Selective gear rules, except: Use of barbed hooks is allowed.
(c) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.
(d) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(e) Salmon:
(i) Open November 1 through December 31.
(ii) Daily limit 6; up to 3 adults, of which 2 may be Chinook.
(iii) Release all salmon except hatchery Chinook and hatchery coho.
(10) **Chinook River (Pacific County):** From the Highway 101 Bridge upstream:
(a) Selective gear rules.
(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.
(11) **Cispus River (Lewis County):** From the mouth to the falls, not including the North Fork:
(a) Open year-round, except closed to all angling within posted "Closed Waters" signs around the adult fish release site.
(b) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(c) Salmon:
(i) Daily limit 6; up to 2 may be adults.
(ii) Only hatchery Chinook and hatchery coho may be retained.
(12) **Cispus River, North Fork (Lewis County):** Selective gear rules.
(13) **Coal Creek (Cowlitz County):**
(a) From the mouth to 400 feet below the falls:
(i) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.
(ii) Selective gear rules, except: Use of barbed hooks is allowed.
(iii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 2; minimum length 14 inches.
(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon:
(A) Open November 1 through December 31.
(B) Daily limit 6; up to 2 may be adults.
(C) Only hatchery Chinook and hatchery coho may be retained.
(b) From 400 feet below the falls to the falls: Closed waters.
(14) **Coldwater Lake (Cowlitz County):**
(a) The Coldwater Lake inlet and outlet streams: Closed waters.
(b) Selective gear rules.
(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.
(15) **Cougar Creek (tributary to Yale Reservoir) (Cowlitz County):**
(a) Selective gear rules.
(b) Open the Saturday before Memorial Day through August 31.
(16) **Coweeman River and tributaries (Cowlitz County):**
(a) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.
(b) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(c) Salmon:
(i) Open November 1 through December 31.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(17) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County):**
(a) The upstream boundary of the reservoir in the Cowlitz arm is at the posted Lewis County PUD sign on Peters Road.
(b) The upstream boundary of the reservoir in the Cispus arm is at the posted markers at the Lewis County PUD kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus arm.
(c) Game fish: Statewide minimum length/daily limit, except:
(i) Release wild rainbow and wild cutthroat trout.
(ii) Trout: Daily limit 10; minimum length 8 inches.
(iii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.
(iv) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.
(v) Channel catfish: Daily limit 10; no size restriction.
(vi) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

(d) Salmon:
(i) Daily limit 6; minimum length 12 inches.
(ii) Up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(18) **Cowlitz River (Lewis/Cowlitz counties):**
(a) From the boundary markers at the mouth to Lexington Bridge:
(i) Game fish:
(A) Trout:
(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.
(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.
(B) Steelhead: Open year-round: Daily limit 3 hatchery steelhead, minimum length 20 inches.
(C) Other game fish: Open year-round, statewide minimum size/daily limit.
(ii) Salmon:
(A) Open January 1 through July 31.
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31.
(I) Daily limit 6; up to 3 may be adults.
(II) Release all salmon other than hatchery coho.
(b) From the Lexington Bridge to the mouth of Mill Creek:
(i) Within a 100 foot radius of the new Cowlitz Trout Hatchery outfall structure, except open to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card within posted markers when adjacent waters are open: Closed waters.
(ii) Game fish:
(A) Trout:
(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.
(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.
(B) Steelhead: Open year-round; daily limit 3 hatchery steelhead; minimum length 20 inches.
(C) Other game fish: Open year-round, statewide minimum size/daily limit.
(iii) Salmon:
(A) Open January 1 through July 31.
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31.
(I) Daily limit 6; up to 3 may be adults.
(II) Release all salmon other than hatchery coho.
(c) From the mouth of Mill Creek to 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam:
(i) From 400 feet or posted markers below Cowlitz Salmon Hatchery barrier dam to boundary markers near the Cowlitz Salmon Hatchery water intake approximately 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam: Closed waters.

(ii) Within a 100 foot radius of the Cowlitz Salmon Hatchery wheelchair ramp (within the posted fishing boundary) except for anglers with disabilities **and** who have a designated harvester companion card: Closed waters.

(iii) It is unlawful to fish from a floating device.

(iv) April 1 through November 30:

(A) Anti-snagging rule.

(B) Night closure.

(v) May 1 through June 15: It is unlawful to fish from the south side of the river.

(vi) Game fish:

(A) Trout:

(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.

(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(B) Steelhead: Open year-round; daily limit 3 hatchery steelhead; minimum length 20 inches.

(C) Other game fish: Open year-round, statewide minimum size/daily limit.

(vii) Salmon:

(A) Open January 1 through July 31.

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31.

(I) Daily limit 6; up to 3 may be adults.

(II) Release all salmon other than hatchery coho.

(d) From 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam to Mayfield Dam.

(i) From 400 feet below the Mayfield powerhouse upstream to Mayfield Dam: Closed waters.

(ii) Game fish:

(A) Trout:

(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.

(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(B) Steelhead: Open year-round; daily limit 3 hatchery steelhead; minimum length 20 inches.

(C) Other game fish: Open year-round, statewide minimum size/daily limit.

(iii) Salmon:

(A) Open January 1 through July 31.

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31.

(I) Daily limit 6; up to 3 may be adults.

(II) Release all salmon other than hatchery coho.

(e) From the posted PUD sign on Peters Road to the Forest Road 1270 (old Jody's Bridge):

(i) Closed to all angling within posted "Closed Waters" signs around the adult fish release site.

(ii) September 1 through October 31: Anti-snagging rule and night closure.

(iii) Open year-round.

(iv) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(v) Salmon:

(A) Open year-round.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(f) From Forest Road 1270 (old Jody's Bridge) upstream and tributaries.

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(19) **Deep River (Wahkiakum County):**

(a) Open year-round.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Daily limit 6; up to 2 may be adults.

(ii) Only hatchery Chinook and hatchery coho may be retained.

(20) **Delameter Creek (Cowlitz County):**

(a) From 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek: Closed waters.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(21) **Drano Lake (Skamania County):** In the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge:

(a) Closed on Wednesdays beginning the second Wednesday in April through June 30.

(b) Closed from 6 p.m. Tuesdays through 6 p.m. Wednesdays during the month of October.

(c) March 16 through October 31: Night closure.

(d) August 1 through December 31: Anti-snagging rule.

(e) May 1 through June 30 and October 1 through December 31:

(i) Each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

(ii) Two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.

(f) April 16 through June 30: The area west of a line projected from the easternmost pillar of the Highway 14 Bridge to a posted marker on the north shore is open only to bank fishing.

(g) Open year-round.

(i) Game fish: Statewide minimum length/daily limit, except:

(A) Bass: No limit and no size restriction.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restriction.

(D) Release trout.

(E) Steelhead: From January 1 through March 15; daily limit 2 hatchery steelhead; minimum length 20 inches.

(ii) Salmon and steelhead: Open March 16 through December 31:

(A) March 16 through June 30: Daily limit 2 hatchery steelhead or 2 hatchery Chinook, or one of each. Release all other salmon.

(B) July 1 through July 31:

(I) Daily limit 2 hatchery Chinook. Closed to fishing for or retaining steelhead.

(II) Release all other salmon.

(C) August 1 through October 31: Daily limit 6; no more than 1 adult salmon. Closed to fishing for or retaining steelhead.

(D) November 1 through December 31: Daily limit 6; up to 1 may be an adult salmon or hatchery steelhead.

(22) **Elochoman River (Wahkiakum County):**

(a) From the mouth to Foster (Risk) Road Bridge:

(i) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon: Open the Saturday before Memorial Day through March 15.

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(v) Salmon and steelhead: Open April 16 through the Friday before Memorial Day: Daily limit 6; of which 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.

(b) From Foster (Risk) Road Bridge upstream to 200 feet above the WDFW temporary weir:

(i) From Foster (Risk) Road Bridge to 200 feet above the WDFW temporary weir while the weir is installed in the river: Closed waters.

(ii) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(iii) Open the Saturday before Memorial Day through March 15.

(iv) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(v) Salmon: Open the Saturday before Memorial Day through March 15.

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(vi) Salmon and steelhead: Open April 16 through the Friday before Memorial Day: Daily limit 6; of which 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.

(c) From 200 feet above the WDFW temporary weir to the Beaver Creek Road Bridge:

(i) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon: Open the Saturday before Memorial Day through March 15.

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(v) Salmon and steelhead:

(A) Open April 16 through the Friday before Memorial Day.

(B) Daily limit 6; up to 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.

(d) From the Beaver Creek Road Bridge to the Elochoman Hatchery Bridge:

(i) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon: Open the Saturday before Memorial Day through March 15.

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(v) Salmon and steelhead:

(A) Open April 16 through the Friday before Memorial Day.

(B) Daily limit 6; up to 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.

(e) Elochoman Hatchery Bridge to West Fork:

(i) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon: Open the Saturday before Memorial Day through March 15.

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(f) From West Fork upstream:

(i) Game fish: Statewide minimum length/daily limit, except: Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(ii) Salmon:

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(23) **Franz Lake (Skamania County):** Closed waters.

(24) **Germany Creek (Cowlitz County) and all tributaries:**

(a) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) From 200 feet below to 200 feet above the temporary weir while the weir is installed in the river: Closed waters.

(d) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(e) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(25) **Grays River (Wahkiakum County):** From the mouth to South Fork:

(a) From mouth to Barr Road Bridge:

(i) August 1 through November 15:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) January 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Open Saturday before Memorial Day through March 15.

(iv) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(v) Salmon:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery coho and hatchery Chinook may be retained.

(III) All Chinook must be adipose and/or ventral fin clipped to be retained.

(b) From Barr Road Bridge to Highway 4 Bridge:

(i) August 1 through November 15:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) January 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Open Saturday before Memorial Day through March 15.

(iv) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(v) Salmon:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery coho and hatchery Chinook may be retained.

(III) All Chinook must be adipose and/or ventral fin clipped to be retained.

(c) From the Highway 4 Bridge to the mouth of South Fork:

(i) From 400 feet below to 200 feet above the temporary weir while the weir is installed in the river: Closed waters.

(ii) August 1 through November 15:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(iii) January 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Open Saturday before Memorial Day through March 15.

(v) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(vi) Salmon:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(III) All Chinook must be adipose and/or ventral fin clipped to be retained.

(d) From South Fork upstream:

(i) Selective gear rules, except: Use of barbed hooks is allowed.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(iv) Salmon:

(A) Open the Saturday before Memorial Day through December 31.

(B) Daily limit 6; minimum length 12 inches. Up to 2 adults may be retained.

(C) Only hatchery Chinook and hatchery coho may be retained. All Chinook must be adipose and/or ventral fin clipped to be retained.

(26) **Grays River tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(27) **Grays River, East Fork (Wahkiakum County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through October 31.

(c) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(d) Salmon:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(iv) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(28) **Grays River, East Fork tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(29) **Grays River, South Fork (Wahkiakum County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through October 31.

(c) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(d) Salmon:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained; all Chinook must be adipose and/or ventral fin clipped to be kept.

(30) **Grays River, South Fork tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(31) **Grays River, West Fork (Wahkiakum County):**

(a) Open the Saturday before Memorial Day through December 31.

(b) August 1 through November 15: Anti-snagging rule, night closure and stationary gear restriction.

(c) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(d) Salmon: Open the Saturday before Memorial Day through December 31.

(i) Daily limit 6; up to 2 may be adults.

(ii) Only hatchery Chinook and hatchery coho may be retained; all Chinook must be adipose and/or ventral fin clipped to be kept.

(32) **Grays River, West Fork tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(33) **Green River (Cowlitz County):**

(a) From the mouth to Miner's Creek:

(i) From 400 feet above and 400 feet below the salmon hatchery rack (or from the posted signs above and below the salmon hatchery rack) when the rack is installed in the river: Closed waters.

(ii) From 400 feet below to 400 feet above the water intake at the upper end of the hatchery grounds from September 1 through November 30: Closed waters.

(iii) September 1 through October 31: Anti-snagging rule applies and night closure in effect from the mouth to 400 feet below the salmon hatchery rack.

(iv) Selective gear rules, except: Use of barbed hooks is allowed from the Saturday before Memorial Day through July 31 and December 1 through March 15.

(v) Open the Saturday before Memorial Day through March 15. Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(vi) Salmon:

(A) From mouth to 400 feet or posted markers below Toutle Hatchery rack site:

(I) Open August 1 through November 30.

(II) Daily limit 6; up to 3 may be adults.

(III) Only hatchery coho may be retained.

(B) From 400 feet or posted markers below Toutle Hatchery rack site to Miner's Creek:

(I) Open August 1 through November 30.

(II) Daily limit 6; up to 3 may be adults, of which 1 may be a Chinook.

(III) Only hatchery Chinook and hatchery coho may be retained.

(b) From Miner's Creek upstream:

(i) Selective gear rules, except: Use of barbed hooks is allowed.

(ii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(34) **Green River tributaries (Cowlitz County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(35) **Grizzly Lake (Skamania County):** Closed waters.

(36) **Hamilton Creek (Skamania County):**

(a) Tributaries downstream from the Highway 14 Bridge: Closed waters.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(37) **Horsethief Lake (Klickitat County):** Open the fourth Saturday in April through October 31.

(38) **Indian Heaven Wilderness Lakes (Skamania County):** Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 8 inches.

(39) **Johnson Creek (Lewis County) (Cowlitz River tributary):** Selective gear rules.

(40) **Kalama River (Cowlitz County):**

(a) From the mouth to the railroad bridge below Interstate 5:

(i) Game fish: Open year-round.

(A) Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Open year-round: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Salmon:

(A) Open January 1 through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 3 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(b) From the railroad bridge below Interstate 5 to Modrow Bridge:

(i) From Modrow Bridge downstream to the markers approximately 1,000 feet below the temporary rack when the rack is installed below Modrow Bridge: Closed waters.

(ii) April 1 through October 31:
(A) Night closure.
(B) Anti-snagging rule.
(iii) Game fish: Open year-round.
(A) Statewide minimum length/daily limit, except:
(B) Trout: Daily limit 2; minimum length 14 inches.
(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon:
(A) Open January 1 through July 31:
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31:
(I) Daily limit 6; up to 3 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(c) From the Modrow Bridge to the natural gas pipeline crossing:
(i) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(ii) April 1 through October 31:
(A) Night closure.
(B) Anti-snagging rule.
(iii) Game fish: Open year-round.
(A) Statewide minimum length/daily limit, except:
(B) Trout: Daily limit 2; minimum length 14 inches.
(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon:
(A) Open January 1 through July 31:
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31:
(I) Daily limit 6; up to 3 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(d) From the natural gas pipeline crossing to the deadline at the intake to the lower salmon hatchery:
(i) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(ii) April 1 through October 31:
(A) Night closure.
(B) Anti-snagging rule.
(iii) Open September 1 through October 31 for fly fishing only, except: Use of barbed hooks is allowed.
(iv) Game fish: Open year-round.
(A) Statewide minimum length/daily limit, except:
(B) Trout: Daily limit 2; minimum length 14 inches.
(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(v) Salmon:
(A) Open January 1 through July 31:
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31:
(I) Daily limit 6; up to 3 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(e) From the Fallert Creek hatchery intake to posted markers approximately 1,400 feet below fishway entrance at the Kalama Falls hatchery:

(i) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(ii) Game fish: Open year-round.

(A) Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Salmon:

(A) Open January 1 through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 3 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(f) From the posted markers approximately 1,400 feet below the fishway entrance at Kalama Falls hatchery to 1,000 feet above the fishway: Closed waters.

(g) From 1,000 feet above the fishway at the Kalama Falls hatchery, upstream to Summers Creek:

(i) Open year-round.

(ii) Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(h) From Summers Creek upstream to the intersection of 6000 and 6420 roads: Open year-round:

(i) Fly fishing only, except: Use of barbed hooks is allowed.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(i) From the intersection of 6000 and 6420 roads to the 6600 road bridge immediately downstream of Jacks Creek:

(i) Selective gear rules, except: Use of barbed hooks is allowed.

(ii) Open the Saturday before Memorial Day through November 30.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(j) From the 6600 road bridge immediately downstream of Jacks Creek to Kalama Falls and tributaries: Closed waters.

(41) **Klickitat River (Klickitat County):**

(a) From the mouth (Burlington Northern Railroad Bridge) to Fisher Hill Bridge:

(i) April 1 through the Friday before Memorial Day:

(A) Anti-snagging rule.

(B) Night closure.

(ii) July 1 through July 31: Night closure.

(iii) August 1 through January 31:

(A) Anti-snagging rule.

(B) Night closure.

(iv) Game fish:

(A) Open Saturday before Memorial Day through January 31.

(B) Statewide minimum length/daily limit, except:

(C) Trout: Daily limit 2; minimum length 14 inches.

(v) Steelhead:

(A) Open Saturday before Memorial Day through June 30: Daily limit 3 hatchery steelhead, minimum length 20 inches.

(B) July 1 through October 31: Closed.

(C) Open November 1 through January 31: Daily limit 3 hatchery steelhead, minimum length 20 inches.

(vi) Salmon:

(A) Open Saturday before Memorial Day through July 31: Daily limit 6; up to 2 adults may be retained. Release wild Chinook.

(B) Open August 1 through January 31: Daily limit 6; up to 2 adults may be retained.

(vii) Salmon and steelhead: Open April 1 to the Friday before Memorial Day for salmon and steelhead on Mondays, Wednesdays, and Saturdays only:

(A) Daily limit 2; no more than 2 hatchery steelhead, or 2 salmon, or one of each, may be retained.

(B) Release wild Chinook.

(b) From Fisher Hill Bridge to the boundary markers above Klickitat Salmon Hatchery, the following waters are closed: From Fisher Hill Bridge to 400 feet above #5 fishway (Lyle Falls fishway), tributaries except Bird, Blockhouse, Bowman, Spring, Outlet creeks and the Little Klickitat River, and the waters from the boundary markers above Klickitat Salmon Hatchery to the boundary markers below the hatchery.

(c) From 400 feet above #5 (Lyle Falls fishway) fishway to the boundary markers below Klickitat Salmon Hatchery:

(i) Open the Saturday before Memorial Day through November 30:

(A) Game fish: Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(ii) Whitefish:

(A) Open December 1 through the last day in February for Whitefish only.

(B) Whitefish gear rules.

(iii) Salmon:

(A) Saturday before Memorial Day through July 31:

(I) Daily limit 6 fish; no more than 2 adults may be retained.

(II) Release wild Chinook.

(B) August 1 through November 30: Daily limit 6 fish; no more than 2 may be adults.

(d) From the boundary markers above Klickitat Salmon Hatchery to the Yakama Indian Reservation boundary:

(i) Game fish open the Saturday before Memorial Day through November 30.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(42) **Lacamas Creek (Clark County):**

(a) From the mouth to the footbridge at the lower falls:

(i) Open the Saturday before Memorial Day through August 31.

(ii) Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 2; minimum length 14 inches.
(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(b) From the footbridge at the lower falls upstream: It is permissible to fish up to the base of Lacamas Lake Dam.
(43) **Lacamas Creek, tributary of Cowlitz River (Lewis County):**
(a) Selective gear rules, except: Use of barbed hooks is allowed.
(b) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(c) Salmon:
(i) Open August 1 through October 31.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(44) **Lake River (Clark County):**
(a) Open year-round.
(b) Chumming is permissible.
(c) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.
(iii) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.
(iv) Channel catfish: Daily limit 10; no size restriction.
(v) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.
(45) **Lewis River (Clark County):**
(a) From the mouth to the mouth of the East Fork Lewis River:
(i) Game fish:
(A) Open year-round.
(B) Statewide minimum length/daily limit, except:
(I) Trout: Daily limit 2; minimum length 14 inches.
(II) Steelhead: Daily limit 3 steelhead; minimum length 20 inches.
(ii) Salmon:
(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.
(B) Open August 1 through September 30:
(I) Daily limit 6; up to 3 adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(C) Open October 1 through December 31:
(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.
(II) Only Chinook and hatchery coho may be retained.
(b) From the mouth of the East Fork Lewis River to Johnson Creek.
(i) Game fish:
(A) Open year-round.
(B) Statewide minimum length/daily limit, except:
(I) Trout: Daily limit 2; minimum length 14 inches.
(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(ii) Salmon:
(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.
(B) Open August 1 through September 30:

(I) Daily limit 6; up to 3 adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(C) Open October 1 through December 31:
(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.
(II) Only Chinook and hatchery coho may be retained.
(c) From Johnson Creek to Colvin Creek:
(i) May 1 through May 31: Closed waters.
(ii) Those waters shoreward of the cable buoy and corkline at the mouth of the Lewis River Salmon Hatchery fish ladder: Closed waters.
(iii) June 1 through November 30 and April 1 through April 30: Anti-snagging rule and night closure.
(iv) Game fish:
(A) Open June 1 through April 30.
(B) Statewide minimum length/daily limit, except:
(I) Trout: Daily limit 2; minimum length 14 inches.
(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(v) Salmon:
(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.
(B) Open August 1 through September 30:
(I) Daily limit 6; up to 3 adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(C) Open October 1 through December 31:
(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.
(II) Only Chinook and hatchery coho may be retained.
(d) From the mouth of Colvin Creek to the overhead powerlines at Merwin Dam:
(i) Open June 1 through October 31 and December 16 through April 30.
(ii) Anti-snagging rule and night closure April 1 through April 30 and June 1 through October 31.
(iii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 2; minimum length 14 inches.
(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon:
(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.
(B) Open August 1 through September 30:
(I) Daily limit 6; up to 3 adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(C) Open October 1 through October 31:
(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.
(II) Only Chinook and hatchery coho may be retained.
(D) Open December 16 through December 31:
(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.
(II) Only Chinook and hatchery coho may be retained.
(e) From the overhead powerlines below Merwin Dam to Merwin Dam: Closed waters.
(f) From the cable crossing 1,300 yards below Yale Dam to Yale Dam: Closed waters.
(g) From the old Lewis River streambed between Swift No. 1 Powerhouse and Swift No. 2 Powerhouse: Closed waters.
(h) Lewis River Power Canal:
(i) Open the fourth Saturday in April through October 31.
(ii) It is unlawful to fish from a floating device.

(iii) Game fish: Statewide minimum length/daily limit, except:

(iv) Trout: Daily limit 5; no minimum length.

(i) From Eagle Cliff Bridge to Muddy River, including all tributaries except Muddy River:

(i) Selective gear rules.

(ii) Open the Saturday before Memorial Day through July 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 10; minimum length 8 inches.

(B) Release wild trout.

(j) From the Muddy River to the lower falls and tributaries (including the Muddy River):

(i) Selective gear rules.

(ii) Release all fish.

((~~(45)~~)) (46) **Lewis River, East Fork (Clark/Skamania counties):**

(a) From the posted markers at the lower end of Big Eddy to 100 feet above Lucia Falls: Closed waters.

(b) From 400 feet below to 400 feet above Moulton Falls: Closed waters.

(c) From 400 feet below Horseshoe Falls upstream, including tributaries above Horseshoe Falls: Closed waters.

(d) From the mouth to 400 feet below Horseshoe Falls:

(i) Open the Saturday before Memorial Day through July 15 and September 16 through March 15.

(ii) Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(iv) Salmon:

(A) Open September 16 through December 31.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(e) Tributaries from the mouth to 400 feet below Horseshoe Falls:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

((~~(46)~~)) (47) **Little Klickitat River (Klickitat County):** Within Goldendale city limits:

(a) Open the fourth Saturday in April through the Friday before Memorial Day to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(b) Open the Saturday before Memorial Day through October 31 to all anglers.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Limit 5; no minimum length.

((~~(47)~~)) (48) **Little Washougal River (Clark County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(48)~~)) (49) **Little White Salmon River (Skamania County):**

(a) From the orange fishing boundary markers at Drano Lake upstream to the intake near the north boundary of the Little White Salmon National Fish Hatchery: Closed waters.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 5; minimum length 8 inches.

((~~(49)~~)) (50) **Love Lake (Clark County):** Closed waters.

((~~(50)~~)) (51) **Mayfield Lake (Reservoir) (Lewis County):**

(a) Open from the Mayfield Dam to Onion Rock Bridge.

(b) From the Tacoma Power safety signs at Onion Rock Bridge to Mossyrock Dam: Closed waters.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 10; minimum length 8 inches.

(ii) Release wild rainbow trout and wild cutthroat trout.

(iii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(iv) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(v) Channel catfish: Daily limit 10; no size restriction.

(vi) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

(d) Salmon:

(i) Open September 1 through December 31:

(ii) Daily limit 6; minimum length 12 inches.

(iii) Up to 2 may be adults.

(iv) Only hatchery Chinook and hatchery coho may be retained.

((~~(51)~~)) (52) **Merrill Lake (Cowlitz County):**

(a) Fly fishing only.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Release all fish.

((~~(52)~~)) (53) **Merwin Lake (Reservoir) (Clark/Cowlitz counties):** Landlocked salmon rules.

((~~(53)~~)) (54) **Mill Creek (Cowlitz County):**

(a) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(54)~~)) (55) **Mill Creek (Lewis County):** From the mouth to the hatchery road crossing culvert.

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through October 31 and December 1 through December 31.

(c) Anti-snagging rule from December 1 through December 31.

(d) Night closure from December 1 through December 31.

(e) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(f) Salmon:

(i) Open August 1 through October 31 and December 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(55)~~)) (56) **Mineral Lake (Lewis County):** Open the fourth Saturday in April through September 30.

((~~(56)~~)) (57) **Olequa Creek (Lewis/Cowlitz counties):**

(a) From 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek: Closed waters.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(57)~~)) (58) **Ostrander Creek (Cowlitz County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

((~~(58)~~)) (59) **Outlet Creek (Silver Lake) (Cowlitz County):**

(a) From the Saturday before Memorial Day through November 30.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open August 1 through November 30.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(59)~~)) (60) **Rainey Creek (Lewis County):**

(a) From mouth to Highway 12.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 5; minimum length 8 inches.

(ii) Release wild rainbow and cutthroat trout.

((~~(60)~~)) (61) **Riffe Lake (Reservoir) (Lewis County):**

(a) Open from Mossyrock Dam to Cowlitz Falls Dam:

(b) From Cowlitz Falls Dam downstream to the Lewis County PUD safety signs located approximately 800 feet below the dam: Closed waters.

(c) It is permissible to fish up to the base of Swofford Pond Dam.

(d) Landlocked salmon rules.

((~~(61)~~)) (62) **Rock Creek (Klickitat County):**

(a) From Army Corps of Engineers Park upstream to the source: Closed waters.

(b) Open year-round from the mouth to the Army Corps of Engineers Park. Limits, size restrictions, and gear restrictions are the same as those in the adjacent portion of the Columbia River.

((~~(62)~~)) (63) **Rock Creek (Skamania County):** From the mouth to the falls at approximately river mile one:

(a) Open the Saturday before Memorial Day through March 15.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(63)~~)) (64) **Rowland Lake, North (Klickitat County):** Open the fourth Saturday in April through March 31.

((~~(64)~~)) (65) **Salmon Creek (Clark County):** From the mouth to 182nd Avenue Bridge:

(a) Open the Saturday before Memorial Day through March 15.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(65)~~)) (66) **Salmon Creek (Lewis County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook or hatchery coho may be retained.

((~~(66)~~)) (67) **Silver Lake (Cowlitz County):** Game fish: Statewide minimum length/daily limit, except:

(a) Crappie: Daily limit 10; minimum length 9 inches.

(b) Grass carp: No limit and no minimum length.

(c) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(d) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(e) Channel catfish: Daily limit 10; no size restriction.

(f) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

((~~(67)~~)) (68) **Silver Creek (tributary to Cowlitz River) (Lewis County):** From the mouth to USFS Road 4778. Selective gear rules.

((~~(68)~~)) (69) **Skamokawa Creek (Wahkiakum County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(69)~~)) (70) **Skate Creek (tributary to Cowlitz River) (Lewis County):** Selective gear rules.

((~~(70)~~)) (71) **Spearfish Lake (Klickitat County):** Open the fourth Saturday in April through March 31.

((~~(71)~~)) (72) **Spirit Lake (Skamania County):** Closed waters.

((~~(72)~~)) (73) **Spring Creek (Klickitat County):** From Hill Road upstream to the Goldendale Hatchery: Game fish: Statewide minimum length/daily limit, except: Trout: Limit 5; minimum length 8 inches.

((~~(73)~~)) (74) **Stillwater Creek (Lewis County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

((~~(74)~~)) (75) **Swift Reservoir (Skamania County):**

(a) From dam to posted markers approximately 3/8 mile below Eagle Cliff Bridge:

(i) Open the Saturday before Memorial Day through November 30.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 10; minimum length 8 inches.

(B) Release wild trout.

(C) Release all steelhead.

(iii) Salmon:

(A) Open the Saturday before Memorial Day through November 30.

(B) Salmon count toward trout daily limit.

(C) Minimum length 8 inches.

(D) Maximum length 15 inches.

(E) No catch record card required.

(b) From the posted markers approximately 3/8 mile below Eagle Cliff Bridge to the bridge:

(i) Selective gear rules.

(ii) Open the Saturday before Memorial Day through July 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 10; minimum length 8 inches.

(B) Release wild trout.

(C) Release all steelhead.

(iv) Salmon:

(A) Open the Saturday before Memorial Day through July 15.

(B) Landlocked salmon rules.

(C) Maximum length 15 inches.

((~~(75)~~)) (76) **Tilton River (Lewis County):** From the mouth to the West Fork:

(a) Within posted "Closed Waters" signs around the adult fish release sites: Closed waters.

(b) Anti-snagging rule from September 1 through October 31.

(c) Night closure from September 1 through October 31.

(d) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout. Open year-round.

(e) Salmon:

(i) Open year-round.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery coho may be retained.

((~~(76)~~)) (77) **Tilton River, East, North, South and West Forks (Lewis County):** Selective gear rules.

((~~(77)~~)) (78) **Toutle River (Cowlitz County):** From the mouth to the forks:

(a) Open the Saturday before Memorial Day through March 15.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(c) Salmon open August 1 through November 30:

(i) Daily limit 6; up to 3 may be adults, of which 1 may be a Chinook.

(ii) Only hatchery Chinook and hatchery coho may be retained.

((~~(78)~~)) (79) **Toutle River tributaries (unless otherwise listed) (Cowlitz County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release wild trout.

((~~(79)~~)) (80) **Toutle River, North Fork (Cowlitz County):**

(a) From the mouth to the posted deadline below the fish collection facility:

(i) Open the Saturday before Memorial Day through March 15.

(ii) September 1 through October 15: Anti-snagging rule and night closure on the North Fork from the confluence with the South Fork to the mouth of Green River.

(iii) Selective gear rules, except: Use of barbed hooks is allowed the Saturday before Memorial Day through July 31 and December 1 through March 15.

(iv) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(v) Salmon open August 1 through Nov 30:

(A) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.

(B) Only hatchery Chinook and hatchery coho may be retained.

(b) From the posted deadline downstream of the fish collection facility upstream and tributaries: Closed waters.

((~~(80)~~)) (81) **Toutle River, North Fork tributaries from the mouth to the posted deadline below the fish collection facility (unless otherwise listed) (Cowlitz County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

((~~(81)~~)) (82) **Toutle River, South Fork (Cowlitz County):**

(a) From the mouth to 4700 Road Bridge:

(i) Open April 16 through the Friday before Memorial Day:

(A) Selective gear rules, except: Use of barbed hooks is allowed.

(B) Game fish: Statewide minimum length/daily limit, except:

(I) Release trout.

(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(ii) Open the Saturday before Memorial Day through November 30: Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Open December 1 through March 15:

(A) Selective gear rules, except: Use of barbed hooks is allowed.

(B) Game fish: Statewide minimum length/daily limit, except:

(I) Trout: Daily limit 2; minimum length 14 inches.

(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(C) Salmon:

(I) Open August 1 through November 30.

(II) Daily limit 6; up to 2 may be adults.

(III) Only hatchery Chinook and hatchery coho may be retained.

(b) From 4700 Road Bridge upstream:

(i) Open the Saturday before Memorial Day through March 15.

(ii) From December 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon:

(A) Open August 1 through November 30.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

((~~(82)~~)) (83) **Vancouver Lake ((~~and all other waters west of Burlington Northern Railroad from the Columbia River drawbridge near Vancouver downstream to Lewis River~~)) (Clark County):**

(a) Open year-round, except Vancouver Lake ((~~flushing channel and the lake~~)) shoreline 400 feet ((~~east~~)) north and ((~~west~~)) south of the flushing channel exit: Closed April 1 through May 31.

(b) Chumming is permissible.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(iii) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(iv) Channel catfish: Daily limit 10; no size restriction.

(v) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

((~~(83)~~)) (84) **Walupt Lake (Lewis County):** All inlet streams: Closed waters.

((~~(84)~~)) (85) **Washougal River (Clark County):**

(a) From the mouth to the boat ramp at the WDFW county line access site:

(i) From 1,000 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river: Closed waters.

(ii) Night closure.

(iii) July 1 through October 31: Anti-snagging rule.

(iv) Open April 16 through the Friday before Memorial Day:

(A) Selective gear rules, except: Use of barbed hooks is allowed.

(B) Game fish: Statewide minimum length/daily limit, except: Release all trout.

(v) Open the Saturday before Memorial Day through March 15.

(A) Game fish: Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(vi) March 16 through April 15: Closed.

(vii) Steelhead:

(A) Open April 16 through March 15: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(B) March 16 through April 15: Closed.

(viii) Salmon:
(A) Open August 1 through December 31.
(B) Daily limit 6; up to 3 adults may be retained, of which 2 may be Chinook.
(C) Only hatchery Chinook and hatchery coho may be retained.
(b) From the boat ramp at the WDFW county line access site to the bridge at Salmon Falls:
(i) From 1,000 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river: Closed waters.
(ii) August 1 through October 31:
(A) Anti-snagging rule.
(B) Night closure.
(iii) Game fish:
(A) Open from the Saturday before Memorial Day through March 15.
(B) Game fish: Statewide minimum length/daily limit, except:
(C) Trout: Daily limit 2; minimum length 14 inches.
(D) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon:
(A) Open August 1 through December 31.
(B) Daily limit 6; up to 3 adults may be retained, of which 2 may be Chinook.
(C) Only hatchery Chinook and hatchery coho may be retained.
(c) From the bridge at Salmon Falls upstream and tributaries: Closed waters.
((~~(85)~~)) (86) **Washougal River, West (North) Fork (Clark/Skamania counties):**
(a) From the mouth to the water intake at the department hatchery: Closed waters.
(b) From the intake at the department hatchery upstream:
(i) Open the Saturday before Memorial Day through March 15.
(ii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 2; minimum length 14 inches.
(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iii) Salmon:
(A) Open August 1 through December 31.
(B) Daily limit 6; up to 2 may be adults.
(C) Only hatchery Chinook and hatchery coho may be retained.
((~~(86)~~)) (87) **White Salmon River (Klickitat/Skamania counties):**
(a) From the mouth (Burlington Northern Railroad Bridge) to the county road bridge below the former location of the powerhouse:
(i) Open year-round.
(ii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat.
(iii) July 1 through October 31: Night closure for salmon and steelhead.
(iv) August 1 through December 31: Anti-snagging rule.
(v) Salmon and steelhead:
(A) Open April 1 through June 30:
(I) Daily limit 2; up to 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.
(II) Release wild Chinook.
(B) Open July 1 through July 31:
(I) Daily limit 2; up to 2 salmon.

(II) Release wild Chinook. Closed to fishing for or retaining steelhead.

(C) Open August 1 through October 31:

(I) Daily limit 6; up to 2 adult salmon. Closed to fishing for or retaining steelhead.

(II) Only hatchery Chinook and hatchery coho may be retained.

(D) Open November 1 through March 31:

(I) Daily limit 6; up to 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Only hatchery Chinook and hatchery coho may be retained.

(b) From the county road bridge below the former location of the powerhouse upstream to Big Brother Falls (river mile 16):

(i) From Big Brother Falls downstream 400 feet: Closed waters.

(ii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(iii) Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Salmon and steelhead:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 2 fish, up to 2 salmon, or 2 steelhead, or one of each may be retained.

(II) Only hatchery salmon and hatchery steelhead may be retained.

(B) Open August 1 through October 31:

(I) Daily limit 6; up to 2 adult salmon, or 2 steelhead, or one of each may be retained.

(II) Only hatchery salmon and hatchery steelhead may be retained.

((~~(87)~~)) (88) **Wind River (Skamania County):**

(a) From the mouth to the Highway 14 Bridge:

(i) Open year-round.

(ii) March 16 through June 30: Night closure.

(iii) March 16 through June 30: Each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

(iv) March 16 through June 30: Two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.

(v) July 1 through October 31: Night closure for salmon and steelhead fishing.

(vi) August 1 through October 31: Anti-snagging rule applies.

(vii) Game fish: Statewide minimum length/daily limit, except:

(A) Release cutthroat trout and wild rainbow trout.

(B) Steelhead: Open November 1 through March 15; daily limit 3 hatchery steelhead; minimum length 20 inches.

(viii) Salmon and steelhead:

(A) Open March 16 through June 30: Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained. Release wild Chinook and wild coho.

(B) Open July 1 through September 30:

(I) Daily limit 6; up to 2 adult salmon may be retained. Closed to fishing for or retaining steelhead.

(II) Release wild Chinook and wild coho.

(C) Open October 1 through October 31:

(I) Daily limit 6; up to 2 may be adults. Closed to fishing for or retaining steelhead.

(II) Release wild coho.

(b) From the Highway 14 Bridge to 400 feet below Shipherd Falls:

(i) Open year-round.

(ii) March 16 through June 30: Night closure.

(iii) July 1 through October 31: Night closure for salmon and steelhead fishing.

(iv) Anti-snagging rule from May 1 through June 30 and August 1 through October 31.

(v) Game fish: Statewide minimum length/daily limit, except:

(A) Release cutthroat trout and wild rainbow trout.

(B) Steelhead: Open November 1 through March 15; daily limit 3 hatchery steelhead; minimum length 20 inches.

(vi) Salmon and steelhead:

(A) Open March 16 through June 30: Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained. Release wild Chinook and wild coho.

(B) Open July 1 through July 31:

(I) Daily limit 6; up to 2 adult salmon may be retained. Closed to fishing for or retaining steelhead.

(II) Release wild Chinook and wild coho.

(C) Open August 1 through October 31:

(I) Daily limit 6; up to 2 adult salmon may be retained. Closed to fishing for or retaining steelhead.

(II) Release wild Chinook and wild coho.

(c) From 400 feet below to 100 feet above Shipherd Falls fish ladder: Closed waters.

(d) From 100 feet above Shipherd Falls fish ladder to 400 feet below the Coffer Dam:

(i) Anti-snagging rule.

(ii) Night closure.

(iii) Open September 16 through November 30:

(A) Release all fish.

(B) Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Salmon and steelhead:

(A) Open May 1 through June 30.

(B) Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(e) From 400 feet below the Coffer Dam to 100 feet above the Coffer Dam: Closed waters.

(f) From 100 feet above the Coffer Dam to 800 yards downstream from Carson National Fish Hatchery:

(i) Anti-snagging rule.

(ii) Night closure.

(iii) Open September 16 through November 30:

(A) Release all fish.

(B) Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Salmon and steelhead open May 1 through June 30: Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(g) From 800 yards downstream from Carson National Fish Hatchery upstream to Moore Bridge:

(i) Open September 16 through November 30.

(ii) Release all fish.

(iii) Selective gear rules, except: Use of barbed hooks is allowed.

(h) From Moore Bridge upstream: Closed waters.

((~~(88)~~)) (89) **Wind River tributaries (Skamania County):** Closed waters.

((~~(89)~~)) (90) **Yale Reservoir (Cowlitz County):** Landlocked salmon rules.

((~~(90)~~)) (91) **Yellowjacket Creek (tributary to Cispus River) (Lewis County):** Selective gear rules.

RDS-6597.2

AMENDATORY SECTION (Amending WSR 25-13-087, filed 6/16/25, effective 7/17/25)

WAC 220-312-050 Freshwater exceptions to statewide rules—East-side. (1) **Countywide freshwater exceptions to statewide rules:**

(a) Irrigation canals, wasteways, drains and the inlets and outlets of all lakes, ponds, and reservoirs in Grant and Adams counties (except Crab Creek, Rocky Ford Creek and Ponds, Columbia Basin Hatchery Creek, Bobcat Creek, Coyote Creek, Frenchman Hills Wasteway and Drains, Hays Creek, Red Rock Creek, Sand Hollow Creek, and Lake Lenore inlet and outlet) are open year-round, statewide lake rules apply to all species.

(b) In Adams, Douglas, Franklin, Grant, and Okanogan counties, except Zosel Dam (Okanogan River) and Enloe Dam (Similkameen River): It is permissible to fish up to the base of all dams.

(2) **Aeneas Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(3) **Ahtanum Creek (Yakima County):** Selective gear rules.

(4) **Ahtanum Creek, North Fork (Yakima County):**

(a) From the Grey Rock Trailhead Bridge crossing upstream to Shellneck Creek: Closed waters.

(b) Selective gear rules.

(5) **Ahtanum Creek, Middle Fork (Yakima County):**

(a) From the A2000 Spur Road Bridge in NE 1/4 of Section 34 upstream to the A2800 Road Bridge at Tree Phones Campground: Closed waters.

(b) Selective gear rules.

(6) **Alta Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(7) **Amber Lake (Spokane County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Open March 1 through November 30.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(8) **American River (Yakima County):**

(a) Selective gear rules.

(b) From the Highway 410 Bridge at river mile 5.4 to the Mesatchee Creek Trail crossing at river mile 15.8: Closed waters from July 16 through September 15.

(9) **Amon Wasteway (Benton County):** Selective gear rules.

(10) **Andrews Creek (tributary to Chewuch River) (Okanogan County):** From the mouth to the falls approximately 0.5 miles upstream: Closed waters.

(11) **Asotin Creek, mainstem and forks (Asotin County):**

(a) Closed waters:

(i) South Fork from mouth upstream.

(ii) North Fork from USFS border upstream.

(b) Game fish: Statewide minimum length/daily limit, except: It is unlawful to fish for steelhead.

(c) Selective gear rules.

(12) **Aspen Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(13) **Badger Lake (Spokane County):** Open the fourth Saturday in April through ((~~September 30~~)) October 31.

(14) **Banks Lake (Grant County):**

(a) Chumming is permissible.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Crappie: Daily limit 10; minimum length 9 inches.

(ii) Yellow perch: Daily limit 25.

(15) **Bayley Lake (Stevens County):**

(a) Inlet stream: Closed waters.

(b) Open the fourth Saturday in April through October 31.

(c) Fly fishing only.

(d) It is unlawful to fish from a floating device equipped with a motor.

(e) Release all fish.

(16) **Bear Creek (tributary to South Fork Tieton River) (Yakima County):** From the mouth to the falls (approximately 0.75 mile): Closed waters.

(17) **Bear Lake (Spokane County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(18) **Beaver Creek (tributary to Methow River) (Okanogan County):** Closed waters.

(19) **Beaver Lake (Big) (Okanogan County):** Open the fourth Saturday in April through October 31.

(20) **Beaver Lake, (Little):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(21) **Beda Lake (Grant County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(22) **Beehive (Lake) Reservoir (Chelan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(23) **Beth Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(24) **Big Four Lake (Columbia County):**

(a) Fly fishing only.

(b) It is unlawful to fish from any floating device.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(25) **Big Meadow Lake (Pend Oreille County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(26) **Big Twin Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(27) **Blackbird Island Pond (Chelan County):** Open July 1 through September 30 for juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(28) **Black Canyon Creek (tributary to Methow River) (Okanogan County):** Closed waters.

(29) **Black Lake (Chelan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(30) **Black Lake (Okanogan County):** Selective gear rules.

(31) **Black Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(32) **Blue Lake (Columbia County):** It is unlawful to fish from any floating device.

(33) **Blue Lake (Grant County):** Open the fourth Saturday in April through October 31.

(34) **Blue Lake (near Sinlahekin) (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(e) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(35) **Blue Lake (near Wannacut Lake) (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1, minimum length 18 inches.

(36) **Bobcat Creek and Ponds (Adams County):** Open the fourth Saturday in April through September 30.

(37) **Bonaparte Creek (Okanogan County):** From the mouth to the falls approximately river mile 1.0: Closed waters.

(38) **Bonaparte Lake (Okanogan County):**

(a) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(39) **Boulder Creek and tributaries (Okanogan County):** From the mouth to the barrier falls at river mile 1.0: Closed waters.

(40) **Box Canyon Creek and tributaries (Kittitas County):** From mouth (Kachess Reservoir) upstream approximately 2 miles to the 20 foot high waterfall, including that portion of the creek that flows through the dry lake bed: Closed waters.

(41) **Browns Lake (Pend Oreille County):**
(a) Open the fourth Saturday in April through October 31.
(b) Fly fishing only.
(c) It is unlawful to fish from a floating device equipped with a motor.
(42) **Bumping Lake (Reservoir) (Yakima County):** Chumming is permissible.
(43) **Buckskin Creek and tributaries (Yakima County):** From the mouth to the west boundary of Suntides Golf Course: Closed waters.
(44) **Bumping River (Yakima County):**
(a) It is permissible to fish up to the base of Bumping Dam.
(b) From the mouth to Bumping Reservoir; selective gear rules.
(45) **Burke Lake (Grant County):** Open March 1 through September 30.
(46) **Buttermilk Creek (tributary to Twisp River) (Okanogan County), including tributaries:**
(a) Open the Saturday before Memorial Day through August 15.
(b) Release all fish.
(c) Selective gear rules.
(47) **Buzzard Lake (Okanogan County):**
(a) Open the fourth Saturday in April through October 31.
(b) Selective gear rules.
(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.
(48) **Caldwell Lake (Pend Oreille County):**
(a) Open the fourth Saturday in April through October 31.
(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
(49) **Caliche Lakes, Upper (Grant County):** Open March 1 through September 30.
(50) **Calispell Creek (Calispell River) (Pend Oreille County):** From the mouth to Calispell Lake: Open year-round.
(51) **Campbell Lake (Okanogan County):**
(a) Selective gear rules.
(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.
(52) **Carl's Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.
(53) **Cascade Lake (Grant County):** Open March 1 through September 30.
(54) **Cattail Lake (Grant County):** Open the fourth Saturday in April through September 30.
(55) **Cedar Creek (tributary to Early Winters Creek) (Okanogan County):**
(a) From the mouth to Cedar Falls:
(i) Open the Saturday before Memorial Day through August 15.
(ii) Selective gear rules.
(iii) Release all fish.
(b) From Cedar Falls upstream including tributaries: Selective gear rules.
(56) **Cedar Lake (Stevens County):** Open the fourth Saturday in April through October 31.
(57) **Chain Lake (Pend Oreille County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Release kokanee.

(58) **Chapman Lake (Spokane County):**

(a) Open the fourth Saturday in April through October 31.

(b) Chumming is permissible.

(59) **Chelan Hatchery Creek (Chelan County):** Closed waters.

(60) **Chelan Lake (Chelan County):**

(a) Game fish: Statewide minimum length/daily limit, except:

(i) Release wild cutthroat trout.

(ii) Lake trout: No limit and no size restriction.

(b) Salmon: Daily limit 1; minimum length 15 inches.

(c) No catch record card required.

(61) **Chelan Lake tributaries (Chelan County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release wild cutthroat trout.

(62) **Chelan River (Chelan County):** From the railroad bridge to the Chelan PUD safety barrier below the power house:

(a) Game fish: Statewide minimum length/daily limit, except:

(i) Release trout.

(ii) Steelhead: Closed to fishing.

(b) From the Chelan PUD safety barrier below the power house upstream to Chelan Lake: Closed waters.

(63) **Chewuch River (Okanogan County):**

(a) From the mouth to Eight Mile Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(iii) Release all fish.

(b) From the mouth to Pasayten Wilderness boundary falls: Whitefish:

(i) Open December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(64) **Chiwaukum Creek (Chelan County):**

(a) From the mouth to Fool Hen Creek, including Fool Hen Creek and tributaries: Closed waters.

(b) From Fool Hen Creek upstream and tributaries: Selective gear rules.

(65) **Chiwawa River (Chelan County):**

(a) From the mouth to Buck Creek and tributaries not including Buck Creek: Closed waters.

(b) From Buck Creek upstream and tributaries (including Buck Creek): Selective gear rules.

(66) **Chopaka Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(67) **Chumstick Creek (Chelan County):** Closed waters.

(68) **Clear Lake (Chelan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(69) **Clear Lake (Spokane County):** Open the fourth Saturday in April through October 31.

(70) **Cle Elum Lake (Reservoir) (Kittitas County):** Game fish: Statewide minimum length/daily limit, except: Kokanee: Daily limit 5; minimum length 9 inches and maximum length 15 inches.

(71) **Cle Elum River (Kittitas County):**

(a) From the mouth to the Green Bridge located approximately 2,000 feet below Cle Elum Dam:

(i) Open year-round.

(ii) Selective gear rules.

(iii) Game fish: Statewide minimum length/daily limit, except: Release rainbow trout and cutthroat trout.

(iv) It is permissible to fish up to the base of Cle Elum Dam.

(v) Whitefish:

(A) Open December 1 through last day in February for whitefish only.

(B) Whitefish gear rules.

(b) From the Green Bridge located approximately 2,000 feet below Cle Elum Dam upstream to the dam: Closed waters.

(c) From above Cle Elum Lake to outlet of Hyas Lake: Selective gear rules.

(72) **Cliff Lake (Grant County):** Open March 1 through September 30.

(73) **Coffee Pot Lake (Lincoln County):**

(a) Open March 1 through September 30.

(b) Selective gear rules.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 1; minimum length 18 inches.

(ii) Crappie: Daily limit 10; minimum length 9 inches.

(74) **Columbia Basin Hatchery Creek (Grant County):**

(a) Open April 1 through September 30 from the hatchery outflow to the confluence with Rocky Coulee Wasteway.

(b) Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(75) **Columbia Park Pond (Benton County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(76) **Colville River (Stevens County):** From the mouth to bridge at the town of Valley including Meyers Falls Reservoir: Open year-round.

(77) **Conconully Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(78) **Conconully Reservoir (Okanogan County):** Open the fourth Saturday in April through October 31.

(79) **Conger Pond (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(80) **Conner Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(81) **Cooper River (Kittitas County):** From the mouth to Cooper Lake: Selective gear rules.

(82) **Coot Lake (Grant County):** Open the fourth Saturday in April through September 30.

(83) **Corral Creek (Benton County):** Selective gear rules.

(84) **Cougar Lake (Pasayten Wilderness) (Okanogan County):** Selective gear rules.

(85) **Cougar Lake (near Winthrop) (Okanogan County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(86) **Cowiche Creek (Yakima County):** Selective gear rules.

(87) **Coyote Creek and Ponds (Adams County):** Open the fourth Saturday in April through September 30.

(88) **Crab Creek (Adams/Grant/Lincoln counties):**

(a) From the mouth to Morgan Lake Road: Open the Saturday before Memorial Day through September 30.

(b) From Morgan Lake Road to O'Sullivan Dam (including Marsh Unit I and II impoundments): Closed waters.

(c) From the confluence of the Moses Lake outlets to Sand Dunes Road including tributaries:

(i) Open year-round.

(ii) Statewide lake rules apply to all species, except:

(A) Crappie: Minimum length 9 inches.

(B) Crappie and bluegill: Combined limit of 25 fish.

(C) Yellow perch: Daily limit 25 fish.

(d) From the fountain buoy and shoreline markers of 150 feet down stream of the Alder Street fill to Grant County Road 7 NE:

(i) Open year-round.

(ii) Statewide lake rules apply to all species, except:

(A) Crappie: Daily limit 10; minimum length 9 inches.

(B) Bluegill: Daily limit 5; minimum length 8 inches.

(C) Yellow perch: Daily limit 25.

(e) From Grant County Road 7 NE upstream (including all tributaries, except Goose Creek in the city of Wilbur): Open year-round.

(89) **Crawfish Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(90) **Crescent Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(91) **Crystal Lake (Grant County):** Open March 1 through September 30.

(92) **Cub Creek (tributary to Chewuch River) (Okanogan County):** From mouth upstream to West Chewuch Road Bridge: Closed waters.

(93) **Cup Lake (Grant County):** Open March 1 through September 30.

(94) **Curl Lake (Columbia County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) It is unlawful to fish from any floating device.

(95) **Davis Lake (Ferry County):** Open the fourth Saturday in April through October 31.

(96) **Davis Lake (Okanogan County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(97) **Dayton Pond (Columbia County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(98) **Deadman Lake (Adams County):** Open the fourth Saturday in April through September 30.

(99) **Deep Creek (tributary to Bumping Lake) (Yakima County):** From the mouth to the waterfall approximately 0.33 mile above the second bridge crossing on USFS Road 1808 (approximately 3.7 miles from the junction of USFS Roads 1800 and 1808): Closed waters.

(100) **Deep Lake (Grant County):** Open the fourth Saturday in April through October 31.

(101) **Deep Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(102) **Deer Lake (Columbia County):**

(a) Open March 1 through November 30.

(b) It is unlawful to fish from any floating device.

(103) **Deer (Deer Springs) Lake (Lincoln County):** Open the fourth Saturday in April through September 30.

(104) **Deer Lake (Stevens County):** Game fish: Statewide minimum length/daily limit, except:

(a) Eastern brook trout count as part of trout daily limit.

(b) Lake trout: Daily limit 5, no more than 1 over 26 inches may be retained.

(105) **Delaney Springs (Grant County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(106) **De Roux Creek (Kittitas County):** From the mouth to the USFS trail 1392 (De Roux Creek Trail) stream crossing (approximately 1 river mile): Closed waters.

(107) **Dog Creek (tributary to Chewuch) (Okanogan County):** From mouth upstream to falls approximately 1.5 miles: Closed waters.

(108) **Domerie Creek (Kittitas County):** Selective gear rules.

(109) **Downs Lake (Lincoln/Spokane counties):**

(a) Open March 1 through September 30.

(b) Game fish: Statewide minimum length/daily limit, except: Crappie: Daily limit 10; minimum length 9 inches.

(110) **Dry Falls Lake (Grant County):**

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(111) **Dune Lake (Grant County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(112) **Dusty Lake (Grant County):**

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(113) **Eagle Creek (tributary to Twisp River) (Okanogan County):** From mouth upstream to the falls approximately 0.5 miles: Closed waters.

(114) **Early Winters Creek (tributary to Methow River) (Okanogan County):**

(a) From the mouth upstream to Forest Road 300: Closed waters.

(b) From Forest Road 300 upstream; including tributaries except Cedar Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(iii) Release all fish.

(115) **Eightmile Creek (tributary to Chewuch River) (Okanogan County):** From the mouth upstream to Forest Road 5130 Bridge: Closed waters.

(116) **Elbow Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(117) **Ell Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(118) **Eloika Lake (Spokane County):** Game fish: Statewide minimum length/daily limit, except: Crappie: Daily limit 10; minimum length 9 inches.

(119) **Empire Lake (Ferry County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(120) **Entiat River (Chelan County):**

(a) From mouth (railroad bridge) to the boundary marker/markers located approximately 1,500 feet upstream of the upper Roaring Creek Road Bridge (immediately downstream of the Entiat National Fish Hatchery):

(i) Open December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(b) From the boundary marker/markers located approximately 1,500 feet upstream of the upper Roaring Creek Road Bridge (immediately downstream of the Entiat National Fish Hatchery) to Entiat Falls:

(i) Whitefish:

(ii) Open December 1 through the last day in February for whitefish only.

(iii) Whitefish gear rules.

(c) Entiat River and all tributaries above Entiat Falls: Selective gear rules.

(121) **Ephrata Lake (Grant County):** Closed waters.

(122) **Esquatzel Coulee (Franklin County):** Open year-round.

(123) **Esquatzel Coulee, West Branch (Franklin County):** Open year-round.

(124) **Falls Creek (tributary to Chewuch River) (Okanogan County):** From mouth upstream to the falls approximately .15 miles: Closed waters.

(125) **Fan Lake (Pend Oreille County):**

(a) Open the fourth Saturday in April through ((~~September 30~~)) October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(126) **Ferry Lake (Ferry County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(127) **Fiorito Lakes (Kittitas County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(128) **Fish Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(129) **Fish Lake (Spokane County):**

(a) Open the fourth Saturday in April through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(130) **Fishhook Pond (Walla Walla County):** It is unlawful to fish from a floating device.

(131) **Fishtrap Lake (Lincoln/Spokane counties):** Open the fourth Saturday in April through September 30.

(132) **Forde Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(133) **Fourth of July Lake (Adams/Lincoln counties):**

(a) Open the Friday after Thanksgiving through March 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(134) **Frank's Pond (Chelan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Open to juvenile anglers only.

(135) **Frater Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(136) **Frenchman Hills Wasteway and Drains (Grant County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(137) **Gadwall Lake (Grant County):** Open the fourth Saturday in April through September 30.

(138) **Garfield Juvenile Pond (Whitman County):** Open to juvenile anglers only.

(139) **Goat Creek (tributary to Methow River) (Okanogan County):** Closed waters.

(140) **Gold Creek, Gold Creek Pond and outlet channel (tributary to Keechelus Lake):** Including that portion of Gold Creek that flows through the dry Keechelus Reservoir lakebed: Closed waters.

(141) **Gold Creek (tributary to Methow River) (Okanogan County):** Closed waters.

(142) **Goose Creek (Lincoln County), within the city limits of Wilbur:** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(143) **Goose Lake, Lower (Grant County):** Game fish: Statewide minimum length/daily limit, except:

(a) Crappie: Daily limit 10; minimum length 9 inches.

(b) Bluegill: It is unlawful to retain more than 5 fish over 6 inches in length.

(144) **Grande Ronde River (Asotin County):**

(a) From the mouth to County Road Bridge, about 2.5 miles upstream:

(i) Open year-round for game fish other than trout and steelhead.

(ii) From August 1 through April 15: Selective gear rules.

(iii) Trout: Open from the Saturday before Memorial Day through October 31.

(iv) Steelhead:

(A) Open January 1 through April 15; daily limit 3 hatchery steelhead; minimum length 20 inches.

(B) August 1 through December 31; release steelhead.

(b) From the County Road Bridge upstream to the Oregon state line:

(i) Open year-round for game fish other than trout and steelhead.

(ii) From August 1 through April 15: Barbless hooks required.

(iii) Trout: Open from the Saturday before Memorial Day through October 31.

(iv) Steelhead: Open August 1 through April 15; daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) All tributaries: Closed waters.

(145) **Green Lakes (Lower and Upper) (Okanogan County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Eastern brook trout count as part of trout daily limit.

(146) **Grimes Lake (Douglas County):**

(a) Open June 1 through August 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(147) **Halfmoon Lake (Adams County):** Open the fourth Saturday in April through September 30.

(148) **Hampton Lakes (Lower and Upper) (Grant County):** Open the fourth Saturday in April through September 30.

(149) **H and H Reservoir Number One (Pascal's Pond) (Chelan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(150) **Harris Lake (Grant County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(151) **Hatch Lake (Stevens County):** Open the Friday after Thanksgiving through March 31.

(152) **Hays Creek and Ponds (Adams County):** Open the fourth Saturday in April through September 30.

(153) **Headgate Pond (Asotin County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(154) **Hen Lake (Grant County):** Open the fourth Saturday in April through September 30.

(155) **Hog Canyon Creek (Spokane County):** From the mouth to Scroggie Road: Closed waters.

(156) **Hog Canyon Lake (Spokane County):** Open the Friday after Thanksgiving through March 31.

(157) **Homestead Lake (Grant County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(158) **Hourglass Lake (Grant County):** Open the fourth Saturday in April through September 30.

(159) **Hutchinson Lake (Adams County):** Open the fourth Saturday in April through September 30.

(160) **I-82 Ponds, 1 through 7 (Yakima County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(161) **Icicle River and tributaries (Creek) (Chelan County):**

(a) From the mouth upstream 800 feet to posted signs: Closed waters.

(b) From posted signs 800 feet upstream of the mouth to 500 feet below Leavenworth National Fish Hatchery: Closed waters.

(c) From 500 feet below Leavenworth National Fish Hatchery to shoreline markers where Cyo Road would intersect the Icicle River at the Sleeping Lady Resort: Closed waters.

(d) From shoreline markers where Cyo Road would intersect the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation District footbridge (approximately 750 feet upstream of the "Snow Lakes Trailhead" parking lot): Closed waters.

(e) From the Icicle Irrigation Peshastin District footbridge upstream, and tributaries: Selective gear rules.

(162) **Indian Creek (Yakima County):** From the mouth to the waterfall approximately six miles upstream including that portion that flows through the dry lake bed of Rimrock Reservoir: Closed waters.

(163) **Ingalls Creek (Chelan County):** From the mouth to Alpine Lakes Wilderness boundary and tributaries: Closed waters.

(164) **Jameson Lake (Douglas County):** Open the fourth Saturday in April through October 31.

(165) **Jasmine Creek (Okanogan County):**

(a) Open year-round to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(b) Game fish: Statewide minimum length/daily limit, except: Steelhead: Closed to fishing.

(166) **Jefferson Park Pond (Walla Walla County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(167) **Jolanda, Lake (Chelan County):** Closed waters.

(168) **Kachess Lake (Reservoir) (Kittitas County):**

(a) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(b) Chumming is permissible.

(169) **Kachess River (Kittitas County):**

(a) From Kachess Lake (Reservoir) upstream to the waterfall approximately 0.5 miles above Mineral Creek: Closed waters.

(b) It is permissible to fish up to the base of Kachess Dam.

(c) From the mouth to Kachess Dam: Selective gear rules.

(170) **Keechelus Lake (Reservoir) (Kittitas County):**

(a) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(b) Chumming is permissible.

(171) **Kettle Creek (tributary to American River) (Yakima County):** Closed waters.

(172) **Kettle River (Stevens County):** From Barstow Bridge upstream:

(a) Selective gear rules, except for juvenile anglers, from the Canadian border upstream to Highway 21 Bridge at Curlew.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Minimum length 14 inches.

(d) Whitefish:

(i) Open December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(173) **Kings Lake and tributaries (Pend Oreille County):** Closed waters.

(174) **Kiwanis Pond (Kittitas County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(175) **Lake Creek (Okanogan County):**

(a) From the mouth to Black Lake: Closed waters.

(b) From Black Lake to Three Prong Creek: Closed waters.

(176) **Ledbetter Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(177) **Ledking Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(178) **Leech Lake (Yakima County):**

(a) Fly fishing only.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Game fish: Statewide minimum length/daily limit, except: Rainbow trout: Daily limit 1; minimum length 18 inches.

(179) **Lemna Lake (Grant County):** Open the fourth Saturday in April through September 30.

(180) **Lenice Lake (Grant County):**

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(181) **Lenore Lake (Grant County):**

(a) The waters within a 200 yard radius of the trash rack leading to the irrigation pumping station (on the south end of the lake) and the area approximately 100 yards beyond the mouth of inlet stream to State Highway 17: Closed waters.

(b) Open March 1 through November 30.

(c) Selective gear rules.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(182) **Libby Creek (tributary to Methow River) (Okanogan County):** Closed waters.

(183) **Liberty Lake (Spokane County):** Open March 1 through October 31.

(184) **Lilly Lake (Chelan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(185) **Lions Park Pond (Walla Walla County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(186) **Little Bridge Creek (tributary of Twisp River) (Okanogan County):**

(a) Open the Saturday before Memorial Day through August 15.

(b) Release all fish.

(c) Selective gear rules.

(187) **Little Falls Reservoir (Spokane River) (Lincoln County):** From Little Falls Dam to Long Lake Dam: Landlocked salmon rules.

(188) **Little Lost Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(189) **Little Naches River including tributaries (Yakima County):** Selective gear rules.

(190) **Little Pend Oreille River and tributaries (Stevens County):** Selective gear rules.

(191) **Little Spokane River and tributaries (Spokane County):**

(a) From the inlet of Chain Lake upstream 0.25 mile to the railroad crossing culvert: Closed waters.

(b) From the SR 291 Bridge upstream:

(i) Open Saturday before Memorial Day through October 31.

(ii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(192) **Little Twin Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 1; minimum length 18 inches.

(ii) Eastern brook trout count as part of trout daily limit.

(193) **Little Twin Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(194) **Little Wenatchee River (Chelan County):**

(a) From the mouth to USFS road 6700 Bridge and tributaries: Closed waters.

(b) From the USFS road 6700 Bridge upstream including tributaries: Selective gear rules.

(195) **Long Lake (Ferry County):**

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to use flies containing lead.

(d) It is unlawful to fish from a floating device equipped with a motor.

(196) **Long Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(197) **Long Lake (Lake Spokane) (Spokane County):** From Long Lake Dam to Nine Mile Dam, including Little Spokane River from the mouth to the SR 291 Bridge: Landlocked salmon rules.

(198) **Loon Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(199) **Lost Lake (Kittitas County):** Game fish: Statewide minimum length/daily limit, except: Rainbow trout: Daily limit 2; minimum length 14 inches.

(200) **Lost Lake (Okanogan County):**

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(c) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(201) **Lost River (tributary to Methow River) (Okanogan County):**

(a) From the mouth to the mouth of Monument Creek: Closed waters.

(b) From the mouth of Monument Creek including tributaries upstream to Deception Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Minimum length 14 inches; daily limit 2.

(B) Dolly Varden/bull trout may be retained as part of trout daily limit.

(202) **Lyman Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(203) **Mad River (Chelan County):**

(a) From the mouth to Windy Creek, including Windy Creek and tributaries except Tillicum Creek: Closed waters.

(b) From Windy Creek upstream and tributaries: Selective gear rules.

(204) **Manastash Creek (Kittitas County):** Selective gear rules.

(205) **Marshall Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(206) **Martha Lake (Grant County):** Open March 1 through September 30.

(207) **Mary Ann Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(208) **Mattoon Lake (Kittitas County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(209) **McCabe Pond (Kittitas County):** It is unlawful to fish from any floating device equipped with a motor.

(210) **McDowell Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Release all fish.

(211) **McManaman Lake (Adams County):** Open the fourth Saturday in April through September 30.

(212) **Medical Lake (Spokane County):**

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(213) **Medical Lake, West (Spokane County):** Open the fourth Saturday in April through ((~~September 30~~)) October 31.

(214) **Mercer Creek (Kittitas County):** Selective gear rules.

(215) **Merry Lake (Grant County):**

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(216) **Methow River (Okanogan County):**

(a) From mouth to County Road 1535 (Burma Road) Bridge: Closed waters.

(b) Tributaries from mouth to County Road 1535 (Burma Road) Bridge except Black Canyon Creek:

(i) Release all fish, except: Eastern brook trout: No minimum length/daily limit.

(ii) Steelhead: Closed to fishing.

(c) From County Road 1535 (Burma Road) Bridge to Gold Creek:

(i) Open the Saturday before Memorial Day through September 15.

(ii) Selective gear rules.

(iii) Release all fish.

(iv) Steelhead: Closed to fishing.

(d) All tributaries from the County Road 1535 (Burma Road) to Gold Creek except Gold Creek:

(i) Selective gear rules.

(ii) Release all fish, except: Eastern brook trout: No minimum length/daily limit.

(iii) Steelhead: Closed to fishing.

(e) From Gold Creek to Foghorn Dam:

(i) Open the Saturday before Memorial Day through September 30.

(ii) Selective gear rules.

(iii) Release all fish.

(iv) Steelhead: Closed to fishing.

(v) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(f) Methow River tributaries from Gold Creek to Foghorn Dam; except Twisp River, Chewuch River, Libby Creek, and Beaver Creek:

(i) Release all fish, except: Eastern brook trout: No minimum length/daily limit.

(ii) Steelhead: Closed to fishing.

(g) From Foghorn Dam to Weeman Bridge including tributaries:

(i) Open the Saturday before Memorial Day through August 15:

(A) Release all fish.

(B) Selective gear rules.

(C) Steelhead: Closed to fishing.

(ii) Whitefish:

(A) Open December 1 through the last day in February for Whitefish only.

(B) Whitefish gear rules.

(h) From Weeman Bridge to the falls above Brush Creek: Whitefish:

(i) Open December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(i) Methow River tributaries from Weeman Bridge to the falls above Brush Creek; excluding Lost River, Goat Creek, Early Winters Creek, and Wolf Creek:

(i) Selective gear rules.

(ii) Release all fish.

(iii) Steelhead: Closed to fishing.

(217) **Mill Creek (tributary to the Walla Walla River) (Walla Walla County):**

(a) From the mouth to Bennington Dam, including tributaries: Closed waters.

(b) From Bennington Dam upstream excluding tributaries: Selective gear rules.

(c) All tributaries upstream of Bennington Dam: Closed waters.

(218) **Mineral Creek (tributary to upper Kachess River) (Kittitas County):** From the mouth to the Wilderness Boundary: Closed waters.

(219) **Molson Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(220) **Monument Creek (Okanogan County), including tributaries:** Selective gear rules.

(221) **Morgan Lake (Adams County):** Open the fourth Saturday in April through September 30.

(222) **Moses Lake (Grant County):** Game fish: Statewide minimum length/daily limit, except:

(a) Crappie: Daily limit 10; minimum length 9 inches.

(b) Bluegill: Daily limit 5; minimum length 8 inches.

(c) Yellow perch: Daily limit 25.

(223) **Mud Lake (Yakima County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(224) **Mudgett Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(225) **Muskegon Lake (Pend Oreille County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(226) **Myron Lake (Yakima County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(227) **Mystic Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(228) **Naches River (Yakima/Kittitas counties):**

(a) From the mouth to Little Naches River:

(i) Selective gear rules.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Release trout from the confluence with Tieton River to the confluence of the Little Naches River and Bumping River (origin of Naches River).

(b) From the mouth to the Tieton River:

(i) Whitefish: December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(229) **Naneum Creek and tributaries (Kittitas County):** Selective gear rules.

(230) **Naneum Pond (Kittitas County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(231) **Napeequa River (Chelan County):** From mouth to Twin Lakes Creek (including Twin Lakes Creek and all tributaries: Closed waters.

(232) **Nason Creek (Chelan County):**

(a) From the mouth to Gaynor Falls and tributaries except Whitepine Creek: Closed waters.

(b) From Gaynor Falls (approximately 0.7 miles upstream of Whitepine Creek) upstream and tributaries: Selective gear rules.

(233) **Nile Creek and tributaries (Yakima County):** Selective gear rules.

(234) **No Name Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(235) **North Creek (tributary to Twisp River) (Okanogan County):** From the mouth upstream to Twisp River Road Bridge: Closed waters.

(236) **North Elton Pond (Yakima County):**

(a) Open the Friday after Thanksgiving through March 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(237) **North Potholes Reserve Ponds (Grant County):** Open March 1 through the day before waterfowl season begins.

(238) **Nunnally Lake (Grant County):**

(a) The outlet stream of Nunnally Lake is closed waters.

(b) Open March 1 through November 30.

(c) Selective gear rules.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(e) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(239) **Oak Creek and tributaries (Yakima County):** Selective gear rules.

(240) **Okanogan River (Okanogan County):**

(a) From the mouth to Highway 97 Bridge immediately upstream of the mouth:

Game fish: Open year-round. Statewide minimum length/daily limit, except:

(i) Release trout.

(ii) Steelhead: Closed to fishing.

(b) From Highway 97 Bridge immediately upstream of the mouth to the highway bridge at Malott:

Game fish: Open year-round. Statewide minimum length/daily limit, except:

(i) Release trout.

(ii) Steelhead: Closed to fishing.

(c) From the highway bridge at Malott to the Highway 97 Bridge at Oroville:

Game fish: Open the Saturday before Memorial Day through September 15. Statewide minimum length/daily limit, except:

(i) Release trout.

(ii) Steelhead: Closed to fishing.

(d) From the Highway 97 Bridge at Oroville upstream to the Zosel Dam: Closed waters.

(e) All Okanogan River tributaries, except Salmon Creek, Jasmine Creek, Bonaparte Creek, and the Similkameen River:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Release trout.

(B) Steelhead: Closed to fishing.

(241) **Osoyoos Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except:

(a) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(b) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(c) Channel catfish: Daily limit 10; no size restriction.

(d) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

(242) **Palouse River (Whitman County):** From the mouth to the base of Palouse Falls:

(a) Open year-round for game fish except trout and steelhead.

(b) Trout: Open the Saturday before Memorial Day through October 31.

(c) Steelhead:

(i) Open August 1 through April 15.

(ii) Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement, except for steelhead.

(243) **Palouse River (Whitman County) mainstem above Palouse Falls and tributaries (Washington waters only), except Rock Creek and Hog Canyon Creek:** Open year-round.

(244) **Pampa Pond (Whitman County):**

(a) Open March 1 through September 30.

(b) It is unlawful to fish from any floating device.

(245) **Park Lake (Grant County):** Open the fourth Saturday in April through October 31.

(246) **Parker Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(247) **Pataha Creek (Garfield County):**

(a) Within the city limits of Pomeroy: Open to juvenile anglers, senior angler, and anglers with a disability who possess a designated harvester companion card only.

(b) From the city limits of Pomeroy upstream: Selective gear rules.

(248) **Pearrygin Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(249) **Pend Oreille River (Pend Oreille County):**

(a) Open year-round.

(b) Game fish: Statewide lake rules.

(c) All sloughs within the boundaries of the Kalispel Reservation, except Calispell Slough: Closed waters.

(250) **Perch Lake (Grant County):** Open the fourth Saturday in April through September 30.

(251) **Peshastin Creek and all tributaries except Ingalls Creek (Chelan County):** Closed waters.

(252) **Petit Lake (Pend Oreille County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(253) **Phalon Lake (Stevens County):** Closed waters.

(254) **Phillips Lake (Stevens County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(255) **Pierre Lake (Stevens County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(256) **Pillar Lake (Grant County):** Open the fourth Saturday in April through September 30.

(257) **Ping Pond (Oasis Park Pond) (Grant County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(258) **Pit Lake (Douglas County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(259) **Poacher Lake (Grant County):** Open the fourth Saturday before April through September 30.

(260) **Potholes Reservoir (Grant County):** Game fish: Statewide minimum length/daily limit, except:

(a) Crappie: Minimum length 9 inches.

(b) Crappie and bluegill: Combined limit of 25 fish.

(c) Yellow perch: Daily limit 25 fish.

(261) **Potter's Pond (Stevens County):** Open the fourth Saturday in April through October 31.

(262) **Powerline Lake (Franklin County):** Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(263) **Quail Lake (Adams County):**

(a) Fly fishing only.

(b) It is unlawful to fish from any floating device equipped with a motor.

(c) Release all fish.

(264) **Quarry Pond (Walla Walla County):** It is unlawful to fish from any floating device.

(265) **Quincy Lake (Grant County):** Open March 1 through September 30.

(266) **Rainbow Lake (Columbia County):**

(a) Open March 1 through November 30.

(b) It is unlawful to fish from any floating device.

(267) **Rat Lake (Okanogan County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(268) **Rattlesnake Creek and tributaries (Yakima County):**

(a) Selective gear rules.

(b) Release all fish.

(269) **Red Rock Creek (Grant County):** Open the Saturday before Memorial Day through September 30.

(270) **Reflection Pond (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(271) **Renner Lake (Ferry County):**

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(272) **Rigley Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2, minimum length 14 inches.

(273) **Rimrock Lake (Reservoir) (Yakima County):** Chumming is permissible.

(274) **Ringold Springs Hatchery Creek (Franklin County):** Closed waters.

(275) **Roaring Creek (Entiat River tributary) (Chelan County):** Closed waters.

(276) **Rock Creek (Adams/Whitman counties):**

(a) From the mouth to the bridge on Jordan Knott Road at Revere:

(i) Selective gear rules.

(ii) Release all fish.

(b) From the bridge on Jordan Knott Road upstream: Open year-round.

(277) **Rocky Ford Creek and Ponds (Grant County):**

(a) Open to fly fishing and fishing from the bank only (no wading).

(b) Release all fish.

(278) **Rocky Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(279) **Roosevelt Lake (Grant/Ferry/Lincoln/Stevens counties):** Columbia River from Grand Coulee Dam to U.S. Canadian border including Hawk Creek downstream of the falls at Hawk Creek Campground, Spokane River from 400 feet downstream of Little Falls Dam, Kettle River downstream of Barstow Bridge, and Colville River downstream of S.R. 25 Bridge.

(a) The following areas are closed waters:

(i) From the Little Dalles power line crossing upstream approximately one mile to the marked rock point from March 1 through the Friday before Memorial Day.

(ii) Northport power line crossing upstream to the most upstream point of Steamboat Rock, from March 1 through the Friday before Memorial Day.

(iii) The Kettle River upstream to Barstow Bridge from March 1 through the Friday before Memorial Day.

(b) From Grand Coulee Dam to the Little Dalles power line crossing:

(i) Game fish: Statewide minimum length/daily limit, except:

(A) Kokanee: Daily limit 6; no more than 2 with intact adipose fins.

(B) Trout (except kokanee): Daily limit 5; it is unlawful to retain trout with an intact adipose fin.

(C) Walleye: Daily limit 16 fish; no size restrictions.

(ii) Salmon:

(A) Salmon count toward trout daily limit.

(B) No catch record card required.

(c) From the Little Dalles power line crossing to the Canadian border:

(i) Game fish: Statewide minimum length/daily limit, except:

(A) Kokanee: Daily limit 6; no more than 2 with intact adipose fins.

(B) Trout (except kokanee): Daily limit 2; minimum size 18 inches.

(C) Walleye: Daily limit 16; no size restrictions.

(ii) Salmon:

(A) Salmon count toward trout daily limit.

(B) No catch record card required.

(280) **Round Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(281) **Royal Lake (Adams County):** Closed waters.

(282) **Royal Slough (including Marsh Unit IV impoundments) (Adams County):** Closed waters.

(283) **Rufus Woods Lake (Douglas/Okanogan counties):**

(a) From Grand Coulee Dam downstream to State Route 155 Bridge: Closed waters.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2.

(c) Sturgeon: Closed to fishing.

(d) A nonmember fishing permit issued by the Colville Tribes shall satisfy the license requirement of RCW 77.32.010 on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods.

(e) A Colville tribal member identification card satisfies the license requirement of RCW 77.32.010 on all waters of Lake Rufus Woods.

(284) **Sacheen Lake (Pend Oreille County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(285) **Saddle Mountain Lake (Grant County):** Closed waters.

(286) **Sago Lake (Grant County):** Open the fourth Saturday in April through September 30.

(287) **Salmon Creek (Okanogan County):**

(a) From the mouth to Conconully Reservoir:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Release trout other than eastern brook trout.

(B) Steelhead: Closed to fishing.

(b) From Conconully Reservoir upstream including tributaries: Selective gear rules.

(288) **San Poil River (Ferry County):**

(a) From the western shoreline at the mouth of the San Poil Arm (as marked by a regulatory buoy) directly eastward across the San Poil Arm to the eastern shoreline of the San Poil Arm (as marked by a regulatory buoy) upstream to the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek:

(i) Game fish: Open year-round; statewide minimum length/daily limit, except:

(A) Open June 1 through January 31 for kokanee, smallmouth bass, trout, and walleye:

(I) Kokanee: Daily limit 2.

(II) Trout: Daily limit 5; it is unlawful to retain trout with an intact adipose fin.

(III) Walleye: Daily limit 16; no size restrictions.

(IV) Smallmouth bass: Daily limit 10; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(B) Largemouth bass: Daily limit 5; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(ii) Salmon: Open year-round:

(A) Salmon count toward trout daily limit.

(B) No catch record card required.

(iii) Carp: Open year-round.

(b) From the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the

outlet of Dick Creek to approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys:

(i) Game fish: Open year-round; statewide minimum length/daily limit, except:

(A) Kokanee: Unlawful to fish for or retain.

(B) Trout: Unlawful to fish for or retain.

(C) Open June 1 through January 31 for walleye and smallmouth bass:

(I) Walleye: Daily limit 16; no size restrictions.

(II) Smallmouth bass: Daily limit 10; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(D) Largemouth bass: Daily limit 5; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(ii) Salmon: Open year-round; landlocked salmon rules apply.

(iii) Carp: Open year-round; unlawful to fish for carp with bow and arrow.

(c) The waters from approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys, to all waters north of the regulatory buoy line at or above 1,310 feet mean sea level elevation upstream to the northern reservation boundary are managed under the regulatory authority of the Colville Confederated Tribes.

(289) **Sand Hollow Creek (Grant County) including tributaries:** From the mouth (State Route 243) upstream: Open the Saturday before Memorial Day through September 30.

(290) **Sarg Hubbard Park Pond (Reflection Pond) (Yakima County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(291) **Schallow Pond (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(292) **Sedge Lake (Grant County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(293) **Shellneck Creek (Yakima County):** Closed waters.

(294) **Sherman Creek (Ferry County) and tributaries:** From the hatchery boat dock to 400 feet upstream of hatchery water diversion dam: Closed waters.

(295) **Shiner Lake (Adams County):** Open the fourth Saturday in April through September 30.

(296) **Shoveler Lake (Grant County):** Open the fourth Saturday in April through September 30.

(297) **Silver Lake (Spokane County):** Game fish: Statewide minimum length/daily limit, except: Crappie: Daily limit 10; minimum length 9 inches.

(298) **Silver Nail Lake (Okanogan County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(299) **Similkameen River (Okanogan County):**

(a) From Enloe Dam downstream 400 feet: Closed waters.

(b) From the mouth to Enloe Dam:

(i) Open July 1 through September 15.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Release trout.

(B) Steelhead: Closed to fishing.

(iii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(c) From Enloe Dam to the Canadian border, including tributaries, except Sinlahekin Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(300) **Sinlahekin Creek (Okanogan County):** From Palmer Lake to Cecile Creek Bridge:

(a) Open the Saturday before Memorial Day through August 31.

(b) Selective gear rules.

(c) Whitefish:

(i) Open December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(301) **Skookum Lake, North (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(302) **Skookum Lake, South (Pend Oreille County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(303) **Snake River:**

(a) Tributaries except Palouse River, Tucannon River, Asotin Creek, and Grande Ronde River: Closed waters.

(b) Columbia River rules apply downstream of the Burbank-to-Pasco railroad bridge at Snake River mile 1.5.

(c) Within 400 feet of the base of any dam: Closed waters.

(d) Within a 400 foot radius around the fish ladder entrance at Lyons Ferry Hatchery: Closed waters.

(e) Within a 200 foot radius upstream of the fish ladder exit above Lower Granite Dam: Closed waters.

(f) Within an area 1,200 feet downstream from the base of the west lock gate at Little Goose Dam on the south bank of the Snake River and 100 feet out into the river from the south river bank: Closed waters.

(g) Game fish: Open year-round; statewide minimum length/daily limit, except:

(i) Trout: Open the Saturday before Memorial Day through October 31.

(ii) Steelhead:

(A) Open July 1 through August 31; catch and release only. Barbless hooks required.

(B) Open September 1 through March 31; Daily limit 3 hatchery steelhead; barbless hooks required.

(C) April 1 through June 30; closed to fishing.

(304) **Snipe Lake (Grant County):** Open the fourth Saturday in April through September 30.

(305) **Snipes Creek (Benton County):** Selective gear rules.

(306) **South Columbia Basin Irrigation PE16.4 spillway at the Ringold Springs access downstream 400' towards the Columbia River. (46°30'20.0"N 119°15'28.7"W) (Franklin County):** Closed waters.

(307) **Spectacle Lake (Okanogan County):** Open April 1 through September 30.

(308) **Spokane River (Spokane County):** From Nine Mile Dam upstream to the Idaho/Washington state line:

(a) Selective gear rules.

(b) Open the Saturday before Memorial Day through March 15.

(c) Game fish: Release all fish, except: Hatchery rainbow trout: Daily limit 2.

(309) **Sprague Lake (Adams/Lincoln counties):**

(a) The following waters are closed waters:

(i) Cow Creek.

(ii) The marsh at the southwest end of the lake from the lakeside edge of the reeds, including Cow Creek, to Danekas Road.

(iii) The small bay at the southeast end of the lake.

(b) All other waters southwest of the southwest tip of Harper Island: Closed from October 1 through April 30.

(c) Game fish: Statewide minimum length/daily limit except:

(i) Crappie: Minimum length 9 inches.

(ii) Crappie and bluegill: Combined limit of 25 fish.

(310) **Spring Creek (Benton County):** Selective gear rules.

(311) **Spring Hill Reservoir (Black Lake, Lower Wheeler Reservoir) (Chelan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1, minimum length 18 inches.

(312) **Spring Lake (Columbia County):** It is unlawful to fish from any floating device.

(313) **Spring Lakes (Upper and Lower) (Grant County):** Open March 1 through September 30.

(314) **Springdale Pond (Lucky Duck Pond) (Stevens County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(315) **Spruce Creek (tributary to South Fork Tieton River) (Yakima County):** Closed waters.

(316) **Starvation Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(317) **Starzman Lakes (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(318) **Stehekin River (Chelan County):** From the mouth (Powerline crossing) upstream and tributaries:

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release wild cutthroat.

(319) **Stratford/Brook Lake (Grant County):** Open March 1 through September 30.

(320) **Sugarloaf Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(321) **Sullivan Creek and tributaries (Pend Oreille County):**

(a) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout.

(b) Selective gear rules.

(322) **Sullivan Lake (Pend Oreille County):** Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(323) **Summit Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(324) **Summit Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(325) **Swan Lake (Ferry County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(326) **Swauk Creek and tributaries (Kittitas County):** Selective gear rules.

(327) **Taneum Creek and tributaries (Kittitas County):** Selective gear rules.

(328) **Teal Lakes (North and South) (Grant/Adams counties):** Open the fourth Saturday in April through September 30.

(329) **Teanaway River (Kittitas County), and tributaries except North Fork:** Selective gear rules.

(330) **Teanaway River, North Fork (Kittitas County):**

(a) From the mouth to Beverly Creek and tributaries; including Beverly Creek:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release trout.

(b) From Beverly Creek to the impassable waterfall at the end of USFS Road 9737: Closed waters.

(331) **Tern Lake (Grant County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(332) **Thirtymile Creek (tributary to Chewuch River) (Okanogan County):** From mouth upstream to falls (approximately 700 feet): Closed waters.

(333) **Tieton River (Yakima County):**

(a) It is permissible to fish up to the base of Tieton (Rimrock) Dam.

(b) Selective gear rules apply.

(334) **Tieton River, North Fork (Yakima County):**

(a) From mouth to USFS Road 740 Bridge:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(b) The Clear Lake spillway channel: Closed waters.

(c) From the USFS Road 740 Bridge to Clear Lake Dam: Closed waters.

(d) The mainstem and tributaries including that portion of the river that flows through the dry lakebed of Rimrock Reservoir, upstream of Clear Lake:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(335) **Tieton River, South Fork (Yakima County):** From the bridge on USFS Road 1200 to bridge on USFS road 1070: Closed waters.

(336) **Tillicum Creek (tributary to Mad River) (Chelan River):**

(a) From mouth to the intersection of USFS 5800 and USFS 5808: Closed waters.

(b) From the intersection of USFS 5800 and USFS 5808 upstream (upstream 2.25 miles) including tributaries: Selective gear rules.

(337) **Touchet River and tributaries (Columbia/Walla Walla counties):**

(a) From the mouth to the confluence of the North and South Forks:

(i) All tributaries: Closed waters.

(ii) Game fish: Open the Saturday before Memorial Day through April 15; statewide minimum length/daily limit, except:

(A) November 1 through April 15: Release all fish except steelhead.

(B) August 1 through April 15: Hatchery steelhead daily limit 3, barbless hooks required.

(b) From the confluence of the North and South Forks upstream including both forks, Robinson Fork, and Wolf Fork:

(i) All other tributaries: Closed waters.

(ii) Open the Saturday before Memorial Day through August 31.

(iii) Selective gear rules.

(338) **Trout Lake (Ferry County):** Open the fourth Saturday in April through October 31.

(339) **Tucannon River (Columbia County):**

(a) All tributaries are closed waters, except Pataha Creek.

(b) Mouth upstream to Tucannon Hatchery Road Bridge:

(c) Game fish: Open the Saturday before Memorial Day through April 15; statewide minimum length/daily limit, except:

(i) November 1 through April 15: Release all fish except steelhead.

(ii) August 1 through April 15: Hatchery steelhead daily limit 3, barbless hooks required.

(d) Tucannon Hatchery Bridge to 500 feet above intake for Rainbow Lake: Closed waters.

(e) 500 feet above intake for Rainbow Lake to Cow Camp Bridge:

(i) Open the Saturday before Memorial Day through August 31.

(ii) Selective gear rules.

(f) Cow Camp Bridge upstream: Closed waters.

(340) **Tucquala Lake (Kittitas County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Statewide stream rules apply.

(341) **Twentymile Creek (tributary to Chewuch River) (Okanogan County):** From the mouth upstream to falls (approximately 0.75 miles): Closed waters.

(342) **Twin Lakes, tributaries, and Twin Lakes Creek (outlet stream) to the confluence with the Napeequa River (Chelan County):** Closed waters.

(343) **Twisp River (Okanogan County):**

(a) Mouth to War Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(iii) Release all fish.

(b) Twisp River tributaries from War Creek upstream except North Creek and North Fork Twisp River:

(i) Selective gear rules.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Release all fish.

(c) From War Creek upstream: Closed waters.

(344) **Twisp River, North Fork (Okanogan County):** From mouth to falls including tributaries: Closed waters.

(345) **Umtanum Creek (Kittitas County):** Selective gear rules.

(346) **Union Creek (Yakima County):** From the mouth to the falls: Closed waters.

(347) **Upper Wheeler Reservoir (Chelan County):**
(a) Open the fourth Saturday in April through October 31.
(b) Fly fishing only.
(c) It is unlawful to fish from a floating device equipped with a motor.
(d) Release all fish.
(348) **Vic Meyers (Rainbow) Lake (Grant County):**
(a) Open the fourth Saturday in April through September 30.
(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
(349) **Walla Walla River (Walla Walla County):** From mouth to Washington/Oregon stateline:
(a) All tributaries except Touchet River and Mill Creek: Closed waters.
(b) Game fish: Open year-round; statewide minimum length/daily limit, except for trout and steelhead:
(i) Trout: Open the Saturday before Memorial day through October 31; statewide minimum length/daily limit.
(ii) Steelhead:
(A) Open the Saturday before Memorial Day through July 31; daily limit 2 hatchery steelhead.
(B) Open August 1 through April 15; daily limit 3 hatchery steelhead, barbless hooks required.
(350) **Wannacut Lake (Okanogan County):** Open the fourth Saturday in April through October 31.
(351) **Wapato Lake (Chelan County):** Open the fourth Saturday in April through October 31.
(352) **Ward Lake (Ferry County):**
(a) Open the fourth Saturday in April through October 31.
(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
(353) **Warden Lake (Grant County):** Open the fourth Saturday in April through September 30.
(354) **Warden Lake, South (Grant County):** Open the fourth Saturday in April through September 30.
(355) **Washburn Island Pond (Okanogan County):**
(a) Open April 1 through September 30.
(b) An internal combustion motor may be attached to a floating device, but cannot be used.
(356) **Washburn Lake (Okanogan County):**
(a) Open the fourth Saturday in April through October 31.
(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.
(c) Selective gear rules.
(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(357) **Watson Lake (Columbia County):**
(a) Open March 1 through November 30.
(b) It is unlawful to fish from any floating device.
(358) **Wenaha River tributaries:**
(a) Open the Saturday before Memorial Day through August 31.
(b) Selective gear rules.
(359) **Wenas Creek (Yakima County):** From the mouth to Wenas Lake, including tributaries: Selective gear rules.
(360) **Wenatchee Lake (Chelan County):**
(a) Selective gear rules.
(b) Game fish: Statewide minimum length/daily limit, except:

(i) Release trout.

(ii) Steelhead: Closed to fishing.

(iii) Kokanee: Closed to fishing.

(361) **Wenatchee River (Chelan County):**

(a) From the mouth to the Icicle Road Bridge: Game fish: Closed to fishing.

(b) From Icicle Road Bridge upstream to Lake Wenatchee: Closed waters.

(362) **Whitepine Creek (Chelan County):** From the mouth to Whitepine Creek Falls (1 mile upstream of mouth) and tributaries: Closed waters.

(363) **White River (Chelan County):** From the mouth to White River Falls and tributaries, except Napeequa River: Closed waters.

(364) **Widgeon Lake (Grant County):** Open the fourth Saturday in April through September 30.

(365) **Williams Lake (Spokane County):** Open the fourth Saturday in April through ((~~September 30~~)) October 31.

(366) **Williams Lake (Stevens County):** Open the Friday after Thanksgiving through March 31.

(367) **Wilson Creek (Kittitas County):** From BNSF railroad bridge upstream: Selective gear rules.

(368) **Winchester Wasteway (Grant County) (that portion within the Winchester Game Reserve):** Open March 1 through September 30.

(369) **Wolf Creek (Methow River tributary) (Okanogan County):** Closed waters.

(370) **Yakima River (Yakima County):**

(a) Downstream of Highway 240 Bridge: Columbia River rules apply.

(b) From the Highway 240 Bridge to 400 feet downstream of the Horn Rapids (Wanawish) Dam:

(i) Open March 1 through October 31.

(ii) Chumming is permissible.

(iii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iv) Barbless hooks required for salmon and steelhead.

(v) Salmon: Open September 15 through October 31.

(A) Daily limit 6; up to 2 adults may be retained.

(B) Release all salmon other than Chinook and coho.

(C) Night closure.

(c) From 400 feet downstream of the Horn Rapids (Wanawish) Dam to the dam: Closed waters.

(d) From the Horn Rapids (Wanawish) Dam to 200 feet downstream of the USBR Chandler Powerhouse:

(i) Open March 1 through October 31.

(ii) Chumming is permissible.

(iii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iv) Barbless hooks required for salmon and steelhead.

(v) Salmon: Open September 15 through October 31.

(A) Daily limit 6; up to 2 adults may be retained.

(B) Release all salmon other than Chinook and coho.

(C) Night closure.

(e) From 200 feet downstream of the USBR Chandler Powerhouse to 200 feet upstream of the Chandler Powerhouse:

(i) Open March 1 through August 31.

(ii) Chumming is permissible.

(iii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iv) Barbless hooks required for steelhead.

(v) September 1 through October 31: Closed waters.

(f) From 200 feet upstream of the Chandler Powerhouse to the downstream side of the westbound I-82 Bridge in Prosser:

(i) Open March 1 through October 31.

(ii) Chumming is permissible.

(iii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iv) Barbless hooks required for salmon and steelhead.

(v) Salmon: Open September 15 through October 31.

(A) Daily limit 6; up to 2 adults may be retained.

(B) Release all salmon other than Chinook and coho.

(C) Night closure.

(g) From the downstream side of the westbound I-82 Bridge in Prosser to the Grant Avenue Bridge in Prosser:

(i) Open March 1 through October 31.

(ii) Chumming is permissible.

(iii) Fishing from a floating device is prohibited September 15 through November 15.

(iv) Game fish: Statewide minimum size/daily limit, except: Release trout.

(v) Barbless hooks required for salmon and steelhead.

(vi) Salmon: Open September 15 through November 15.

(A) Daily limit 6; up to 2 adults may be retained.

(B) Release all salmon other than Chinook and coho.

(C) Night closure.

(h) From Grant Avenue Bridge to Prosser Dam: Closed waters.

(i) From Prosser Dam to Highway 223 Bridge:

(i) Open March 1 through October 31.

(ii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iii) Barbless hooks required for steelhead.

(j) From Highway 223 Bridge to 400 feet below the Sunnyside (Parker) Dam:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Trout: Minimum length 14 inches.

(iii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(k) From 400 feet below the Sunnyside (Parker) Dam to the dam: Closed waters.

(l) From the Sunnyside (Parker) Dam to the Yakima Avenue-Terrace Heights Bridge:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Trout: Minimum length 14 inches.

(iii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(m) From Yakima Avenue-Terrace Heights Bridge upstream 400 feet: Closed waters.

(n) From 400 feet upstream of the Yakima Avenue-Terrace Heights Bridge to 3,500 feet below Roza Dam:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Trout: Minimum length 14 inches.

(iii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(o) From 3,500 feet below Roza Dam to Roza Dam: Closed waters.

(p) From Roza Dam to the U.S. Bureau of Reclamation restricted area signs: Open year-round.

(i) Selective gear rules.

(ii) Internal combustion motors are prohibited.

(iii) Game fish: Statewide minimum length/daily limit, except: Release trout.

(iv) Whitefish: December 1 through the last day in February: Whitefish gear rules.

(q) From the U.S. Bureau of Reclamation restricted area signs to the boat launch ramp on the Roza Access Area (approximately 1.3 river miles): Open year-round.

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release trout.

(iii) Whitefish: December 1 through the last day in February: Whitefish gear rules.

(r) From the boat launch ramp on the Roza Access Area (approximately 1.3 river miles) to 400 feet below Easton Dam; including the portion of Wilson Creek from the mouth upstream to the BNSF railroad bridge: Open year-round.

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release trout.

(iii) Whitefish: December 1 through the last day in February: Whitefish gear rules.

(s) From 400 feet below Easton Dam to the dam: Closed waters.

(t) From Easton Dam to the base of Keechelus Dam including Easton Lake:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release rainbow and cutthroat trout.

(371) **Yakima Sportsmen's Park Ponds (Yakima County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(372) **Yocum Lake (Pend Oreille County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to use lead weights or lead jigs that measure 1.5 inches or less along the longest axis.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

WSR 26-01-013
PERMANENT RULES
SECRETARY OF STATE
[Filed December 4, 2025, 11:27 a.m., effective January 4, 2026]

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

Purpose: The current rules under chapter 434-12A WAC are out-of-date. The amendments update and clarify procedures for responding to public records requests within the office of secretary of state.

Citation of Rules Affected by this Order: Amending chapter 434-12A WAC.

Statutory Authority for Adoption: Chapter 42.56 RCW.

Adopted under notice filed as WSR 25-13-029 on July 11, 2025.

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 2, Amended 7, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 2.

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 4, 2025.

Amanda Doyle
Chief of Staff

RDS-6286.2

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make available ((~~for inspection and copying non-exempt~~)) "public records" in accordance with published rules. ((~~The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency.~~)) RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act (the "act"), that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of ((~~these rules~~)) this chapter is to establish the ((~~procedures~~)) rules the office of the secretary of state (the "office") will follow in order to provide full access to public records. ((~~These rules provide information to persons wishing to request access to public records of the office of the secretary of state and establish processes for both requestors and secretary of state staff that are designed to best assist members of the public in obtaining such access.~~))

(3) The ((~~purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the office of the secretary of state~~)) office will be guided by the provisions of the act describing its purposes and interpretation when carrying out responsibilities in chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 17-22-047, filed 10/25/17, effective 11/25/17)

WAC 434-12A-030 Description of the organization of the office of the secretary of state. (1) The ((~~secretary of state's~~)) office's general duties are set forth in chapter 43.07 RCW, and relate generally to elections, the formation and maintenance of business organizations, charitable solicitations, charitable trusts, registration of domestic partnerships, archives and records management, the state library, the productivity board, the address confidentiality program, legacy Washington, and the combined fund drive. ((~~Additional functions include regulating the use of the state seal, filing or attesting to official acts of the legislature or governor, certifying to the legislature all matters legally required to be certified, issues apostilles, and other actions required or authorized by law. In addition to these constitutional and statutory duties, the secretary of state is frequently called upon to represent the state of Washington in international trade and cultural missions, and to greet and confer with dignitaries and delegations visiting the state of Washington from other countries.~~

~~(2) The functions of the secretary of state are performed through the following divisions and programs:~~

~~(a) The elections division, through which the secretary acts as the state's chief election officer;~~

~~(b) The corporations division, through which the secretary accepts filings as provided by law related to profit and nonprofit corporations and other forms of business organization, accepts registrations pursuant to the Charitable Solicitations Act and the Charitable Trust Act, accepts filings and issues licenses related to digital signatures, accepts registrations of domestic partnerships, and issues apostilles and trademarks;~~

~~(c) The archives and records management division, through which the secretary provides services as required by law related to archives and records management;~~

~~(d) The Washington state library, providing library services to the public and state government and related services;~~

~~(e) The special programs division, which includes:~~

~~(i) The productivity board, which the secretary chairs and whose staff provides organizational support and which provides awards and incentives related to state employee brainstorm and teamwork incentive programs;~~

~~(ii) The address confidentiality program, for victims of domestic violence, sexual assault and stalking;~~

~~(iii) Legacy Washington, which conducts, publishes and preserves oral histories of significant figures in Washington history; and~~

~~(iv) The combined fund drive, Washington state's workplace giving program for active and retired public employees.~~

~~(3) The offices of the secretary of state and their staff are located at:~~

~~(a) Main Administrative Office, Legislative Building, 416 Sid Snyder Way, P.O. Box 40220, Olympia, WA 98504-0220;~~

~~(b) Elections Division, 520 Union Ave. S.E., P.O. Box 40229, Olympia, WA 98504-0229;~~

~~(c) Corporations Division, 801 Capitol Way South, P.O. Box 40234, Olympia, WA 98504-0234;~~

~~(d) Archives and Records Management Division, 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238. The archives and records management division also includes:~~

~~(i) The State Records Center, located at 7590 New Market Street S.W., Tumwater, WA, mailing address: P.O. Box 40239, Olympia, WA 98504-0239;~~

~~(ii) Archives Regional facilities:~~

~~(A) Southwest Regional Branch, located at 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238;~~

~~(B) Puget Sound Regional Branch, located at 3000 Landerholm Circle S.E., MS-N100, Bellevue, WA 98007-6484;~~

~~(C) Northwest Regional Branch, located at Western Washington University, MS-9123, Bellingham, WA 98225-9123;~~

~~(D) Central Regional Branch, located at 400 E. University Way, Mail Stop 7547, Ellensburg, WA 98926-7547; and~~

~~(iii) The Washington State Digital Archives, and Eastern Washington Regional Branch, located at 960 Washington Street, Cheney, WA 99004;~~

~~(e) The Washington State Library, Point Plaza East, 6880 Capitol Blvd. S.E., Tumwater, P.O. Box 42460, Olympia, WA 98504-2460;~~

~~(f) The Productivity Board, The Address Confidentiality Program, and Legacy Washington, Legislative Building, P.O. Box 40220, Olympia, WA 98504-0220.~~

~~(4) Any person wishing to request access to public records of the office of the secretary of state, or seeking assistance in making such a request, should contact the public records officer by mail at P.O. Box 40224, Olympia, WA 98504-0224, or by fax at 360-704-7830, or by email at Publicrecords@sos.wa.gov. Information is also available at the secretary of state's website, at www.sos.wa.gov.~~

~~(5)~~)) (2) The public records officer ((~~will oversee~~)) is responsible for overseeing the office's compliance with the act, but another ((~~secretary of state~~)) office staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee ((~~and the office of the secretary of state will provide the fullest assistance to the requestor~~)) will implement the office's rules regarding public records; create and maintain ((~~for use by the public and the office of the secretary of state an index to public records of the office by making available those records retention schedules applicable to the office of the secretary of state; and prevent fulfilling public records requests from causing excessive interference with essential functions of the office~~)) a records index; and provide the fullest possible assistance to requestors.

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-040 Public records available. All public records of the office are deemed to be available for the public ((~~inspection and copying~~)) during normal business hours, pursuant to these rules and applicable state law ((~~, as follows:~~

~~(1) **Hours for inspection of records.** Public records are available for inspection and copying during~~)). For the purposes of this chapter, normal business hours ((~~of the office of the secretary of state,~~)) are Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the office ((~~of the secretary of state.~~)), for which an appointment ((~~may be~~)) is required.

((~~(2)~~)) (1) **Records index.** Pursuant to RCW 42.56.070, an index ((~~of public records~~)) is available ((~~for use by members of the public, consisting of those records retention schedules applicable to the office of the secretary of state~~)) on the office's website at www.sos.wa.gov. A variety of other records are also available on the office's website. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

((~~(3)~~)) (2) **Organization of records.** The office ((~~of the secretary of state~~)) will maintain its records in a reasonably organized manner. The office will take reasonable actions to protect records from damage and disorganization. ((~~A requestor shall not take original records from the office. A variety of records are available on the secretary of state website at www.secstate.wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a records request.~~

~~(4) **Making a request for public records.**~~

~~(a) Any person wishing to inspect or obtain copies of public records of the office of the secretary of state should make the request in writing by letter, fax, or email addressed to the public records officer and including the following information:~~

~~• Name of requestor;~~

~~• Address of requestor;~~

~~• Other contact information, including telephone number and any email address;~~

~~• Identification of the public records adequate for the public records officer or designee to locate the records; and~~

~~• The date of the request.~~

~~(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Copies will be made by secretary of state staff unless other arrangements are agreed upon. Costs for copying are specified in WAC 434-12A-100.~~

~~(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing. The office will presume that the request is fully and accurately described in this confirmation unless the requestor promptly indicates otherwise in writing.~~))

NEW SECTION

WAC 434-12A-042 Making a request for public records. In accordance with chapter 42.56 RCW, the public may request to inspect or copy records as follows:

(1) Submit a request through one of the following methods:

(a) Online at www.sos.wa.gov;

(b) Email to PublicRecords@sos.wa.gov;

(c) Mail to P.O. Box 40224, Olympia, WA 98504-0224;

(d) Fax to 360-704-7830; or

(e) Verbally by phone at 360-704-5220 or in person. The public records officer or designee will confirm receipt of request in writing. The office will presume that the request is fully and accurately described in this confirmation unless the requestor promptly indicates otherwise in writing.

(2) Requestors may be asked to include the following information with their records request:

(a) Name of requestor. Identity of requestor may be required if the records sought are limited to a particular group;

(b) Other contact information, such as email address, physical address, or telephone number;

(c) The calendar date of the request;

(d) The nature of the request; and

(e) A specific description of the public records, adequate for the public records officer or designee to locate the records.

(3) If the requestor wishes to have copies of the records made instead of inspecting them, they should so indicate.

(4) When requesting a list of individuals, the requestor may be required to complete a statement agreeing not to release or use the information for commercial purposes.

(5) Requests must be made for identifiable public records and the office may ask for clarification when necessary. The public records officer or designee is not able to answer questions about the nature of records or their use.

AMENDATORY SECTION (Amending WSR 17-22-047, filed 10/25/17, effective 11/25/17)

WAC 434-12A-045 Processing of public records requests((~~—General~~)). (1) **Providing "fullest assistance."** ((~~The office of the secretary of state is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests.~~)) The public records officer or designee will provide the fullest assistance alongside the most timely possible action to requestors, without excessive interference to other essential functions of the office. The public records officer or designee will process requests in ((~~the~~)) an order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) ((~~Make the records available for inspection or copying;~~)) Provide the record or make the records available for inspection or copying, either in hard copy or electronically;

(b) Provide ((~~copies of the records, either in hard copy or electronically, upon payment of any applicable fees by the requestor; or~~)) an online link to the record. If the requestor notifies the office they cannot access records through the internet, then the public records officer or designee will provide copies of the record or allow the requestor to view copies;

(c) Provide a reasonable estimate of when records will be available; ((~~or~~))

(d) ((~~If the request is unclear or does not sufficiently identify the requested records,~~)) Request clarification from the requestor if the request is unclear or does not sufficiently identify the requested records. ((~~Such clarification may be requested and provided by telephone.~~)) The public records officer or designee may revise the estimate of when records will be available or close the request if the requestor fails to clarify the request within five business days of notice; or

(e) Deny the request. Denials will be accompanied by a written statement citing specific reasons for denial.

(3) ((**~~Consequences of failure to respond.~~**)) **Delayed responses.** If the ((~~office of the secretary of state does not respond~~)) requestor does not receive a response in writing within five business days of ((~~receipt of~~)) submitting the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the ((~~failure to respond~~)) delay and to determine whether their request was received.

(4) **Protecting rights of others.** ((~~In the event that~~)) If the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer or designee may((~~, prior to providing the records, give~~)) provide notice to ((~~such others whose rights may be affected by the disclosure~~)) the persons named in the records, before providing records to the requestor. ((~~Such~~)) Notice should be given so as to make it possible for those ((~~other~~)) persons named to contact the requestor and ask ((~~him or her~~)) them to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request. Due to these notifications, fulfillment of the request may be delayed.

(5) ((**~~Records exempt from disclosure.~~** ~~Some records are exempt from disclosure, in whole or in part. If the office of the secretary of state believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.~~)) **Searching for records.** The office will conduct a reasonable search for responsive records. A reasonable search typically involves the public records officer or designee working with departments across the office to decide where the records are likely to be and how to access them. The office is only responsible for records it creates or maintains and not for records created or maintained by other state agencies or local governments.

(6) **Inspection of records.**

(a) Consistent with other demands, the office ((~~of the secretary of state~~)) shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any ((~~document~~)) public records. The requestor shall indicate which ((~~documents he or she wishes the agency to copy~~)) records they want copied.

(b) The requestor must claim copies or review the assembled records within thirty days of the office's notification ((~~to him or her that the records are available for inspection or copying~~)). The ((~~agency~~)) public records officer or designee will notify the requestor in writing of this requirement and ((~~inform the requestor that he or she should contact the agency~~)) ask them to make arrangements to ((~~claim copies~~)) collect or review the records.

(c) If the requestor or ((~~a~~)) their representative ((~~of the requestor~~)) fails to claim ((~~copies~~)) or review the records within the ((~~thirty~~)) 30-day period or make other arrangements, the office ((~~of the secretary of state~~)) may close the request and refile the assembled records. ((~~Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.~~)) The public records officer or designee will notify the requestor in writing that the request will be closed within 10 business days if the records are not inspected.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee ((~~shall~~)) will make the requested copies or arrange for copying.

(8) **Providing electronic records.** Electronic records will be provided in a format that is generally commercially available. If the requestor notifies the office they cannot access electronic records, then the public records officer or designee will provide paper copies of the record or allow the requestor to view copies using an office computer.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee ((~~will~~)) may provide ((~~access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way~~)) records in installments. If, within ((~~thirty~~)) 30 days, the requestor fails to inspect or open electronically the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request. The public records officer or designee will notify the requestor in writing that the request will be closed within 10 business days if the records are not inspected or opened electronically.

((~~(9)~~)) (10) **Completion of ((~~inspection~~)) request.** ((~~When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the office of the secretary of state has completed a diligent search for the requested records and made any located nonexempt records available for inspection.~~)) After the public records officer or designee has finished all searches for records, provided all installments of records, and after the requestor has completed any inspections or requests for copies, the office will send the requestor a written notification, closing the request.

((~~(10)~~)) (11) **Closing withdrawn or abandoned requests.** ((~~When~~)) If the requestor either withdraws the request or fails to fulfill ((~~his or her~~)) their obligations to inspect the records ((~~or pay the~~

~~deposit or final payment for the requested copies~~)), the public records officer ((~~will~~)) or designee may close the request and indicate in writing to the requestor that the ((~~office of the secretary of state has closed the~~)) request is closed.

((~~(11)~~)) (12) **Later discovered documents.** If((~~, after the office of the secretary of state has informed the requestor that it has provided all available records,~~)) the office ((~~becomes aware of~~)) discovers additional responsive documents existing at the time of the request, ((~~it~~)) the public records officer or designee will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 434-12A-054 No duty to create records. The office is not obligated to create a new record to satisfy a records request, including production of new records from an electronic database. See WAC 44-14-04003(6).

AMENDATORY SECTION (Amending WSR 17-22-047, filed 10/25/17, effective 11/25/17)

WAC 434-12A-100 ((~~Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule.~~)) Costs for providing copies of public records. (1) ((~~Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the office of the secretary of state declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential functions.~~)) The office does not charge fees for the inspection of public records.

(2) The office ((~~of the secretary of state~~)) may charge fees for ((~~production of~~)) providing copies of public records consistent with the fee schedule established in RCW 42.56.120((~~, as amended by section 3, chapter 304, Laws of 2017~~)).

(3) ((~~The Washington state archives research fees covered by WAC 434-690-080 are determined by archives according to its terms. The corporation fees are per WAC 434-112-085.~~)) Pursuant to RCW 42.56.120(2), the office declares for the following reasons that it would be unduly burdensome to calculate the actual costs of providing copies of public records:

(a) Funds were not allocated for performing a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential functions.

(4) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ((~~ten~~)) 10 percent of

the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The office ((~~of the secretary of state~~)) will not charge sales tax when it makes copies of public records.

((~~(5) **Costs of mailing.** The office of the secretary of state may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(6) **Payment.** Payment may be made by cash, check, or money order to the office of the secretary of state, or by those credit or debit cards accepted by the office.~~

~~(7) The public records officer or designee has discretion to waive the applicable fees when the total cost for copying and mailing all responsive records is less than five dollars.~~))

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-12A-110 Exemptions. (1) The Public Records Act provides that a number of ((~~document~~)) record types are exempt from public ((~~inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits~~)) disclosure. If the office determines a record or information within a record is exempt from disclosure, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or portion of the record is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions while providing the non-exempt portions.

(2) Requestors should be aware ((~~of the following~~)) that exemptions((~~,~~)) outside the Public Records Act((~~, that~~)) may restrict the availability of some ((~~documents~~)) records held by the office ((~~of the secretary of state for inspection and copying~~)). These exemptions include, but are not limited to, the following:

RCW 5.60.060(2) (attorney-client privilege, together with attorney work product privilege).

RCW 5.60.060(5) (communications to a public officer in official confidence).

RCW 5.60.070 (communications between a mediator and a party to mediation).

((~~RCW 19.34.240 (digital signatures).~~

~~RCW 19.34.420 (digital signatures).~~))

RCW 29A.08.710 through 29A.08.775 (voter registration records).

RCW 29A.32.100 (arguments and statements for voters pamphlet).

RCW 29A.60.110 (sealing of ballot containers).

RCW 40.14.030 (exempt records accessioned into state archives).

RCW 40.24.070 (address confidentiality program).

((~~RCW 43.07.100 (records of entities supplying information to the bureau of statistics).~~

~~5 U.S.C. § 552(a) (the federal Privacy Act).~~))

The foregoing list is for informational purposes only and failure to list an exemption shall not affect the efficacy of any exemption. The ((~~secretary of state~~)) office reserves the right to determine that a public record is exempt under the provisions of state law.

((~~(2)~~)) (3) The office ((~~of the secretary of state~~)) is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-120 Review of denials of public records requests. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of ((~~that~~)) the decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the assistant secretary of state or the deputy secretary of state((~~. That person~~)), who will ((~~immediately~~)) consider the petition and either affirm or reverse the denial. Within two business days following ((~~the office's~~)) receipt of the petition, ((~~or within such other time as the office of the secretary of state and the requestor mutually agree to~~)) the assistant secretary of state or deputy secretary of state shall notify the petitioner and the public records officer in writing of the decision or that more time is required to consider the petition.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the office ((~~of the secretary of state~~)) denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-12A-055	Processing of public records requests—Electronic records.
WAC 434-12A-150	Revolving fund.

WSR 26-01-017
PERMANENT RULES
CASCADIA COLLEGE
[Filed December 4, 2025, 1:49 p.m., effective January 4, 2026]

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

Purpose: The proposed change is to repeal chapter 132Z-119 WAC, which is a now-outdated version of the Title IX supplemental student conduct code. Chapter 132Z-119 WAC has been replaced with chapter 132Z-120 WAC, which complies with the current Title IX regulations. WAC 132Z-120 was subject to rule making; a rule-making hearing was held on August 5, and the rules were approved by the Cascadia College board of trustees on September 17, 2025.

Citation of Rules Affected by this Order: Repealing chapter 132Z-119 WAC.

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

Adopted under notice filed as WSR 25-20-061 on September 26, 2025.

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 1; 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 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

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 3, 2025.

Susan Thomas
Rules Coordinator

WSR 26-01-027
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed December 5, 2025, 12:34 p.m., effective January 1, 2026]

Effective Date of Rule: January 1, 2026.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.385 (3)(a), the rules implement legislation that has an effective date of January 1, 2026.

Purpose: The paid family and medical leave (PFML) program (Title 50A RCW) is adopting new and amended rules related to the implementation of E2SHB 1213 (chapter 304, Laws of 2025) and SSB 5191 (chapter 178, Laws of 2025), which passed during the 2025 legislative session.

In addition, there is an amended rule pertaining to deadlines for petitions for review submitted to the commissioner's review office.

Further, a rule related to pandemic leave assistance grants is repealed.

Citation of Rules Affected by this Order: New WAC 192-700-008 What is the time frame in which an employer may apply FMLA leave to a period of PFML job protection?, 192-700-025 How does an employee's use of leave under the federal Family and Medical Leave Act (FMLA) affect employment restoration rights?, and 192-700-030 Do employers need to provide a notice to employees regarding their employment restoration rights?; repealing WAC 192-560-011 What small business grants are available under pandemic leave assistance?; and amending WAC 192-500-010 Employer, 192-500-185 Waiting period, 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?, 192-510-050 How will the department assess the size of new employers?, 192-560-010 Which businesses are eligible for small business assistance grants?, 192-560-020 What is the application process for a small business assistance grant?, 192-620-005 What is the minimum claim duration?, 192-700-015 How is employer size determined for employment protection?, 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?, and 192-800-100 What is the process for filing petition for review and any reply to the petition for review?

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 25-21-149 on October 22, 2025.

Changes Other than Editing from Proposed to Adopted Version: WAC 192-560-010(5) was stricken because it is duplicative of statutory language and is no longer consistent with Title 50A RCW as amended by HB 1213.

WAC 192-700-025(2) was amended to align this rule with the timeline described in WAC 192-700-008.

WAC 192-700-025(4) contained an incorrect pointer. The language that reads "… as described in subsection (1) of this section …" has been amended to read "… as described in subsection (3) of this section …"

WAC 192-700-025(5) contained an incorrect pointer. The language that reads "The notice described in subsection (2) of this section …" has been amended to read "The notice described in subsection (4) of this section …"

WAC 192-700-025(10) was added to clarify that any reference to unpaid leave taken under the federal family and medical leave as it related to eligibility for offsetting against future PFML as described

in the proposed rules refers to any period of leave that is protected by the federal FMLA, regardless of whether the employee receives pay from another source (such as sick leave or an internal short-term disability benefit) during said leave.

WAC 192-700-030, the words "under Title 50A RCW" were added after "period of leave" to clarify that the referenced leave is PFML.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, Washington relay 711, (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website https://paidleave.wa.gov/rulemaking/.

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 3, Amended 9, 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 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 10, Repealed 1.

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 3, Amended 10, Repealed 1.

Date Adopted: December 5, 2025.

April Amundson
Policy and Rules Manager
ESPI, Leave and Care Programs

RDS-6694.2

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

WAC 192-500-010 Employer. (1) An "employer" is:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;

(b) The state, state institutions, and state agencies;

(c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; ((~~and~~))

(d) A franchisee; and

(e) Representatives for employers of dockworkers who normally work for several employers in the same industry interchangeably through a collectively bargained agreement. Other than for their own employees, employer representatives are not obligated to report dockworkers who are not covered by the collective bargaining agreement.

(2) "Employer" does not include the United States of America.

(3) For the purposes of paid family and medical leave, the term employer is used for both employer and employer agent.

(4) This section does not apply to:

(a) Any self-employed person or federally recognized tribe that has not elected coverage under Title 50A RCW; and

(b) Any person performing casual labor as defined in RCW 50A.05.010.

AMENDATORY SECTION (Amending WSR 22-10-031, filed 4/26/22, effective 6/9/22)

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least ((~~eight~~)) four consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) A waiting period does not reduce the maximum duration of an employee's available paid family or medical leave.

(5) Subject to subsection (7) of this section, an employee must only meet the requirement of one waiting period in a claim year.

(6) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

(7) The waiting period does not apply to:

(a) Medical leave taken upon the birth of a child;

(b) Family leave taken for bonding after the child's birth or placement; or

(c) Family leave taken for reasons related to a qualified military exigency.

(8) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

RDS-6695.1

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants? (1) To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will determine the size of each employer as provided in RCW 50A.10.030. The department will only count the num-

ber of in-state employees as defined in RCW 50A.05.010 when calculating employer size.

(2) If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:

(a) If the employer was determined to have ((~~fifty~~)) 50 or more employees for the preceding calendar year, and the employer is then determined to have fewer than ((~~fifty~~)) 50 employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or

(b) If the employer was determined to have fewer than ((~~fifty~~)) 50 employees for the preceding calendar year, and the employer is then determined to have ((~~fifty~~)) 50 or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.

((**Example:** ~~On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.~~)) (3) An employer that elects to submit the number of employees employed on the last day of each calendar quarter may do so in the employer portal or in another manner approved by the department. Such employers will, on September 30th of each year, have their size determined by averaging the number of employees reported on the last day of each calendar quarter over the last four calendar quarters.

(4) Employers that elect not to submit the number of employees employed on the last day of each calendar quarter as described in subsection (3) of this section will, on September 30th of each year, have their size determined by averaging the total number of employees reported during the preceding four calendar quarters.

(5) For the purposes of subsection (3) of this section, the term "employed" has the same meaning as WAC 192-700-015(3).

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

WAC 192-510-050 How will the department assess the size of new employers? An employer that has not been in business in Washington long enough to report four calendar quarters by September 30th will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists in accordance with WAC 192-510-040. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect for the following calendar year under RCW 50A.10.030.

RDS-6696.2

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

WAC 192-560-010 Which businesses are eligible for small business assistance grants? (1) An employer determined to have ((~~one hundred fifty~~)) 150 or fewer employees in the state that is assessed the employer share of the premiums is eligible to apply for small business assistance grants as provided in chapter 50A.24 RCW.

(2) An employer determined to have fewer than ((~~fifty~~)) 50 employees is only eligible for a small business assistance grant if the employer opts to pay the employer share of the premiums.

(a) The employer will be assessed the employer share of the premiums for a minimum of ((~~twelve~~)) 12 consecutive calendar quarters beginning with the first calendar quarter after the most recent grant is approved.

(b) The employer may provide notice at any time after the approval of the grant to opt out of paying the employer share of the premiums.

(i) If the ((~~twelfth~~)) 12th consecutive quarter following approval of the grant has ended, the opt-out will become effective on the first day of the following quarter.

(ii) If the ((~~twelfth~~)) 12th consecutive quarter following approval of the grant has not ended, the opt-out will become effective on the first day of the ((~~thirteenth~~)) 13th quarter following approval of the grant.

(3) An employer is not eligible for a small business assistance grant if, at the time of application, the employer has outstanding and delinquent reports, outstanding and delinquent payments, or due and owing penalties or interest under Title 50A RCW.

(4) An employer may request only one grant per year for each employee who takes paid family or medical leave under this title. Submissions under (a) and (b) of this subsection do not qualify as grant applications and therefore do not count against the employer's limit of ((~~ten~~)) 10 applications per year.

(a) An employer that qualifies for a grant under RCW 50A.24.010 for an amount that is less than ((~~one thousand dollars~~)) $1,000 may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds.

(b) An employer may submit a revised application for a grant under RCW 50A.24.010 in an attempt to qualify for additional grant funds.

((~~(5) An employer must apply for any grant no later than four months following the last day of the employee's paid family or medical leave.~~))

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-560-020 What is the application process for a small business assistance grant? (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:

(a) The name and Social Security number or individual taxpayer identification number of the employee taking leave;

(b) The amount and type of grant being requested; and

(c) ((~~An explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave; and~~

~~(d)~~)) For businesses with:

(i) Fewer than 50 employees, a written statement attesting that the employer hired a temporary worker or incurred other significant wage-related costs due to an employee's use of family or medical leave.

(ii) Between 50 and 150 employees, written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of paid family or medical leave.

(d) The department may require additional information as necessary to verify an employer's eligibility for a small business grant.

(2) Incomplete applications will not be reviewed and will not count against an employer's limit of ((~~ten~~)) 10 applications per year under RCW 50A.24.010.

(3) The department will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred any significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave.

(4) ((~~If a grant application is denied, the application will count against an employer's limit of ten applications per year.~~

~~(5)~~)) The denial of a grant application is appealable.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-560-011	What small business grants are available under pandemic leave assistance?

RDS-6697.1

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-620-005 What is the minimum claim duration? (1) The minimum claim duration for paid family or medical leave is ((~~eight~~)) four consecutive hours in a week. If an employee on leave claims ((~~eight~~)) four consecutive hours at any point during a week, the minimum claim duration is satisfied.

((~~**Example 1:** An employee typically works six-hour shifts each weekday. The employee takes leave Monday, works Tuesday and Wednesday, and takes leave Thursday and Friday. The minimum claim duration requirement would be satisfied with the leave taken Thursday and Friday. That employee could also include the hours missed on Monday in the weekly claim.~~

~~(2) If an employee on leave typically works less than eight-hour shifts, the employee will meet the requirement of a minimum claim when the employee has missed eight consecutive hours at any point during a week the employee typically would have been scheduled.~~)) (2) If an employee on leave typically works less than four-hour shifts, the employee will meet the requirement of a minimum claim when the employee has missed four consecutive hours at any point during a week the employee typically would have been scheduled.

Example ((~~2~~)): An employee typically works ((~~four~~)) two-hour shifts. The employee will need to take two consecutive shifts of leave in a week to have a minimum claim.

RDS-6778.2

NEW SECTION

WAC 192-700-008 What is the time frame in which an employer may apply federal family and medical leave (FMLA) to a period of paid family and medical leave (PFML) job protection? (1) If leave under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026 (FMLA)), is not taken, or if a PFML claim year is in effect when a duration of FMLA leave is taken that the employer designates as counting against a future duration of PFML job protection, the "52 consecutive calendar weeks" as referenced in RCW 50A.35.010 means the employee's PFML claim year.

(2) If a PFML claim year is not in effect when a duration of FMLA leave is taken that the employer designates as counting against a future duration of PFML job protection, the "52 consecutive calendar weeks" as referenced in RCW 50A.35.010 means a 52-week period beginning with the first day of such FMLA leave. In such cases, an employee is entitled to a maximum of a combined total of 16 times the typical workweek hours of job protection in the 52-week period. The maximum duration is extended to 18 times the typical workweek hours if the employee took leave due to a serious health condition with a pregnancy that results in incapacity.

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-700-015 How is employer size determined for employment protection? (1) Employment protection ((~~applies to employees who work for an employer with fifty or more employees in employment~~)) is available to employees as provided in RCW 50A.35.010.

(2) For the purpose of ((~~employment protection~~)) RCW 50A.35.010 (6)(a)(i), employers are considered to have ((~~fifty or more~~)) the required number of employees when:

(a) The employer has ((~~fifty or more~~)) the required number of employees ((~~working~~)) or more employed each work day for ((~~twenty~~)) 20 or more calendar workweeks; and

(b) The ((~~twenty~~)) 20 calendar workweeks occur in the current calendar year or occurred in the preceding calendar year.

(3) For the purposes of this section, any employee whose name appears on the employer's payroll will be considered employed. Employees on paid or unpaid leave, including leave taken under Title 50A RCW, leave taken under the federal Family and Medical Leave Act, leaves of absence, disciplinary suspension, etc., are counted as long as the employer has a reasonable expectation that the employee will later return to active employment. If there is no employer/employee relationship (as when an employee is laid off, whether temporarily or permanently) such individual is not counted.

AMENDATORY SECTION (Amending WSR 20-11-035, filed 5/14/20, effective 6/14/20)

WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave? (1) An employee taking family or medical leave under Title 50A RCW is entitled to the continuation of health benefits as provided in ((~~this section when there is at least one day of concurrent use with leave taken under the federal Family and Medical Leave Act as it existed on October 19, 2017~~)) RCW 50A.35.020.

(2) When required under subsection (1) of this section, the employee's health benefits must be maintained as if the employee had continued to work from the date family or medical leave under Title 50A RCW commenced until whichever of the following occurs first:

(a) The employee's family or medical leave under Title 50A RCW ends; or

(b) The employee returns from leave to any employment.

(3) If the employer and employee share the cost of existing health benefits, then during any continuation of health benefits as provided in this section, the employee remains responsible for the employee's share of the cost as prescribed by 29 C.F.R. 825.210, 825.211, and 825.212, and any subsequent amendments to those regulations.

(4) If an employee gives the employer unequivocal notice of intent not to return to work, the employer's obligations under Title 50A RCW to maintain health benefits cease.

(5) Nothing in this section should be construed as restricting an employer from providing a continuation of health benefits for any employee's claim for paid family or medical leave.

NEW SECTION

WAC 192-700-025 How does an employee's use of leave under the federal Family and Medical Leave Act (FMLA) affect employment restora-

tion rights? (1) An employee is entitled to employment restoration upon returning from:

(a) Family or medical leave under Title 50A RCW (PFML), regardless of whether the employee also qualifies for and receives concurrent leave under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026 (FMLA)), as provided under RCW 50A.15.110; or

(b) Leave protected by the FMLA, during a period in which the employee was eligible for benefits under this title but did not apply for and receive those benefits.

(2) An employee is entitled to a combined maximum duration of 16 typical workweeks of leave under subsection (1) of this section taken during a period described in WAC 192-700-008, except this duration is extended to 18 typical workweeks if any of the leave was taken as a result of a serious health condition with a pregnancy resulting in incapacity.

(3) If the employee is approved for a duration of PFML and the associated job protection of such leave would result in a combined duration of job protected leave in excess of the maximum duration described in subsection (2) of this section, an employer may reduce the employee's job protection associated with the duration of PFML by a duration of leave previously taken under FMLA, if the FMLA leave was taken no more than 52 weeks prior to the leave taken under PFML to the extent that such a reduction still entitles the employee to the maximum duration of job protection described in subsection (2) of this section.

(4) Employers that choose to offset job protection, as described in subsection (3) of this section, must provide written notice to the employee in a language understood by the employee and transmitted by a method reasonably certain to be received promptly by the employee. The notice must include the following:

(a) That the employer is designating and counting the employee's initial use of leave against the employee's entitlement under FMLA, including specifying the amount of the entitlement used and remaining, as estimated by the employer based on information provided by the department and employee;

(b) The start and end dates of the employer's designated 12-month leave year under the FMLA;

(c) Since the employee is eligible for paid family or medical leave under this title but is not applying for and receiving benefits, that the employer is counting the FMLA leave toward the maximum periods of job protection associated with leave taken under PFML, including specifying the start and end dates of FMLA leave, and the total amount of FMLA leave counting toward those maximum periods, as estimated by the employer based on information provided by the department and employee; and

(d) That the use of FMLA leave counting against job protection associated with PFML does not affect the employee's eligibility for paid family or medical leave benefits under this title.

(5) The notice described in subsection (4) of this section must be delivered within five business days of the employee requesting or taking FMLA leave and at least monthly thereafter.

(a) The requirement to provide this notice will cease if:

(i) The employer has applied the maximum amount of FMLA leave to an employee's PFML job protection; or

(ii) The employer does not wish to retain the option to reduce PFML job protected leave by FMLA job protected leave.

(b) The notice requirement resumes if the employee takes additional FMLA leave and the employer chooses to apply that leave to reduce job protection under PFML as described in this section.

(6) An employer that does not comply with the notice requirements in this section is required to recognize an employee's full employment restoration rights under PFML regardless of any prior use of leave under FMLA.

(7) An employer may apply FMLA leave toward an employee's job protection under PFML regardless of whether leave taken under either program is intermittent or for different qualifying events.

(8) Any investigation of a complaint filed by an employee under RCW 50A.40.020 that includes an alleged violation of this section will be based on information the employer had or reasonably should have had when the employer allegedly committed the unlawful act.

(9) Nothing in this section prevents an employer from adopting more generous leave or job protection not covered by Title 50A RCW.

Example 1: An employee takes six weeks of leave under FMLA but does not receive benefits under PFML for the same period. The employer wishes to retain the right to apply these six weeks of FMLA leave toward a potential future use of paid family or medical leave that would result in a combined maximum of more than 16 weeks of leave. Leave is not being taken as a result of a serious health condition with a pregnancy resulting in incapacity. The employer provides the proper notice and continues to do so monthly. Six months later, the employee is approved for 12 weeks of paid family leave to bond with a new child in the home. The employer notifies the employee that their previous use of FMLA within the last 52 weeks is being applied to job protection associated with their paid family leave. Because the combined total of job protection would amount to 18 weeks, the employee would need to return to work after the 10th week of paid family leave to retain job protection rights. This would result in a maximum of 16 weeks of job protection. If the employee elects to remain on paid family leave after the 10th week, they will still be eligible for PFML benefits, but the employer would not be required to offer the same or a substantially similar position of employment when the employee returns to work.

Example 2: An employee takes four weeks of leave under FMLA, but does not receive paid family or medical leave benefits for the same period. The employee begins their FMLA leave on March 12, 2026, and returns to work on April 10, 2026. The employer wishes to retain the right to apply these four weeks of FMLA leave toward a potential future use of paid family or medical leave. The employer provides the proper notice and continues to do so monthly. On April 2, 2027, the employee elects to take 16 weeks of paid family and medical leave after giving birth to a child. The employer notifies the employee that their previous use of FMLA within the last 12 months is being applied to job protection associated with their paid family leave. The employer is only able to apply one week of previously used FMLA leave toward the employee's paid medical leave job protection because the additional FMLA leave occurred more than one year prior to the employee's use of paid medical leave.

(10) For the purposes of this section, any reference to leave taken under the federal Family and Medical Leave Act applies regardless of whether the employee received payment in the form of employer paid time off, from a short-term disability benefit plan, or from any other source during such leave.

NEW SECTION

WAC 192-700-030 Do employers need to provide a notice to employees regarding their employment restoration rights? (1) Employers are required to provide a notice to employees eligible for employment restoration rights as described in RCW 50A.35.010 (7)(b).

(2) Employers must provide this notice:

(a) Each time an employee takes or is expected to take a continuous period of leave under Title 50A RCW that lasts at least two typical workweeks; or

(b) One time for each qualifying event if the employee takes or is expected to take combined intermittent periods of leave under Title 50A RCW exceeding 14 typical work days for that qualifying event. In this case, an employer may use an approximate date rather than a precise date for the employee's first scheduled workday after the leave ends.

Example: An employee applies for and receives paid medical leave benefits on an intermittent basis, taking every Monday off for treatment over an extended period of time. After the 14th Monday, an employer is required to provide the notice. The employer may provide a single notice for this qualifying event, and the notice may list "the day after you have received your treatment" as the expected time for the employee's return to work.

(3) The notice described in this section must be delivered in a language understood by the employee and transmitted by a method reasonably certain to be received by the employee no later than:

(a) Five business days in advance of the date the employee is expected to return to work; or

(b) If the employer becomes aware of the employee's use of paid family or medical leave less than five business days in advance of the date the employee is expected to return to work, as soon as is practicable.

(4) Any investigation of a complaint filed by an employee under RCW 50A.40.020 that includes an alleged violation of this section will be based on information the employer had or reasonably should have had when the employer allegedly committed the unlawful act.

RDS-6698.1

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review? (1) The written petition for review must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, within ((~~thirty~~)) 30 days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed at the same time. The commissioner's review office will acknowledge receipt of the

petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the acknowledgment date on the petition for review. The commissioner's review office will also send copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party, and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555. The reply must be ((~~received by~~)) filed with the commissioner's review office within ((~~fifteen~~)) 15 days of the date of the acknowledged petition for review. An informational copy must be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof, and the reply to the petition for review and argument in support thereof, must:

(a) Be captioned, and include the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by a designated representative of that party; ((~~and~~))

(b) Be legible, reproducible, and five pages or less; and

(c) Be filed in accordance with the provisions of RCW 50A.50.040.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation is not considered in the disposition of the case unless it is determined that the failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

WSR 26-01-031
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Nursing Home Administrators)
[Filed December 8, 2025, 9:38 a.m., effective January 8, 2026]

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

Purpose: Nursing home administrators—Administrator-in-training programs and endorsement requirements. The board of nursing home administrators (board) is adopting amendments to WAC 246-843-090 Administrator-in-training program, by updating the program to allow participants to visit other facilities during their program, which will expand their training experience, allowing them to see how a different facility with different services is managed. Amendments also change the preceptor reporting frequency to monthly from quarterly to more accurately track program requirements. The board is also adopting amendments to WAC 246-843-095 Preceptors for administrator-in-training programs, by adding in the requirement to complete the national association's leadership course. The board is also adopting amendments to WAC 246-843-230 Endorsement, to remove barriers for applicants coming from out of state.

Citation of Rules Affected by this Order: Amending WAC 246-843-090, 246-843-095, and 246-843-230.

Statutory Authority for Adoption: RCW 18.52.061, 18.52.071, and 18.130.077.

Adopted under notice filed as WSR 25-15-075 on July 15, 2025.

A final cost-benefit analysis is available by contacting Shelbee Scrimo, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4723, TTY 711, email shelbee.scrimo@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 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 8, 2025.

Rosalie M. Romano, Ph.D., Chair
Board of Nursing Home Administrators

RDS-6384.2

AMENDATORY SECTION (Amending WSR 24-03-147, filed 1/23/24, effective 2/23/24)

WAC 246-843-090 Administrator-in-training program. Unless exempt by WAC 246-843-093, an applicant for the original license must

complete an administrator-in-training (AIT) program according to this section as part of the original licensure process. The board must approve the AIT program before the applicant may begin the training.

(1) To participate in an AIT program, the applicant must submit to the department of health:

(a) In addition to the original license fee, the AIT program fee required in WAC 246-843-990; and

(b)(i) Information on forms provided by the department showing how the AIT program meets the requirements of subsection (2) of this section.

(ii) If the AIT program is less than 1,500 hours, the applicant must also include a resume and explanation of how the applicant meets the relevant requirements in WAC 246-843-091; and

(c) A statement sent directly by the preceptor on a form provided by the department that describes how the preceptor meets the requirements of WAC 246-843-095.

(2) The AIT program must consist of the following:

(a) Be under the guidance and supervision of a qualified preceptor as described in WAC 246-843-095;

(b) Be designed to provide for individual learning experiences and instruction based upon the person's academic background, training, and experience;

(c) Provide for a broad range of experience with a close working relationship between preceptor and AIT. A sponsoring facility of less than 50 beds will be considered for an AIT program only if there is a board approved plan to broaden the AIT experience with an equal percentage of experience in a larger facility under the guidance and supervision of a qualified preceptor as described in WAC 246-843-095;

(d) Be described in a prospectus signed by the preceptor. The prospectus must include a description of the rotation through departments. The board must approve the prospectus before the AIT program start date.

The prospectus shall include the following components:

(i) A minimum of 90 percent of the required AIT program hours are spent in a rotation through each department of a resident occupied nursing home licensed under chapter 18.51 RCW or a Washington state veterans home established under chapter 72.36 RCW. Up to 10 percent of the hours may be at an alternative facility with a licensed nursing home administrator who meets the requirements in WAC 246-843-095; and

(ii) The remaining 10 percent of the AIT program will include:

(A) A written project assignment including at least one problem-solving assignment to improve the nursing home or nursing home procedures. A description of the project must be submitted in writing to the board and approved before the AIT program start date. The description of the project should indicate the definition of the project and method of approach such as data gathering. A project report that includes possible alternatives, conclusions, and final recommendations to improve the facility or procedure is to be submitted to the board for approval at least 10 days before the scheduled end date of the AIT program;

(B) Planned reading and writing assignments as designated by the preceptor; and

(C) Other planned learning experiences including learning about other health and social services agencies in the community.

(3) Preceptors of approved AIT programs shall submit ((~~quarterly~~)) monthly reports to the department as follows:

(a) If the approved AIT program has more than one preceptor, each preceptor shall submit a ((~~quarterly~~)) monthly report.

(b) The preceptor shall submit the final report to the department at least 10 days before the scheduled end date of the AIT program.

(c) Each ((~~quarterly~~)) monthly report must:

(i) Be on forms provided by the department;

(ii) Describe a detailed outline of AIT activities during the reporting period which includes:

(A) A document completed by the AIT and signed by the preceptor; and

(B) A document completed and signed by the preceptor.

(4) Changes in the AIT program, including a change of preceptor, facility or topic, must be immediately reported in writing to the board. A request for change must be in writing and explain why the change is needed.

(5) A site visit by a board member will take place before the program plan is considered complete.

(6) The AIT program must be completed to the board's satisfaction as a condition of licensure. The board may withdraw approval or alter conditions under which approval was given if the board finds that the approved program has not been or is not being followed.

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

WAC 246-843-095 Preceptors for administrator-in-training programs. The preceptor shall submit a statement to the board describing his or her qualifications and an agreement to perform the duties of a preceptor.

(1) Qualifications of preceptor:

(a) The preceptor must be actively practicing as a nursing home administrator for a duration of no less than three years prior to the submission of the AIT applicant's initial application for an AIT credential.

(b) The preceptor must be employed full time as the nursing home administrator in the facility where the AIT is trained.

(c) The preceptor shall have an unrestricted license.

(d) The preceptor shall submit proof that they have completed the National Association of Long Term Care Administrators Board (NAB) preceptor leadership course.

(2) Duties of the preceptor:

(a) The preceptor shall take the time necessary and have at least a weekly face-to-face conference with the AIT about the activities of the AIT relative to the training program and the nursing home.

(b) The preceptor shall evaluate the AIT and submit ((~~quarterly~~)) monthly reports to the board on the progress of the AIT program.

(c) The preceptor shall provide learning opportunities that support the AIT's preparation to succeed on the licensure examination and competently assume the responsibilities of a nursing home administrator.

(3) A preceptor is limited to the supervision of only one AIT unless the preceptor has prior approval from the board.

(4) The board may periodically review and evaluate the quality of AIT programs and preceptor performance.

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

WAC 246-843-230 Endorsement. (1) The board may issue a license on the basis of licensure in good standing from another state to a nursing home administrator if that state requires qualifications substantially equivalent to qualifications required by RCW 18.52.071 and WAC 246-843-090. To obtain a license by endorsement the applicant shall:

(a) ((~~Satisfy requirements listed in WAC 246-831-071 [246-843-071]~~))Submit to the department a completed application for licensure on forms provided by the department that includes all information requested and payment of fees as required in WAC 246-12-020 through 246-12-051 and 246-843-990.

(b) Submit verification forms from all states in which currently or previously licensed that verifies the applicant was or is currently licensed and confirms licensure status.

(2) Applicants who are currently certified by the American College of Health Care Administrators (ACHCA) are exempt from taking the current NAB national examination.

WSR 26-01-042
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed December 10, 2025, 8:18 a.m., effective April 1, 2026]

Effective Date of Rule: April 1, 2026.

Purpose: Licensed mental health counselor associates, University of Washington health sciences library (HEAL-WA) fee. The department of health is adopting amendments to WAC 246-809-990 to implement HB 1190 (chapter 19, Laws of 2025). This legislation expands access to the University of Washington's online health sciences library (HEAL-WA) for licensed mental health counselor associates. As part of this implementation, WAC 246-809-990 is amended to include a $16 HEAL-WA fee, applicable at both initial licensure and renewal for mental health counselor associates.

Citation of Rules Affected by this Order: Amending WAC 246-809-990.

Statutory Authority for Adoption: RCW 18.225.040.

Other Authority: HB 1190 (chapter 19, Laws of 2025), codified in RCW 43.70.110 and 43.70.250.

Adopted under notice filed as WSR 25-17-067 on August 18, 2025.

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 10, 2025.

Kristin Peterson, JD
Chief of Policy
for Dennis E. Worsham
Secretary of Health

RDS-6578.1

AMENDATORY SECTION (Amending WSR 25-11-019, filed 5/12/25, effective 6/12/25)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Except for a probationary license as described in WAC 246-809-095, a license must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) An associate license is valid for one year and must be renewed every year on the date of issuance.

(3) The following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	$290.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed marriage and family therapy associate	
Original application	
Application	65.00
UW online access fee (HEAL-WA)	16.00
Renewal	
Renewal	50.00
UW online access fee (HEAL-WA)	16.00
Late renewal penalty	50.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application	95.00
Initial license	80.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	125.00
Late renewal penalty	65.00
Expired license reissuance	65.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor associate	
Original application	
Application	35.00
UW online access fee (HEAL-WA)	16.00
Renewal	

Title	Fee
Renewal	25.00
UW online access fee (HEAL-WA)	16.00
Late renewal penalty	25.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	170.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	70.00
Late renewal penalty	50.00
Expired license reissuance	72.50
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	65.00
Late renewal penalty	30.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker associate and licensed independent clinical social worker associate	
Original application	
Application	35.00
UW online access fee (HEAL-WA)*	16.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
UW online access fee (HEAL-WA)*	16.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00

* Surcharge applies to independent clinical social worker associate only.

(4) For a probationary license as described under WAC 246-809-095, the following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	$290.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
Duplicate license	10.00

Title	Fee
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application and initial license	175.00
Active license renewal	
Renewal	90.00
Late renewal penalty	50.00
Expired license reissuance	65.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	200.00
Active license renewal	
Renewal	100.00
Late renewal penalty	50.00
Expired license reissuance	72.50
Duplicate license	10.00
Verification of license	25.00

WSR 26-01-043
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed December 10, 2025, 8:26 a.m., effective January 19, 2026]

Effective Date of Rule: January 19, 2026.

Purpose: The health care authority is streamlining its processes for enrollment in and retention of eligibility for medicare savings programs.

Citation of Rules Affected by this Order: Amending WAC 182-503-0005 and 182-517-0100.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Adopted under notice filed as WSR 25-22-013 on October 24, 2025.

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 2, 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 2, Repealed 0.

Date Adopted: December 10, 2025.

Wendy Barcus
Rules Coordinator

RDS-6720.1

AMENDATORY SECTION (Amending WSR 23-11-007, filed 5/4/23, effective 6/4/23)

WAC 182-503-0005 Washington apple health—How to apply. (1) You may apply for Washington apple health at any time.

(2) For apple health programs for children, pregnant people, parents and caretaker relatives, and adults age 64 and under without medicare (including people who have a disability or are blind), you may apply:

(a) Online via the Washington Healthplanfinder at www.wahealthplanfinder.org;

(b) By calling the Washington Healthplanfinder customer support center and completing an application by telephone;

(c) By completing the application for health care coverage (HCA 18-001P), and mailing or faxing to Washington Healthplanfinder; or

(d) At a department of social and health services (DSHS) community services office (CSO).

(3) If you seek apple health coverage and are age 65 or older, have a disability, are blind, need assistance with medicare costs, or seek coverage of long-term services and supports, you may apply:

(a) Online via Washington Connection at www.WashingtonConnection.org;

(b) By completing the application for aged, blind, disabled/long-term care coverage (HCA 18-005) and mailing or faxing it to DSHS;

(c) By calling the DSHS customer service contact center and completing an application by telephone;

(d) In person at a local DSHS CSO or home and community services (HCS) office; ((~~or~~))

(e) As specified in subsection (2) of this section, if you are a child, pregnant, a parent or caretaker relative, or an adult age 64 and under without medicare; or

(f) Effective January 19, 2026, with your consent when you complete an application for medicare Part D low-income subsidy (LIS) benefits, the social security administration (SSA) will transmit an LIS data file to us. We will use the LIS data file to initiate an application for you for benefits under the medicare savings program (MSP) without requiring you to submit a separate MSP application.

(4) You may receive help filing an application.

(a) For households containing people described in subsection (2) of this section:

(i) Call the Washington Healthplanfinder customer support center number listed on the application for health care coverage form (HCA 18-001P); or

(ii) Contact a navigator, health care authority volunteer assistor, or broker.

(b) For people described in subsection (3) of this section who are not applying with a household containing people described in subsection (2) of this section:

(i) Call or visit a local DSHS CSO or HCS office; or

(ii) Call the DSHS community services customer service contact center number listed on the medicaid application form.

(5) To apply for tailored supports for older adults (TSOA), see WAC 182-513-1625.

(6) You must apply directly with the service provider for the following programs:

(a) The breast and cervical cancer treatment program under WAC 182-505-0120;

(b) The family planning only programs under chapter 182-532 WAC; and

(c) The kidney disease program under chapter 182-540 WAC.

(7) For the confidential pregnant minor program under WAC 182-505-0117 and for minors living independently, you must complete a separate application directly with us (the medicaid agency).

More information on how to give us an application may be found at the agency's website: www.hca.wa.gov/free-or-low-cost-health-care (search for "teen").

(8) As the primary applicant or head of household, you may start an application for apple health by providing your:

(a) Full name;

(b) Date of birth;

(c) Physical address, and mailing addresses (if different); and

(d) Signature.

(9) To complete an application for apple health, you must also give us all of the other information requested on the application.

(10) You may have an authorized representative apply on your behalf as described in WAC 182-503-0130.

(11) We help you with your application or renewal for apple health in a manner that is accessible to you. We provide equal access (EA) services as described in WAC 182-503-0120 if you:

(a) Ask for EA services, you apply for or receive long-term services and supports, or we determine that you would benefit from EA services; or

(b) Have limited-English proficiency as described in WAC 182-503-0110.

RDS-6721.1

AMENDATORY SECTION (Amending WSR 24-06-008, filed 2/22/24, effective 4/1/24)

WAC 182-517-0100 Federal medicare savings programs. (1) Available programs. The medicaid agency offers eligible clients the following medicare savings programs (MSPs):

(a) The qualified medicare beneficiary (QMB) program;

(b) The specified low-income medicare beneficiary (SLMB) program;

(c) The qualified individual (QI-1) program; and

(d) The qualified disabled and working individuals (QDWI) program.

(2) Eligibility requirements.

(a) To be eligible for an MSP, a client must:

(i)(A) Be entitled to medicare Part A; or

(B) Be eligible for and enrolled in the medicare Part D low-income subsidy (LIS) program through the social security administration (SSA); and

(ii) Meet the general eligibility requirements under WAC 182-503-0505.

(b) To be eligible for QDWI, a client must be under age 65.

(c) Income limits.

(i) Income limits for all MSPs are found at www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

(ii) If a client's countable income is less than or equal to 110 percent of the federal poverty level (FPL), the client is income eligible for the QMB program.

(iii) If a client's countable income is over 110 percent of the FPL, but does not exceed 120 percent of the FPL, the client is income eligible for the SLMB program.

(iv) If a client's countable income is over 120 percent of the FPL, but does not exceed 138 percent of the FPL, the client is income eligible for the QI-1 program.

(v) If a client's countable income is over 138 percent of the FPL, but does not exceed 200 percent of the FPL, the client is income eligible for the QDWI program if the client is employed and meets disability requirements described in WAC 182-512-0050.

(d) The federal MSPs do not require a resource test.

(3) MSP income eligibility determinations.

(a) The agency has ((~~two~~)) three methods for determining if a client is eligible for an MSP:

(i) The agency first determines if the client is eligible based on SSI-((~~rated~~)) related methodologies under chapter 182-512 WAC. Under this method, the agency calculates the household's net countable income and compares the result to the one-person standard. However, if the spouse's income is deemed to the client, or if both spouses are applying, the household's net countable income is compared to the two-person standard.

(ii) If the client is not eligible under the methodology described in (a)(i) of this subsection, the agency compares the same countable income, as determined under (a)(i) of this subsection, to the appropriate FPL standard based on family size. The number of individuals that count for family size include:

(A) The client;

(B) The client's spouse who lives with the client;

(C) The client's dependents who live with the client;

(D) The spouse's dependents who live with the spouse, if the spouse lives with the client; and

(E) Any unborn children of the client, or of the spouse if the spouse lives with the client.

(iii) The third method for determining if a client is eligible for an MSP is the SSA LIS methodology. This is based on the client's application for the medicare Part D low-income subsidy program through the SSA, which the agency receives from SSA through the LIS data file. Under this methodology, the agency compares the LIS data file regarding income and household size to the current MSP standards.

(b) Under ((~~both~~)) all eligibility determinations, the agency follows the rules for SSI-related people under chapter 182-512 WAC for determining:

(i) Countable income;

(ii) Availability of income;

(iii) Allowable income deductions and exclusions; and

(iv) Deemed income from and allocated income to a nonapplying spouse and dependents.

(c) The agency uses the eligibility determination that provides the client with the highest level of coverage.

(i) If the MSP applicant is eligible for QMB coverage under (a)(i) of this subsection, the agency approves the coverage.

(ii) If the MSP applicant is not eligible for QMB coverage, the agency determines if the applicant is eligible under (a)(ii) of this subsection.

(iii) If neither eligibility determination results in QMB coverage, the agency uses the same process to determine if the client is eligible under any other MSP.

(d) When calculating income under this section:

(i) The agency subtracts client participation from a long-term care client's countable income under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(ii) The agency counts the annual Social Security cost-of-living increase beginning April 1st each year.

(4) Covered costs.

(a) The QMB program pays:

(i) Medicare Part A and Part B premiums using the start date in WAC 182-504-0025; and

(ii) Medicare coinsurance, copayments, and deductibles for Part A, Part B, and Part C, subject to the limitations in WAC 182-502-0110.

(b) If the client is eligible for both SLMB and another medicaid program:

(i) The SLMB program pays the Part B premiums using the start date in WAC 182-504-0025; and

(ii) The medicaid program pays medicare coinsurance, copayments, and deductibles for Part A, Part B, and Part C subject to the limitations in WAC 182-502-0110.

(c) If the client is only eligible for SLMB, the SLMB program covers medicare Part B premiums using the start date in WAC 182-504-0025.

(d) The QI-1 program pays medicare Part B premiums using the start date in WAC 182-504-0025 until the agency's federal funding allotment is spent. The agency resumes QI-1 benefit payments the beginning of the next calendar year.

(e) The QDWI program covers medicare Part A premiums using the start date in WAC 182-504-0025.

(5) MSP eligibility. Medicaid eligibility may affect MSP eligibility:

(a) QMB and SLMB clients may receive medicaid and still be eligible to receive QMB or SLMB benefits.

(b) QI-1 and QDWI clients who begin receiving medicaid are no longer eligible for QI-1 or QDWI benefits, but may be eligible for the state-funded medicare buy-in program under WAC 182-517-0300.

(6) Right to request administrative hearing. A person who disagrees with agency action under this section may request an administrative hearing under chapter 182-526 WAC.

WSR 26-01-053
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Home and Community Living Administration)
(Developmental Disabilities Community Services)
[Filed December 11, 2025, 8:49 a.m., effective January 11, 2026]

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

Purpose: The developmental disabilities community services (DDCS) is enacting these changes to implement changes to DDCS' home and community-based services waivers as approved by the Centers for Medicare and Medicaid Services. These amendments clarify waiver service definitions and service limit language across waivers.

Citation of Rules Affected by this Order: Amending WAC 388-845-0113, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0820, 388-845-1150, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2005, 388-845-2205, and 388-845-2210.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.380.

Other Authority: RCW 71A.12.380(1) and 42 C.F.R. 441.301.

Adopted under notice filed as WSR 25-20-052 on September 25, 2025.

A final cost-benefit analysis is available by contacting Leila Graves, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email Leila.graves@dshs.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 14, 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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 14, Repealed 0.

Date Adopted: December 11, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5073.2

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0113 When may I receive waiver services through teleservice? (1) Teleservice is a remote service delivery method that uses a HIPAA-compliant technology system approved by DDA.

(2) The following services may be delivered through teleservice:

(a) Assistive technology;

(b) Community engagement;

(c) Individual supported employment;
((~~(c)~~)) (d) Individualized technical assistance;
(e) Life skills;
((~~(d)~~)) (f) Music therapy;
((~~(e)~~)) (g) Occupational therapy;
((~~(f)~~)) (h) Peer mentoring;
((~~(g)~~)) (i) Person-centered plan facilitation;
((~~(h)~~)) (j) Physical therapy;
((~~(i) Positive behavior support and consultation until August 31, 2023;~~))
(k) Residential habilitation;
((~~(j)~~)) (l) Specialized evaluation and consultation;
((~~(k) Specialized habilitation;~~))
((~~(l)~~)) (m) Speech, hearing, and language services;
((~~(m) Supported employment;~~
~~(n) Supported parenting; and~~))
(n) Stabilization - crisis diversion bed;
(o) Stabilization - life skills;
(p) Stabilization - staff and family consultation;
((~~(o)~~)) (q) Staff and family consultation((~~.~~)); and
(r) Supported parenting.

(3) A waiver service may be delivered through teleservice if:

(a) The waiver participant chooses that service delivery method and acknowledges the teleservice agreement through signature on the person-centered service plan;

(b) DDA determines through the person-centered planning process that the waiver service can be adequately provided remotely based on the reason for the service request;

(c) There is no risk to the waiver participant's health or safety as a result of the waiver service being provided remotely; and

(d) The waiver participant's person-centered service plan indicates each waiver service that will be provided through teleservice.

(4) For each waiver service that occurs regularly over the course of the plan year and is being delivered remotely, the service must be delivered in-person at least one time per plan year.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0210 What services are available under the basic plus waiver? The following services are available under the basic plus waiver:

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES:	Total costs must not exceed $6,192 per year per participant
Assistive technology	
((~~Assistive technology~~)) Extermination of cimex lectularius (bedbugs)	
Community engagement Environmental adaptations	
Life skills	

SERVICE	YEARLY LIMIT
Occupational therapy Physical therapy Remote support Skilled nursing Specialized equipment and supplies ((~~Specialized habilitation~~)) Speech, hearing, and language services Staff and family consultation Transportation Wellness education	
Therapeutic adaptations	Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding
EMPLOYMENT SERVICES: Individual technical assistance Supported employment	Limits determined by DDA assessment and employment status
Community inclusion	Limits determined by the person-centered service plan
STABILIZATION SERVICES: Crisis diversion bed ((~~Specialized habilitation~~)) <u>Life skills</u> Staff and family consultation	Limits determined by the person-centered service plan
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
Community engagement Environmental adaptions Occupational therapy Physical therapy <u>Remote support</u> Specialized equipment and supplies Speech, hearing, and language services Skilled nursing Staff and family consultation Therapeutic adaptations Transportation	$6,000 per year for emergency assistance funding

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0215 What services are available under the core waiver? (1) The following services are available under the core waiver:

SERVICE	YEARLY LIMIT
Assistive technology Extermination of cimex lectularius (bedbugs) Community engagement Community transition Environmental adaptations Life skills Occupational therapy Physical therapy Remote support Residential habilitation Risk assessment Skilled nursing Specialized equipment and supplies ((~~Specialized habilitation~~)) Speech, hearing, and language services Staff and family consultation Supported parenting Transportation Wellness education	Determined by the person-centered service plan
EMPLOYMENT SERVICES: Individualized technical assistance Supported employment	Limits determined by DDA assessment and employment status
Community inclusion	Limits determined by the person-centered service plan
STABILIZATION SERVICES: Crisis diversion bed ((~~Specialized habilitation~~)) Life skills Staff and family consultation	Limits determined by the person-centered service plan
Respite care	Limits determined by DDA assessment

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0220 What services are available under the community protection waiver? (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
Assistive technology Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy ((~~Positive behavior support and consultation~~)) Residential habilitation Risk assessment Skilled nursing Specialized equipment and supplies Specialized evaluation and consultation Speech, hearing, and language services Staff and family consultation Transportation	Determined by the person-centered service plan
EMPLOYMENT SERVICES: Individual technical assistance Supported employment	Limits determined by DDA assessment and employment status
STABILIZATION SERVICES: Crisis diversion bed ((~~Specialized habilitation~~)) Life skills Staff and family consultation	Limits determined by the person-centered service plan

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0225 What services are available under the children's intensive in-home behavioral support (CIIBS) waiver? (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Life skills Nurse delegation Specialized clothing Specialized equipment and supplies ((~~Specialized habilitation~~)) Staff and family consultation Transportation Vehicle modifications	$15,000 per year for any combination of services
Respite care	Limits determined by the DDA assessment.
STABILIZATION SERVICES: Crisis diversion bed ((~~Specialized habilitation~~)) Life skills Staff and family consultation	Limits determined by the person-centered service plan
Risk assessment	Limits determined by DDA
Environmental adaptations (Accessibility and repairs) ((~~Specialized habilitation~~)) Life skills Staff and family consultation Vehicle modifications	$6,000 per year for emergency assistance funding
Equine therapy Music therapy Peer mentoring Person-centered plan facilitation	$5,000 per year for any combination of services
Therapeutic adaptations	Limited to a single, one-time authorization not to exceed $15,000 every five waiver years

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Community engagement Environmental adaptations Life skills Nurse delegation Occupational therapy Peer mentoring Person-centered plan facilitation Physical therapy Remote support Respite care Skilled nursing Specialized clothing Specialized equipment and supplies ((~~Specialized habilitation~~)) Speech, hearing, and language services Staff and family consultation Supported parenting services Transportation Vehicle modifications Wellness education	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Therapeutic adaptations	Limited to a one-time authorization every five years and limited to funds available in the client's annual allocation
Risk assessment	Limits determined by the person-centered service plan. Costs are excluded from the annual allocation.
STABILIZATION SERVICES: Crisis diversion bed ((~~Specialized habilitation~~)) Life skills Staff and family consultation	Limits determined by the person-centered service plan. Costs are excluded from the annual allocation.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment under chapter 388-828 WAC. The DDA assessment deter-

mines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

(a) Level 1 = $1,560;
(b) Level 2 = $2,340;
(c) Level 3 = $3,120; or
(d) Level 4 = $4,680.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0820 Are there limits to your use of emergency assistance funding? All of the following limits apply to the emergency assistance funding you may receive.

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service plan to determine the need for emergency assistance.

(2) Payment authorizations are reviewed every 30 days and must not exceed $6,000 per 12 months based on the effective date of your current person-centered service plan.

(3) Emergency assistance funding is limited to the following aggregate services when on the basic plus waiver:

(a) Community engagement;
(b) Environmental adaptations;
(c) Occupational therapy;
(d) Physical therapy;
(e) Remote support;
(f) Skilled nursing;
(g) Specialized equipment and supplies;
(h) Speech, hearing, and language services;
(i) Staff and family consultation, which excludes individual and family counseling;
(j) Transportation; and
(k) Therapeutic adaptations.

(4) Emergency assistance funding is limited to the following services when on the CIIBS waiver:

(a) Environmental adaptations;
(b) ((~~Specialized habilitation~~)) Life skills;
(c) Staff and family consultation; and
(d) Vehicle modifications.

(5) Emergency assistance funding may be used for interim services until:

(a) The emergency situation has been resolved;
(b) You are transferred to alternative supports that meet your assessed needs; or
(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1150 What are stabilization services? (1) Stabilization services assist persons who are experiencing a crisis.

(2) Stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for stabilization services if:

(a) A behavioral health professional and DDA has determined the participant is at risk of institutionalization or hospitalization; and

(b) The participant needs short-term:

(i) ((~~Specialized habilitation~~)) Life skills;

(ii) Staff and family consultation; or

(iii) Crisis diversion beds.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-1870 What are ((~~specialized habilitation~~)) life skills services? (1) ((~~Specialized habilitation~~)) Life skills services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in categories of:

(a) Self-empowerment;

(b) Safety awareness and self-advocacy;

(c) Interpersonal effectiveness and effective social communication;

(d) Coping strategies for everyday life changes; and

(e) Managing daily tasks and acquiring adaptive skills.

(3) ((~~Specialized habilitation~~)) Life skills services must promote inclusion in the community.

(4) ((~~Specialized habilitation~~)) Life skills services are available on the basic plus, IFS, core, and CIIBS waivers.

(5) ((~~Specialized habilitation~~)) Life skills services, when authorized as a stabilization service, is available on all five HCBS waivers.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-1880 Who are qualified providers of ((~~specialized habilitation~~)) life skills services? To provide ((~~specialized habilitation~~)) life skills services, a provider must be contracted with DDA for this service, have one year of experience working with people with a developmental or intellectual disability, and be one of the following:

(1) A certified life skills coach;

(2) An individual with a bachelor's, master's, or doctoral degree in social work, sociology, psychology, education, child development, gerontology, nursing, or other related field; or

(3) An individual enrolled and supervised in a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, or nursing.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-1890 Are there limits to the ((~~specialized habilitation~~)) life skills I may receive? The following limits apply to your receipt of ((~~specialized habilitation~~)) life skills:

(1) ((~~Specialized habilitation~~)) Life skills is limited to address a maximum of three goals at a time.

(2) ((~~Specialized habilitation~~)) Life skills support needs must be identified in your DDA assessment and ((~~specialized habilitation~~)) life skills must be documented in your person-centered service plan.

(3) ((~~Specialized habilitation~~)) Life skills must not exceed:

(a) $6,192 within your total basic plus aggregate budget;

(b) Your IFS annual allocation in combination with other waiver services; or

(c) $15,000 within your total CIIBS aggregate budget and $6,000 emergency assistance funding when eligible per WAC 388-845-0800 and 388-845-0820.

(4) ((~~Specialized habilitation~~)) Life skills does not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment, and part B special education services.

(5) Life skills may be provided in a small group up to four if the clients have the same person-centered goal, and the group work addresses each client's current goal.

(6) ((~~Specialized habilitation~~)) Life skills must not be authorized for a client receiving residential habilitation, unless the client is receiving the service from a companion home provider.

((~~(6)~~)) (7) Habilitation plans must be documented as formal plans as outlined in the provider's contract.

((~~(7) Specialized habilitation~~)) (8) Life skills, not provided as a stabilization service, requires prior approval by the DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-2005 Who is a qualified provider of staff and family consultation? To provide staff and family consultation, a provider must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

(1) Audiologist;
(2) Licensed practical nurse;
(3) Marriage and family therapist;
(4) Mental health counselor;
(5) Occupational therapist;
(6) Physical therapist;
(7) Registered nurse;
(8) Sex offender treatment provider;
(9) Speech-language pathologist;
(10) Social worker;
(11) Psychologist;

(12) Certified American Sign Language instructor;
(13) Nutritionist;
(14) Counselors registered or certified in accordance with chapter 18.19 RCW;
(15) Certified dietician;
(16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
(17) Certified music therapist (for CIIBS only);
(18) Psychiatrist;
(19) Professional advocacy organization;
(20) DDA-contracted ((~~specialized habilitation~~)) life skills provider; or
(21) Teacher certified under chapter 181-79A WAC.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-2205 Who is qualified to provide transportation services? The provider of transportation ((~~services can be an individual or agency~~)) must be an entity contracted with DDA ((~~whose contract includes~~)) to provide transportation ((~~in the statement of work~~)).

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-2210 Are there ((~~limitations~~)) limits to the transportation services you can receive? The following ((~~limitations~~)) limits apply to transportation services:
(1) Support needs for transportation services are limited to those identified in your DDA assessment and documented in your person-centered service plan.
(2) ((~~Transportation is limited to travel to and from a waiver service. When the waiver service is supported employment, transportation is limited to days when you receive employment support services.~~
~~(3) Transportation does not include the purchase of a bus pass.~~
~~(4)~~)) Reimbursement for provider mileage requires prior authorization by DDA and is paid according to contract.
((~~(5)~~)) (3) This service does not cover the purchase or lease of vehicles.
((~~(6)~~)) (4) Reimbursement for provider travel time is ((~~not~~)) included ((~~in this service~~)) for nonmedical transportation from a transportation company only.
((~~(7)~~)) (5) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.
((~~(8)~~)) (6) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.
((~~(9)~~)) (7) The dollar limitations for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

WSR 26-01-057
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Home and Community Living Administration)
(Developmental Disabilities Community Services)
[Filed December 11, 2025, 10:26 a.m., effective January 11, 2026]

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

Purpose: The developmental disabilities community services (DDCS) is enacting these changes to clarify waiver service definitions and service limit language across waivers. The department of social and health services (department) inadvertently referenced a section that does not exist in WSR 25-21-123; however, the proposed rule text was correct.

Citation of Rules Affected by this Order: Amending WAC 388-845-0900, 388-845-0910, 388-845-2143, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.380.

Other Authority: RCW 71A.12.380(1) and 42 C.F.R. 441.301.

Adopted under notice filed as WSR 25-21-123 on October 20, 2025.

Changes Other than Editing from Proposed to Adopted Version: The department inadvertently referenced a section that does not exist in WSR 25-21-123; however, the proposed rule text was correct. This is not an edit because the proposed language was correct. This is a clarification.

A final cost-benefit analysis is available by contacting Leila Graves, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email Leila.graves@dshs.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 4, 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 4, Repealed 0.

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

Date Adopted: December 11, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5112.2

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide minimum necessary physical adaptations

to the client's existing home and existing rooms within the home required by the individual's person-centered service plan needed to:

(a) Ensure the health, welfare, and safety of the individual;

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home; and

(c) Increase the individual's independence inside or outside the home to allow the individual to physically enter and move within the home.

(2) Examples of environmental adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom for physical access needs, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental adaptations are available in all of the DDA HCBS waivers.

(4) Environmental adaptations to the home are not available in provider-owned or provider-leased residential settings.

(5) Adaptations to the home necessary to prevent or repair damage to the structure of the home caused by the participant's behavior, as addressed in the participant's behavior support plan, are available on the children's intensive in-home behavioral support, individual and family services, core, and community protection waivers.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0910 What limits apply to environmental adaptations? The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee ((~~,~~)).

(3) Environmental adaptations must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) $1,500 or less, one bid is required;

(b) More than $1,500 and equal to or less than $5,000, two bids are required; or

(c) More than $5,000, three bids are required.

(4) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

(5) DDA may require an occupational therapist, physical therapist, or other professional to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(6) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the home, or general home improvements, such as carpeting, roof repair, or central air conditioning.

(7) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to final payment for work.

(8) Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

(9) Environmental adaptations must not be approved if the existing residence condition is impacted by hazardous mold, asbestos, or home dilapidation.

(10) Location of the home in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

(11) Written consent from the home's landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's home.

(12) Environmental adaptations must not add to the total square footage of the home, convert nonliving space to living space, or create a new room.

(13) The amount of service you may receive is limited to the dollar amounts for aggregate services in your basic plus waiver, CIIBS waiver, or the dollar amount of your annual IFS waiver allocation.

(14) For core and community protection waivers, annual environmental adaptation costs must not exceed $12,192.

(15) Damage prevention and repairs under the CIIBS, IFS, core, and CP waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

(b) Behaviors of waiver participants that resulted in damage to the home must be identified and addressed in a behavior support plan prior to the repair of damages;

(c) Repairs to personal property such as furniture and appliances are excluded; and

(d) Repairs due to normal wear and tear are excluded.

(16) Noncovered environmental adaptations include:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, generators, or ceiling fans;

(d) Roof repair or siding;

(e) Deck construction or repair; ((~~and~~))

(f) Jetted tubs or saunas ((~~.~~)); and

(g) Luxury construction materials such as: tile, natural stone, waterfall shower heads, glass shower surrounds, or other similar materials.

(17) Environmental adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-2143 What are the limits to specialized evaluation and consultation services? The following limits apply to your receipt of specialized evaluation and consultation:

(1) You must be enrolled on the community protection waiver.

(2) Specialized evaluation and consultation support needs must be identified in your DDA assessment and must be documented in your person-centered service plan.

(3) Specialized evaluation and consultation is limited to services that are:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) Not a covered benefit under the medicaid state plan, including mental health treatment.

(4) This service must not replace one-on-one, group, or other treatments to address a mental health condition which are covered by the medicaid state plan.

(5) One-on-one and group skill building that is a component of behavioral health treatment is not covered under specialized evaluation and consultation.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide database due to the following:

(a) You do not need ICF/IID level of care per WAC 388-845-0070, 388-828-8040, and 388-828-8060; ((~~or~~))

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520((~~.~~)); or

(c) You requested enrollment in the IFS waiver and do not meet IFS eligibility per WAC 388-845-0001, 388-845-0030, and 388-845-0100.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:

(a) DDA's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; ((~~or~~))

(b) DDA's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520((~~.~~)); or

(c) DDA's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the IFS waiver and do not meet IFS eligibility per WAC 388-845-0001, 388-845-0030, and 388-845-0100.

(3) If DDA determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDA determines there is not capacity to enroll you on a different waiver.

WSR 26-01-060
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed December 11, 2025, 1:17 p.m., effective January 11, 2026]

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

Purpose: WAC 192-01-001 sets forth the employment security department's (department) rule governance statement. The rule explains what chapters in Title 192 WAC apply to which programs administered by the department. Currently, WAC 192-01-001 states that the department administers programs under Titles 50, 50A, and portions of 50B RCW. ESSB 5525 (2025) created a new chapter in Title 49 RCW and provided authority to the department to adopt rules for the administration of that chapter, the Securing Timely Notification and Benefits for Laid-Off Employees Act, RCW 49.45.070. Therefore, WAC 192-01-001 is amended to include portions of Title 49 RCW in the list of titles for which the department creates rules and administers programs. The rule is also amended to provide the location of the new rules in the department's WAC.

Citation of Rules Affected by this Order: Amending WAC 192-01-001.

Statutory Authority for Adoption: RCW 49.45.070, 50.12.010, and 50.12.040.

Adopted under notice filed as WSR 25-19-026 on September 5, 2025.

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 11, 2025.

Joy E. Adams, Director
Employment System Policy and Integrity

RDS-6645.2

AMENDATORY SECTION (Amending WSR 20-19-136, filed 9/22/20, effective 10/23/20)

WAC 192-01-001 Rule governance statement. The employment security department administers several distinct programs in Titles 50((,)) and 50A RCW, and portions of Titles 49 and 50B RCW through the Washington Administrative Code. The provisions in chapters 192-04 through ((~~192-499~~)) 192-449 WAC apply to the Employment Security Act in Title 50 RCW and other programs administered by the employment security department. The provisions in chapters 192-450 through 192-499 WAC apply

to the Securing Timely Notification and Benefits for Laid-off Employees Act in Title 49 RCW. The provisions in chapters 192-500 through 192-899 WAC apply to the paid family and medical leave program in Title 50A RCW. The provisions in chapters 192-900 through 192-999 WAC apply to portions of the long-term services and supports trust program in Title 50B RCW administered under the employment security department's authority.

WSR 26-01-063
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket UE-210183, General Order R-610—Filed December 11, 2025, 2:46 p.m., effective December 11, 2025, 2:46 p.m.]

In the matter of amending and adopting rules in chapter 480-100 WAC relating to markets and compliance requirements for the Clean Energy Transformation Act (CETA).

1. **STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 25-15-112, filed with the code reviser on July 18, 2025. The commission has authority to take this action pursuant to RCW 80.01.040 and 80.04.160; chapter 80.28 RCW, Gas, electrical, and water companies; chapter 19.280 RCW, Electric utility resource plans; and chapter 19.405 RCW, Washington Clean Energy Transformation Act.

2. **STATEMENT OF COMPLIANCE:** This proceeding complies with 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 these rules on the date this order is entered.

4. **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 19.405.130(3) requires the commission to adopt rules by June 30, 2022, defining the requirements for meeting the obligations under RCW 19.405.030 - [19.405].050 with market purchases from the energy imbalance market and other centralized markets to address the prohibition on double counting of nonpower attributes under RCW 19.405.040 that could occur under other programs. The commission completed the required rule making, but conducts this additional rule making to clarify remaining interpretive questions. This rule making specifically addresses questions including interpreting and implementing RCW 19.405.040 (1)(a) regarding the use of electricity for compliance with RCW 19.405.030 through 19.405.050 and other portions of chapter 19.405 RCW, CETA that may be affected by rules interpreting RCW 19.405.040 (1)(a). This statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the Washington State Register (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 commission's actions and its reasons for taking those actions.

6. **REFERENCE TO AFFECTED RULES:** This order adopts the following WAC sections:

Amending WAC 480-100-605 Definitions and 480-100-650 Reporting and compliance; and adopting [new] WAC 480-100-670 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard, 480-100-675 Portfolio planning requirements to comply with the greenhouse gas neutral standard, and 480-100-680 Use of RECs and NPAs to comply with the 100 percent renewable or nonemitting standard.

7. **PREPROPOSAL STATEMENT OF INQUIRY:** The commission filed a preproposal statement of inquiry (CR-101) on May 3, 2021, at WSR 21-10-088. The statement advised interested persons that the commission was initiating a rule making to implement the requirements of CETA, which requires investor-owned electric utilities to: (1) Eliminate coal-fired generation from their portfolios by the end of 2025; (2) ensure that all retail sales of electricity to their retail customers will be greenhouse gas neutral by the end of 2030; and (3) source all of their power from renewable and nonemitting resources by the end of 2045. The statement clarified that the commission adopted three sets of rules to begin CETA implementation in 2020, and that this notice signified the beginning of the second phase of rule making specifically addressing compliance with RCW 19.405.030 through 19.405.050 with electric market purchases from centralized markets and addressed the prohibition of double counting of nonpower attributes under RCW 19.405.140. The commission informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons, cities, and counties requesting such information pursuant to RCW 34.05.320(3), as well as all regulated electric and natural gas companies and the commission's list of utility attorneys. On May 13, 2021, the commission issued an addendum to the CR-101 notice, clarifying that initial written comments would be due June 2, 2021.

8. **STAKEHOLDER PARTICIPATION:** Pursuant to the initial notice, the commission issued a second notice of opportunity to file written comments on the CR-101 and a list of questions enumerated in the notice on May 17, 2021. The commission received written comments in response to the May 2021 notices on June 2, 2021, and June 14, 2021, respectively. The commission received additional written comments in response to its notices on November 12, 2021, December 6, 2021, February 9, 2022, April 22, 2022, November 24, 2023, February 16, 2024, May 10, 2024, June 21, 2024, November 27, 2024, April 25, 2025, and August 9, 2025. The commission conducted an adoption hearing on September 2, 2025, and workshops and/or technical conferences on June 22, 2021, August 12, 2021, September 27, 2021, December 6, 2021, December 14, 2021, and February 22, 2024.

9. Commenters and workshop participants include Western Power Trading Forum, Avista d/b/a Avista Utilities (Avista), Alliance of Western Energy Consumers, Bonneville Power Administration (BPA), Northwest Intermountain Power Producers Coalition (NIPPC), PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp), Public Generating Pool, Puget Sound Energy (PSE), Northwest Energy Coalition, Climate Solutions, Renewable Northwest, Center for Resource Solutions, Public Counsel Unit of the Attorney General's Office (public counsel), U.S. Energy Storage Association, Renewable Hydrogen Alliance, Copenhagen Infrastructure Partners, Northwest Energy Efficiency Council, Columbia Riverkeeper, FlexCharging, Washington Public Utility Districts Association, Natural Resources Defense Council, The Northwest Requirements Utilities, Pacific Northwest Generating Cooperative, Washington Rural Electric Cooperative Association, King County, Avangrid Renewables, Powerex Corporation, the Washington Environmental Council, and various members of the public. A summary of all written comments and commission staff's responses to CR-101 comments are contained in Appendix B, attached to, and made part of this order.

10. **SMALL BUSINESS ECONOMIC IMPACT:** The proposed rules apply only to the large investor-owned utility companies and thus will have no effect on small business. Following notice of a small business impact economic statement (SBEIS) questionnaire requesting responses by March 9, 2022,

the commission issued an SBEIS that confirmed that the proposed rules will not disproportionately affect small businesses. Following additional SBEIS questionnaires requesting responses by November 24, 2023, and May 10, 2024, the commission received no additional responses. The final rules adopted by the commission in this order do not deviate significantly from the version proposed in May 2024 as they relate to small businesses. Therefore, the commission concludes that the adopted rules do not disproportionately affect small businesses.

11. **NOTICE OF PROPOSED RULE MAKING:** The commission filed a first notice of proposed rule making (CR-102) on March 23, 2022, at WSR 22-07-100 (first notice). The commission filed a second notice (adoption notice or second notice) CR-102 on July 18, 2025, at WSR 25-15-112. The commission scheduled this matter for telephonic and virtual oral comment and adoption under Notice No. WSR 25-15-112 at 9:00 a.m. on Tuesday, September 2, 2025. The adoption notice provided interested persons the opportunity to submit written comments to the commission by August 19, 2025, two weeks prior to the hearing.

12. **WRITTEN COMMENTS:** The commission received written comments in response to the adoption notice from PSE, PacifiCorp, Avista, and NIPPC. Written comments received after the adoption notice are addressed below.

13. **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on Tuesday, September 2, 2025, before Chair Brian J. Rybarik, Commissioner Ann E. Rendahl, and Commissioner Milton H. Doumit. The commission heard a presentation by commission staff (staff) and oral comments from representatives of Avista, PacifiCorp, PSE, BPA, and NIPPC, all of whom enhanced the written comments they previously provided. The Washington department of ecology (ecology) also requested minor clarifications to language in the adopted rules, which are addressed below.

14. **ADDITIONAL WRITTEN COMMENTS:** The commission did not receive any additional comments after the August 19, 2025, written comment deadline.

15. **SUGGESTIONS FOR CHANGES:** The rules have been revised and edited multiple times throughout the CR-101 phase based upon comments from stakeholders. After the commission issued the proposed rules, stakeholders suggested changes in both written and oral comments. The suggested changes and staff's recommended responses are summarized in Appendix B. The commission adopts staff's responses and recommendations from the CR-101 phase as its own, while opining on major changes to the proposed rules in paragraphs 15 through 25. The commission further revises the proposed rules presented at the adoption hearing as described in paragraphs 15 through 25 below.

Discussion:

16. Throughout this process, the commission has considered multiple possible restrictions on the use of nonpower attributes for primary compliance with CETA within a four-year compliance period. Though the commission declines to adopt any of these restrictions at this time, the commission has the authority to place restrictions on the use of nonpower attributes beyond the statutory limits based on its interpretation of "use." Additionally, the commission is not obligated to mirror the rules adopted by the department of commerce (commerce) here or in future changes to these rules. Though the commission does not adopt any of the restrictions considered in the CR-101 phase, we add additional reporting requirements in WAC 480-100-650 to monitor the occurrence of resource shuffling as CETA implementation continues.

17. As stated in the previous adoption order in this docket,[1] the commission finds the relevant statutory language in CETA ambiguous on the question of whether "retained renewable energy credits (RECs)"[2] are eligible for primary compliance under RCW 19.405.040. Good faith arguments could be made on both sides of this question, and the commission does not see any clear evidence of the legislative intent on this specific question within the legislative history. Therefore, the commission must endeavor to follow what it believes the legislative intent was, focusing on achieving the stated policy goals of CETA.

1 GENERAL ORDER R-604, page 14, paragraph 46. June 29, 2022.

2 "Retained RECs" are RECs that are generated by a utility, and the energy associated with that REC is sold as unspecified.

18. The commission finds that allowing retained RECs to count toward primary compliance under RCW 19.405.040(1) furthers the legislative intent of CETA. The period between 2030 and 2045 is one in which flexibility will be needed in order to meet CETA's clean energy goals while also keeping customer rates affordable. Adopting an interpretation that does not allow retained RECs to count toward primary compliance would require electric utilities and large combination utilities to implement complicated accounting systems. Given that retained RECs must be generated by the utility or purchased as a bundled product, the commission finds that the complicated accounting and tracking systems necessary to ensure retained RECs are not counted toward primary compliance would not be in the public interest. Allowing retained RECs to count toward primary compliance still requires a utility to buy or build enough renewable and nonemitting generation to meet the 80 percent primary compliance requirement under CETA. The commission will take this standard into account when setting interim targets in clean energy implementation plans (CEIPs) and integrated system plans (ISPs) moving forward. Parties have objected that adopting this interpretation could reduce the incentives the utilities have to make progress on the clean energy transition.[3] The commission disagrees, and notes that going forward, the agency will review interim targets in light of the statutory interpretation we adopt today. Although the commission is not bound to follow the same rules adopted by commerce, we are concerned about the potential impact of adopting a different interpretation than the one commerce has adopted in its rules.

3 Docket UE-210183, Comments of Renewable Northwest, the Northwest Energy Coalition, and Climate Solutions, page 2 (April 25, 2025).

19. The commission reiterates here what it stated in the previous adoption order regarding the 2045 standard in RCW 19.405.050:[4] The commission finds that retained RECs would not be consistent with the plain language of RCW 19.405.050(1), which requires utilities to "supply" retail load with electricity from 100 percent renewable and nonemitting resources. The commission therefore expects utility long term planning to account for the need to supply 100 percent of retail load in 2045 without the ability to use retained RECs for compliance.

4 GENERAL ORDER R-604, page 11, paragraph 38 ("However, we still expect that the electric utilities we regulate are engaged in planning and acquiring resources to achieve CETA's final goal: supplying 100 percent R&N electricity in providing electric service for retail customers equitably, cost effectively, and reliably").

20. PacifiCorp states concerns regarding the sufficiency of using a cost allocation methodology for CETA compliance. The commission reiterates in this order that for multistate utilities, we expect that a cost allocation methodology will be sufficient for determining that a utility is in compliance with the 100 percent renewable or nonemitting standard. Any interstate cost allocation methodology approved by the

commission is assumed to be accurate and sufficient for the purpose of determining CETA compliance.

21. During the adoption hearing, ecology requested two clarifications regarding the draft rules. First, ecology requested that the commission clarify whether the specification of double-counting within a "load-based program" in proposed WAC 480-100-670(8) extends to the discussion of offering specified power in subsection [(8)](b). We affirm that the specification of "load-based program" in WAC 480-100-670(8) extends to subsection [(8)](b).

22. Second, ecology requested that the commission consider whether in-market attribution of resources to a Washington-based greenhouse gas regulation area[5] qualifies as a load-based program, and whether attribution under such a construct would be considered double-counting. Ecology noted that if the commission does consider in-market attribution to be a load-based program, and therefore double-counting CETA-eligible attributes, it would create difficulties for cap-and-invest implementation. The commission does not believe that in-market attribution is a load-based program, as it exists to serve greenhouse gas accounting within a day-ahead market. The accounting of CETA-eligible attributes occurs in a post-market setting, distinct from the in-market attribution framework that will be used in developing day-ahead markets. As such, the commission clarifies here that it does not consider in-market attribution to be a load-based program.

5 Ecology provides an example of the California independent system operator tariff Sec. 29.32, 33.32 (Federal Energy Regulatory Commission approved).

23. In written comment in response to the adoption notice, Avista proposes changing the hourly analysis requirement in proposed WAC 480-100-675(2) to a monthly requirement, arguing that additional clarification is needed on how such an hourly analysis should be implemented. The commission rejects this request. On this issue, we expect Avista and other affected utilities to construct an hourly analysis that functions within the context of the utility's planning procedures and limitations. The commission encourages all companies to work with staff and technical advisory groups to implement an hourly analysis that demonstrates actionable steps toward CETA compliance. The commission notes that if a company is unable to perform these functions with an hourly analysis, it may apply for a rule exemption to substitute a monthly analysis. Any company seeking an exemption must demonstrate that it is not able to conduct an hourly analysis.

24. Also, in response to the adoption notice, PacifiCorp and PSE offer minor changes to the wording of the monthly reporting requirements in proposed WAC 480-100-650 (3)(l). PacifiCorp proposes clarifying that the reported information should be disaggregated monthly, not reported monthly, as the information would be included in annual clean energy progress reports. The commission agrees with this proposal and adopts the language suggested by PacifiCorp.

25. PSE notes in written comment that the annual clean energy progress reports are not required during years that clean energy compliance reports are submitted and proposes changing the start date for data reporting in proposed WAC 480-100-650 (3)(l) to July 1, 2027. The commission recognizes this issue but prefers that the requested information be reported annually regardless of the nature of the report filed in a given year. In the existing rule implementing CETA, WAC 480-100-650 (1)(h) specifies that information in WAC 480-100-650(4) shall be reported in both progress reports and compliance reports. Consequently, the commission retains the annual reporting requirement,

but moves the requirement from WAC 480-100-650(3) to WAC 480-100-650(4).

26. **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR 25-15-112 with the changes described in paragraph 27 below.

27. **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 25-15-112:

WAC 480-100-650 (3)(l), delete all text, which will be moved to WAC 480-100-650 (4)(e).

WAC 480-100-650 (4)(e), insert "Beginning July 1, 2026, and each year thereafter, the following information shall be reported annually, disaggregated on at least a monthly basis, in megawatt hours:

(i) The total amount of renewable or nonemitting energy that is generated or purchased, categorized by resource type, justified by associated RECs or NPAs;

(ii) The amount of renewable or nonemitting energy that the utility counts towards primary compliance, categorized by resource type, identified by the vintage of the associated RECs or NPAs;

(iii) The total load served by the utility before line losses;

(iv) The retail load served by the utility; and

(v) The total amount of energy storage resource charging and discharging, for supply-side resources owned or contracted by the utility, categorized by resource type."

WAC 480-100-650(m), rename this subsection as subsection (l), following the removal of the previous subsection (l).

28. **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that amendment of WAC 480-100-605 and 480-100-650 is necessary, as well as the addition of new WAC 480-100-700, 480-100-750, and 480-100-800 to implement chapter 19.405 RCW, with a focus on RCW 19.405.030, 19.405.040, 19.405.050, and 19.405.130 and other portions of chapter 19.405 RCW to read as set forth in Appendix C, as rules of the commission, to take effect immediately pursuant to RCW 34.05.380 (3)(a).

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 3, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, 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 3, Amended 2, Repealed 0.

ORDER

29. **THE COMMISSION ORDERS:**

30. The commission amends WAC 480-100-605 and 480-100-650; and creates WAC 480-100-670, 480-100-675, and 480-100-680 to read as set forth in Appendix C, as rules of the Washington utilities and transportation commission, to take effect immediately.

31. This order and the rule set out below, after being recorded in the register of the commission, shall be forwarded to the code re-

viser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, December 11, 2025.
Washington Utilities and Transportation Commission

Brian J. Rybarik, Chair
Ann E. Rendahl, Commissioner
Milton H. Doumit, Commissioner

Appendix C
CHAPTER 480-100 WAC - RULES

RDS-5035.4

AMENDATORY SECTION (Amending WSR 22-14-055, filed 6/29/22, effective 7/1/22)

WAC 480-100-605 Definitions. The definitions below apply to all of WAC 480-100-600 through 480-100-665.

"Allocation of electricity" means, for the purposes of setting electricity rates, the costs and benefits associated with the resources used to provide electricity to an electric utility's retail electricity consumers that are located in this state.

"Alternative lowest reasonable cost and reasonably available portfolio" means, for purposes of calculating the incremental cost of compliance in RCW 19.405.060(3), the portfolio of investments the utility would have made and the expenses the utility would have incurred if not for the requirement to comply with RCW 19.405.040 and 19.405.050. The alternative lowest reasonable cost and reasonably available portfolio must include the social cost of greenhouse gases in the resource acquisition decision in accordance with RCW 19.280.030 (3)(a).

"Biomass energy" includes: Organic by-products of pulping and the wood manufacturing process; animal manure; solid organic fuels from wood; forest or field residues; untreated wooden demolition or construction debris; food waste and food processing residuals; liquors derived from algae; dedicated energy crops; and yard waste.

Biomass energy does not include:

- Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;
- Wood from old growth forests; or
- Municipal solid waste.

"Carbon dioxide equivalent" or "CO_2e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

"CEAP" means the clean energy action plan.

"CEIP" means the clean energy implementation plan.

"Centralized electricity market" means a wholesale electricity market that facilitates the purchase and sale of electricity between multiple participants.

"Coal-fired resource" means a facility that uses coal-fired generating units, or that uses units fired in whole or in part by coal as feedstock, to generate electricity. Coal-fired resource does not include:

• An electric generating facility that is included as part of a limited duration wholesale power purchase, not to exceed one month, made by an electric utility for delivery to retail electric customers that are located in this state for which the source of the power is not known at the time of entry into the transaction to procure the electricity; or

• An electric generating facility that is subject to an obligation to meet the standards contained in RCW 80.80.040 (3)(c).

"Commission" means the Washington utilities and transportation commission.

"Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

"Cost-effective" means that a project or resource is forecast: (a) To be reliable and available within the time it is needed; and (b) to meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

"Customer benefit indicator" means an attribute, either quantitative or qualitative, of resources or related distribution investments associated with customer benefits described in RCW 19.405.040(8).

"Demand response" means changes in electric usage by demand-side resources from their normal consumption patterns in response to changes in the price of electricity, or to incentive payments designed to induce lower electricity use, at times of high wholesale market prices or when system reliability is jeopardized. Demand response may include measures to increase or decrease electricity production on the customer's side of the meter in response to incentive payments.

"Distributed energy resource" means a nonemitting electric generation or renewable resource or program that reduces electric demand, manages the level or timing of electricity consumption, or provides storage, electric energy, capacity, or ancillary services to an electric utility and that is located on the distribution system, any subsystem of the distribution system, or behind the customer meter, including conservation and energy efficiency.

"Energy assistance" means a program undertaken by a utility to reduce the household energy burden of its customers.

• Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's energy burden.

• Energy assistance may include direct customer ownership in distributed energy resources or other strategies if such strategies achieve a reduction in energy burden for the customer above other available conservation and demand-side measures.

"Energy assistance need" means the amount of assistance necessary to achieve an energy burden equal to six percent for utility customers.

"Energy burden" means the share of annual household income used to pay annual home energy bills.

"Equitable distribution" means a fair and just, but not necessarily equal, allocation of benefits and burdens from the utility's

transition to clean energy. Equitable distribution is based on disparities in current conditions. Current conditions are informed by, among other things, the assessment described in RCW 19.280.030 (1)(k) from the most recent integrated resource plan.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such a material.

"Greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department of ecology by rule under RCW 70A.45.010.

"Highly impacted community" means a community designated by the department of health based on the cumulative impact analysis required by RCW 19.405.140 or a community located in census tracts that are fully or partially on "Indian country," as defined in 18 U.S.C. Sec. 1151.

"Implementation period" means the four years after the filing of each clean energy implementation plan through 2045. The first implementation period will begin January 1, 2022, and will end December 31, 2025, and the second implementation period will begin on January 1, 2026, and will end on December 31, 2029.

"Integrated resource plan" or "IRP" means an analysis describing the mix of generating resources, conservation, methods, technologies, and resources to integrate renewable resources and, where applicable, address overgeneration events, and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in RCW 19.280.030(1).

"Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its customers, public policies regarding resource preference adopted by Washington or the federal government, and the cost of risks associated with environmental effects, including emissions of carbon dioxide. The analysis of the lowest reasonable cost must describe the utility's combination of planned resources and related delivery system infrastructure and show consistency with chapters 19.280, 19.285, and 19.405 RCW.

"Market allocation" means a greenhouse gas accounting or reporting mechanism that operates after the dispatch of a centralized electricity market and that assigns electricity and emissions to individual utilities or other load-serving entities participating in a centralized electricity market based on resources owned or under contract to those entities and market purchases.

"Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate. Natural gas does not include renewable natural gas or the portion of renewable natural gas when blended into other fuels.

"Nonemitting electric generation" means electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation. Nonemitting electric generation does not include renewable resources.

"Nonpower attributes" or "NPA" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity including, but not limited to, the facility's fuel type, geographic location, vintage, qualification as a renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases. Nonpower attributes ((~~does~~)) do not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

"Primary compliance" means the portion of the greenhouse gas neutrality standard contained in RCW 19.405.040 (1)(a) that cannot be met through the alternative compliance options under RCW 19.405.040 (1)(b).

"Renewable energy credit" or "REC" means a tradable certificate of proof of one megawatt-hour of a renewable resource. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity and the certificate is verified by a renewable energy credit tracking system selected by the department of commerce.

"Renewable resource" means water; wind; solar energy; geothermal energy; renewable natural gas; renewable hydrogen; wave, ocean, or tidal power; biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or biomass energy.

"Resource" includes, but is not limited to, generation, conservation, distributed generation, demand response, efficiency, and storage.

"Resource allocation framework" means a system or protocol that allows for the market allocation of specific resources dispatched in a centralized electricity market that the commission has determined to have sufficient safeguards against the double counting of nonpower attributes.

"Resource need" means any current or projected deficit to reliably meet electricity demands created by changes in demand, changes to system resources, or their operation to comply with state or federal requirements. Such demands or requirements may include, but are not limited to, capacity and associated energy, capacity needed to meet peak demand in any season, fossil-fuel generation retirements, equitable distribution of benefits or reduction of burdens, cost-effective conservation and efficiency resources, demand response, and renewable and nonemitting resources.

"Retail electric load" means the amount of megawatt-hours of electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers. "Retail electric load" does not include:

(a) Megawatt-hours delivered from qualifying facilities under the federal Public Utility Regulatory Policies Act of 1978, P.L. 95-617, in operation prior to May 7, 2019, provided that no entity other than the electric utility can make a claim on delivery of the megawatt-hours from those resources; or

(b) Megawatt-hours delivered to an electric utility's system from a renewable resource through a voluntary renewable energy purchase by a retail electric customer of the utility in which the renewable energy credits associated with the megawatt-hours delivered are retired on behalf of the retail electric customer.

"Social cost of greenhouse gas emissions" or "SCGHG" is the inflation-adjusted costs of greenhouse gas emissions resulting from the generation of electricity, as required by RCW 80.28.405, the updated calculation of which is published on the commission's website.

"Unbundled renewable energy credit" or "unbundled REC" means a renewable energy credit that is sold, delivered, or purchased separately from the underlying electricity. All thermal renewable energy credits are considered unbundled renewable energy credits.

"Unspecified electricity" means an electricity source for which the fuel attribute is unknown or has been separated from the energy delivered to retail electric customers.

"Vintage" means the month and year in which electricity and its associated RECs are generated; in the case of an NPA, the month and year in which the associated electricity is generated.

"Vulnerable populations" means communities that experience a disproportionate cumulative risk from environmental burdens due to: (a) Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and (b) sensitivity factors, such as low birth weight and higher rates of hospitalization.

AMENDATORY SECTION (Amending WSR 22-14-055, filed 6/29/22, effective 7/1/22)

WAC 480-100-650 Reporting and compliance. (1) **Clean energy compliance report.** Unless otherwise ordered by the commission, each electric utility must file a clean energy compliance report with the commission by July 1, 2026, and at least every four years thereafter. The report must:

(a) Demonstrate whether and how the utility met its interim targets.

(b) Demonstrate whether and how the utility met its specific targets.

(c) Demonstrate whether and how the specific actions the utility took made progress toward meeting the clean energy transformation standards at the lowest reasonable cost.

(d) Demonstrate whether and how the utility met its statutory obligations under RCW 19.405.040(1) and 19.405.050(1) through the acquisition of the electricity and associated RECs or nonpower attributes. This requires the utility to demonstrate that the electricity the utility reports for compliance is:

(i) From a generating facility located within the utility's service area or balancing authority area; or

(ii) Acquired by the utility at one of the following points of delivery:

(A) The transmission or distribution system of an electric utility;

(B) The transmission system of the Bonneville Power Administration;

(C) The transmission system of any entity that is a participant in a centralized organized market located in the Western Interconnection in which the electric utility is a participant; or

(D) Another point of delivery designated by the electric utility for the purpose of subsequent delivery to the electric utility.

(e) Demonstrate whether and how the specific actions the utility took are consistent with the requirements in WAC 480-100-610 (4)(c) including, but not limited to:

(i) Providing updated customer benefit indicator values;

(ii) An analysis that the distribution of benefits and reductions of burdens have accrued or will reasonably accrue to intended customers, including highly impacted communities and vulnerable populations.

(f) Provide a description of the utility's equity advisory group process, customer engagement and outcomes, and how the utility's efforts are consistent with the requirements in WAC 480-100-655 for the development or update of customer benefit indicators related to WAC 480-100-610 (4)(c).

(g) Include the actual incremental cost of compliance as required in WAC 480-100-660(5).

(h) Include all of the information found in the annual progress report as described in subsection (4) of this section for the fourth year of the CEIP.

(i) Include a summary of the data in the annual progress reports described in subsection (4) of this section.

(j) Document the use of any alternative compliance options as described in RCW 19.405.040 (1)(b), or any request for a temporary exemption per RCW 19.405.090(3).

(k) Include a description of the public participation opportunities the utility provided and the feedback the utility received during the implementation period, including whether and how public participation influenced the utility's decisions and actions.

(l) Include the data input files made available to the commission in native format and in an easily accessible format as an appendix.

(2) **Clean energy compliance report review process.**

(a) Interested persons may file written comments with the commission regarding the utility's clean energy compliance report within 60 days of the utility's filing unless the commission states otherwise.

(b) The commission may review clean energy compliance reports through the commission's open public meeting process, as described in chapter 480-07 WAC.

(c) After completing its review of the utility's clean energy compliance report, the commission will determine whether the utility met its specific and interim targets, and whether the utility made sufficient progress toward meeting the clean energy transformation standards.

(3) **Annual clean energy progress reports.** On or before July 1st of each year beginning in 2023, other than in a year in which the utility files a clean energy compliance report, the utility must file with the commission, in the same docket as its most recently filed CEIP, an informational annual clean energy progress report regarding its progress in meeting its targets during the preceding year. The annual clean energy progress report must include, but is not limited to:

(a) Beginning July 1, 2027, and each year thereafter, an attestation for the previous calendar year that the utility did not use any coal-fired resource as defined in this chapter to serve Washington retail electric customer load.

(b) Conservation achievement in megawatts, first-year megawatt-hour savings, and projected cumulative lifetime megawatt-hour savings.

(c) Demand response program achievement and demand response capability in megawatts and megawatt hours.

(d) Renewable resource capacity in megawatts, and renewable energy usage in megawatt hours and as a percentage of electricity supplied by renewable resources.

(e) All renewable energy credits and the program or obligation for which they were used (e.g., voluntary renewable programs, renewable portfolio standard, clean energy transformation standards).

(f) Verification and documentation of the retirement of renewable energy credits for all electricity from renewable resources used to comply with the requirements of RCW 19.405.040, 19.405.050, a specific target, or an interim target, except for electricity purchased from Bonneville Power Administration, which may be used to comply with these requirements without a renewable energy credit until January 1, 2029, as long as the nonpower attributes of the renewable energy are tracked through contract language.

(g) Nonemitting resource capacity in megawatts, and nonemitting energy usage in megawatt hours and as a percentage of total electricity supplied by nonemitting energy.

(h) The utility's greenhouse gas content calculation pursuant to RCW 19.405.070.

(i) An electronic link to the utility's most recently filed fuel mix disclosure report as required by RCW 19.29A.140.

(j) Total greenhouse gas emissions in metric tons of CO_2e.

(k) Demonstration of ownership of nonpower attributes for nonemitting generation using attestations of ownership and transfer by properly authorized representatives of the generating facility, all intermediate owners of the nonemitting electric generation, and an appropriate company executive of the utility; the utility may not transfer ownership of the nonpower attributes after claiming them in any compliance report.

(l) Other information the company agreed to or was ordered to report in the most recently approved CEIP ((~~or~~)), biennial CEIP update, or ISP.

(4) **Data and contract reporting.** Each utility must file its annual clean energy progress report based on an analysis that identifies and considers the source and characteristics of the electricity a utility claims to meet compliance obligations under WAC 480-100-610, including electricity that is produced, purchased, sold, or exchanged.

(a) Unless otherwise ordered by the commission, the analysis and supporting data provided in the filing must include data in an hourly format for:

(i) Total Washington retail sales.

(ii) Retail sales for customers participating in a voluntary renewable energy purchase program in alignment with RCW 19.405.020 (36)(b).

(iii) Total electricity production for all renewable and nonemitting generation owned, contracted, or controlled by the utility.

(iv) Generation from qualifying facilities as described in RCW 19.405.020 (36)(a).

(v) All electricity sold or transferred for all bundled sales of electricity from renewable and nonemitting sources. For the purposes of this subsection, bundled electricity is electricity that is sold with all its nonpower attributes in the same transaction.

(vi) All electricity sales in which the electricity was sold by that utility in a wholesale market sale without its associated nonpower attributes.

(b) Unless otherwise ordered by the commission, the utility must include in its filing the following:

(i) Total monthly megawatt-hours of sales, purchases, and exchanges by counter party of electricity sales in which the electricity was sold by that utility in a wholesale market sale without its associated nonpower attributes. Any contract in which the utility sells electricity in a wholesale market sale without its associated nonpower attributes must include terms stating the seller is not transferring any of the nonpower attributes and the buyer may not represent in any form that the electricity has any nonpower attributes associated with it and that the buyer must include such provision in any sale of the electricity in any subsequent sale it makes.

(ii) Total monthly megawatt-hours of sales, purchases, and exchanges of bundled electricity from renewable or nonemitting generation. For the purposes of this subsection, bundled electricity is electricity that is sold with all of its nonpower attributes in the same transaction.

(iii) All purchase contracts longer than one month that source the electricity delivered from coal fueled generation.

(iv) Beginning January 1, 2026, all existing or new purchase contracts longer than one month with documentation that none of the electricity delivered is sourced from coal fueled generation.

(v) Any data provided to the Western power pool's resource adequacy program or its successor.

(c) A utility may use an unbundled REC as an alternative compliance option, as provided in RCW 19.405.040 (1)(b), only if the utility demonstrates that there is no double counting of any nonpower attribute associated with that REC. This subsection sets only the minimum requirements necessary to demonstrate that no double counting has occurred. The commission may require the utility to produce other evidence or take specific actions as the commission determines necessary to ensure that there is no double counting of nonpower attributes.

(i) Except as provided in (c)(iii) of this subsection, a utility may use an unbundled REC for alternative compliance only if the utility demonstrates:

(A) The associated electricity was sold, delivered, or transferred without fuel sources or nonpower attributes and under a contract or transaction term expressly stating the fuel source or nonpower attributes are not included; and

(B) The associated electricity was not delivered, reported, or claimed as a zero-emission specified source or assigned the emissions rate of the renewable generating facility under a greenhouse gas (GHG) program.

(ii) A utility's demonstration under this section may be met by documentation that the entity providing the unbundled REC:

(A) Provides contract, confirmation, or other transaction terms that comply with the requirements of (c)(i)(A) and (B) of this subsection;

(B) Was a party to or otherwise has knowledge of the transaction in which the associated electricity was sold or transferred and attests to (c)(i)(A) and (B) of this subsection; or

(C) Obtained the unbundled REC from an entity that attests that it and all previous owners of the REC transferred the REC using trans-

action terms complying with the requirements of (c)(ii)(A) or (B) of this subsection.

(iii) To claim and retire an unbundled REC for alternative compliance where the Washington-eligible RECs were created by renewable electricity marketed by the Bonneville Power Administration a utility must demonstrate the REC was not associated with electricity from a system sale from the Bonneville Power Administration directly into a state with a GHG program and to an entity regulated by the state greenhouse gas program. The RECs are calculated based on the same vintage year as the year in which the electricity was imported to the state with the greenhouse gas program.

(iv) For the purposes of (c) of this subsection, "greenhouse gas program" includes any governmental program outside of Washington that caps or limits greenhouse gas emissions or requires the purchase, surrender, or retirement of greenhouse gas allowances if the scope of the greenhouse gas program includes electricity imported from outside the governmental jurisdiction and does not require the retirement of RECs for such imported electricity.

(d) For the purposes of reporting and compliance, the storage of electricity has the following impacts:

(i) The eligibility of renewable or nonemitting electricity is not affected by the use of storage resources.

(ii) Except for storage resources located on the customer side of a retail meter, any electrical consumption or loss resulting from the charging, holding, and discharging of storage resources is not considered retail electric load as defined in RCW 19.405.020(36).

(iii) Any electrical consumption or loss resulting from the charging, holding, and discharging of storage resources located on the customer side of a retail meter is considered retail electric load for the purpose of compliance with chapter 19.405 RCW.

(e) Beginning July 1, 2026, and each year thereafter, the following information shall be reported annually, disaggregated on at least a monthly basis, in megawatt hours:

(i) The total amount of renewable or nonemitting energy that is generated or purchased, categorized by resource type, justified by associated RECs or NPAs;

(ii) The amount of renewable or nonemitting energy that the utility counts towards primary compliance, categorized by resource type, identified by the vintage of the associated RECs or NPAs;

(iii) The total load served by the utility before line losses;

(iv) The retail load served by the utility; and

(v) The total amount of energy storage resource charging and discharging, for supply-side resources owned or contracted by the utility, categorized by resource type.

(5) **Commission staff information requests.** Nothing in this rule affects the utility's obligation to provide any additional information or data requested by commission staff.

NEW SECTION

WAC 480-100-670 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard. (1) In order to designate a REC or NPA for primary compliance under RCW 19.405.040 (1)(a) or to demonstrate progress towards an interim target established under RCW 19.405.060(1), a utility must comply with the

requirements of this section. The requirements of this section apply to all RECs that are retired and NPAs from nonemitting resources that are reported to meet primary compliance.

(2) Each electric utility must retire any RECs associated with renewable or nonemitting electricity claimed for compliance. The vintage of the RECs being retired must be dated within the four-year compliance period for which the RECs are being claimed, whether for primary or alternative compliance.

(3) If a tracking system identified by the Washington state department of commerce creates RECs for a resource that falls under the definition of nonemitting electric generation in RCW 19.405.020(27), a utility must obtain, verify, track, and retire those RECs in the same manner as RECs from renewable resources.

(4) For resources that do not generate RECs, a utility must demonstrate sole ownership of all NPAs associated with the electricity claimed towards primary compliance. The NPAs claimed towards primary compliance must be associated with electricity generated within the four-year compliance period for which the NPAs are being claimed, whether for primary or alternative compliance.

(5) Unless a REC or NPA is compliant with subsection (6) of this section, the utility must acquire the RECs or NPAs with the electricity associated with the RECs or NPAs in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange.

(6) RECs or NPAs associated with electricity generated by a renewable or nonemitting resource dispatched in or scheduled into a centralized electricity market are eligible to count towards a utility's primary compliance if market allocation of electricity to the utility occurs as a result of the centralized electricity market's resource allocation framework; and, if the utility does not already own the associated RECs or NPAs, the utility separately acquires the RECs or NPAs associated with the renewable or nonemitting electricity resulting from the allocation of the resource to the utility in the centralized electricity market.

(7) The electricity associated with the RECs or NPAs must be consistent with WAC 480-100-650 (1)(d).

(8) A utility may retire a REC or demonstrate ownership of an NPA for the purpose of primary compliance only if the utility demonstrates that there is no double counting of that REC, NPA, or the associated clean energy within another load-based program in Washington or other jurisdictions. At a minimum, this requires that:

(a) Any bilateral sale of electricity with its associated RECs or NPAs must include terms stating that the sale is of specified renewable or nonemitting electricity, and in the absence of such terms, the sale is presumed to be unspecified electricity; and

(b) Any electricity generated by a renewable or nonemitting resource and offered for sale by the utility in a centralized electricity market shall not be offered as specified power, and the utility must ensure that the associated RECs or NPAs are not transferred to another entity.

(9) RECs or NPAs retired for both primary compliance with RCW 19.405.040 (1)(a) and compliance with RCW 19.285.040 (2)(a) are not considered double counted.

(10) NPAs may only be used to demonstrate progress towards primary compliance instead of a REC if the associated electricity has not generated a REC.

NEW SECTION

WAC 480-100-675 Portfolio planning requirements to comply with the greenhouse gas neutral standard. (1) When submitting an integrated resource plan, clean energy implementation plan, clean energy action plan, or integrated system plan required by statute to the commission, a utility must demonstrate how its planned resource acquisition, resource retirement, and continued investment in or operation of existing resources are projected to meet its primary compliance obligation under RCW 19.405.040 (1)(a), in addition to any other minimum percentage of retail electric load established by the commission through an approved interim target, with renewable or nonemitting electricity in each compliance period beginning January 1, 2030.

(2) Each utility must meet the requirement in subsection (1) of this section through, at a minimum, an hourly analysis of the renewable or nonemitting output of the preferred resource portfolio, and how this is intended to meet its primary compliance obligation for each compliance period under RCW 19.405.040 (1)(a), or other minimum percentage of retail electric load established by the commission through an approved interim target, under expected renewable output conditions. If a plan referenced in subsection (1) of this section only includes one portfolio, for the purposes of this section, that portfolio is the preferred portfolio.

NEW SECTION

WAC 480-100-680 Use of RECs and NPAs to comply with the 100 percent renewable or nonemitting standard. In order to use a REC or NPA to comply with the requirements of RCW 19.405.050(1), a utility must:

(1) Ensure that any REC or NPA retired for compliance is consistent with all requirements of WAC 480-100-670, including the requirements specifically related to primary compliance; and

(2) Demonstrate that the utility did not use the associated electricity for any purpose other than supplying electricity to its Washington retail electric customers.

WSR 26-01-068
PERMANENT RULES
BIG BEND
COMMUNITY COLLEGE
[Filed December 12, 2025, 9:37 a.m., effective January 12, 2026]

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

Purpose: Big Bend Community College (college) has revised chapter 132R-04 WAC, Student code of conduct, in order to continue to ensure compliance with the Title IX regulatory requirements. The college previously amended this code in consideration of the federal regulations made effective in August 2024. However, in *Tennessee v. Cardona*, No. 2:24-00072 (January 9, 2025), the court vacated the 2024 Title IX federal regulations. The United States Department of Education subsequently also indicated its intent to enforce the 2020 Title IX regulations. Consequently, the college seeks to amend its student code of conduct to ensure compliance.

Citation of Rules Affected by this Order: Amending WAC 132R-04-015, 132R-04-017, 132R-04-053, 132R-04-057, 132R-04-064, 132R-04-103, 132R-04-112, 132R-04-113, 132R-04-116, 132R-04-1170, 132R-04-125, 132R-04-131, 132R-04-140, 132R-04-150, 132R-04-300, 132R-04-305, 132R-04-315, 132R-04-320, 132R-04-330, 132R-04-335, and 132R-04-340.

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

Adopted under notice filed as WSR 25-21-113 on October 20, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 21, 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 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 11, 2025.

Chandra Rodriguez
Executive Assistant to the President

RDS-6524.1

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-015 Definitions. For the purposes of this chapter, terms are defined as follows:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The vice president of learning and student

success will serve as the student conduct officer or may appoint a designee.

(2) "Conduct review officer" is a college administrator designated by the president to be responsible for reviewing or referring appeals of student disciplinary actions as specified in this code. The director of student programs will serve as the conduct review officer, unless otherwise designated by the president.

(3) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary and to reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action may be reviewed through brief adjudicative proceedings.

(6) ((~~"Pregnancy or related conditions" means:~~

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

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

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

~~(7) "Program" or "programs and activities" means all operations of the college.~~

~~(8) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.~~

~~(9) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.~~

~~(10)~~)) "Respondent" is the student who is alleged to have violated the student conduct code.

((~~(11)~~)) (7) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email, once one has been generated, and by certified or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed, if possible, and deposited into the mail, whichever is first.

((~~(12)~~)) (8) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a

disciplinary review by a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

(a) Hand delivery of the document to the school official or school official's assistant; or

(b) By sending the document by email and first class mail to the recipient's college-assigned email and office address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

((~~(13)~~)) (9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

((~~(14)~~)) (10) "Student" is defined as all persons taking courses at or through the college, including those concurrently attending secondary or postsecondary institutions and college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses (excluding those trainings occurring through the Center for Business and Industry Service and the Japanese Agriculture Training Program), irrespective of modality. Persons who withdraw after allegedly violating the student code of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for the purposes of this chapter. "Continuing relationship" is established when a student is registered for an upcoming term or has indicated an intent to do so via a transaction, such as submitting a financial aid application for an upcoming term.

((~~(15) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.~~

~~(16) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:~~

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

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

~~(17)~~)) (11) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or

student cohort, student performance groups, and student living groups within student housing.

((~~(18) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations, and informal resolution processes, and coordinating supportive measures, in accordance with college policy.~~

~~(19)~~)) (12) "Business day" means a weekday, excluding weekends and college holidays. If a time period is not specifically stated in business days, then calendar days apply.

((~~(20) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:~~

~~(a) A student or employee; or~~

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

~~(21)~~)) (13) "Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the college when the college files the complaint.

(14) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-017 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises; or

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

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives ((~~or the ability of a student or staff to participate in the college's programs and activities~~)).

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

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

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

(5) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be

applied to conduct by students or student groups that occurs off campus.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-053 Authority. The Big Bend Community College (BBCC) board of trustees, acting according to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. Administration of the student disciplinary procedures is the responsibility of the vice president of learning and student success. The vice president of learning and student success will serve as the student conduct officer, or appoint a designee((~~, except in the cases involving allegations of sex discrimination including sex-based harassment when the Title IX coordinator or designee will serve as the student conduct officer~~)). Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-057 Prohibited student conduct. The college may impose sanctions against a student or student group who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct, which includes, but is not limited to, any of the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, ((~~or~~)) fabrication, or deliberate damage.

(a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence, in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

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

(d) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(e) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

((~~(e)~~)) (f) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.

(2) **Other dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students;

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee; or

(d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(3) **Obstructive or disruptive conduct.** Conduct not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(a) Assault is intentionally touching or striking another person in a harmful or offensive way.

(b) A threat is any conduct and/or speech that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person. If the threat primarily involves speech, the speaker must also have consciously disregarded a substantial, unjustifiable risk that the communications could be viewed as threatening violence.

(c) Harassing conduct is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities. Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(d) For purposes of this code, "bullying" is repeated or aggressive unwanted behavior, not otherwise protected by law, ((~~that humiliates, harms, or intimidates the victim~~)) when a reasonable person would feel humiliated, harmed, or intimidated.

(e) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive(s) of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(9) **Hazing.**

Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

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

(b) Humiliation by ritual act;

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

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

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

(10) **Alcohol, cannabis, drug, and tobacco violations.**

(a) Alcohol. The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Cannabis. The use, possession, delivery, or sale of cannabis or the psychoactive compounds found in cannabis intended for human consumption, regardless of form, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, production, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human grown hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college, or in any location where such use is prohibited, or in any location other than the parking lots, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

"Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132R-04-103.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcomed sexual advances, requests for sexual favors, quid pro quo harassment, and other

verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs or activities;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex. This includes, but is not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

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

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

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

(iv) Statutory rape. ((~~Consensual~~)) Nonforcible intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, ((~~or~~)) stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(viii) Consent. Clear, knowing, and voluntary permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapable of consent has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Discriminatory harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive, so as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program and/or social programs and/or student housing; alter the terms of an employee's employment; or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity or expression; veteran's or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law. See supplemental definitions: "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications not otherwise protected by law.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation of federal, state, or local law, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

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

(19) **Abuse of process.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena or order to appear at a hearing;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student disciplinary committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(20) **Unsafe vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(21) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college housing, traffic and parking rules.

(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(23) **Aiding or abetting.** Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of fed-

eral, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

((~~(24) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.~~

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

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

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

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

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

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

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

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

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

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

~~(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(C) **Incest** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half~~

~~related. Descendant includes stepchildren and adopted children under the age of 18.~~

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

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

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

~~(I) The length of the relationship;~~

~~(II) The type of relationship; and~~

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

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

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

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

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

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

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

~~(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.~~))

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-064 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer (or designee) may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with written notice or oral notice of the summary suspension at the time of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two calendar days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension Proceedings" and shall include:

(a) The reasons for imposing the summary suspension, including reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the chair of the student disciplinary committee for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or designee, or to attend a disciplinary hearing.

(5)(a) The conduct review officer or designee shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the notice of summary suspension proceedings has been served upon the respondent in accordance with these rules and the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief statement of findings of fact and conclusions of law, the policy reasons justifying imposition of the summary suspension. If summary suspension is upheld and/or other discipline imposed, the order shall inform the respondent of the duration of the summary suspension or the nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the order may be appealed.

(f) The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension.

(g) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices whom may be bound or protected by it.

(6) In cases involving allegations of sexual ((~~discrimination~~)) misconduct, the complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-103 Supplemental sexual misconduct procedures. (1) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial discipline action and to appeal the student conduct officer's disciplinary order. Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct not otherwise subject to Title IX. In such cases, these procedures shall supplement the student disciplinary procedures. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

(2) **Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(a) The college's Title IX compliance officer or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(b) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(c) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the

college's duty to investigate and process sexual harassment and sexual violence complaints.

(d) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-112 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **((~~Sex discrimination, including sex-based harassment~~)) Sexual misconduct.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of ((~~sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies~~)) sexual misconduct.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve ((~~sex-based harassment~~)) sexual misconduct complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) ((~~Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the~~

~~right to participate in the disciplinary process and to appeal any disciplinary decision.~~

~~(7)~~)) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

((~~(8)~~)) (7) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

((~~(9)~~)) (8) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

((~~(10)~~)) (9) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

((~~(11)~~)) (10) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132R-04-063; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

((~~(12)~~)) (11) In cases involving allegations of ((~~sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.~~

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

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

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

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

~~(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:~~

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

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

~~(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;~~

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

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

~~(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.~~

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

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

~~(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities~~)) sexual misconduct that is not subject to Title IX, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-113 Appeal from disciplinary action. (1) ((~~Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132R-04-057,~~)) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's order shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent((~~, complainant if any,~~)) and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student disciplinary committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) In the event of a conflict between this student conduct code and the Administrative Procedure Act, chapter 34.05 RCW, this student conduct code will govern.

(7) The college hereby adopts the Model rules of procedure, chapter 10-08 WAC, by reference. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(8) Imposition of discipline for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(9) The student disciplinary committee shall hear the following cases as fully adjudicated proceedings:

(a) Appeals from suspensions in excess of ten instructional days;

(b) Appeals from dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president((~~; and~~

~~(d) Cases in which students request to have their discipline case heard by the committee~~)).

(10) Student conduct appeals involving the following disciplinary actions shall be reviewed as brief adjudicative proceedings:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(11) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(12) In cases involving allegations of sexual misconduct that are not subject to Title IX, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(13) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(14) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-116 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by the student conduct officer. The presiding officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the college's view of the matter and (b) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon all the parties within 10 calendar days of consideration of the initial hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 calendar days of service of the initial decision, the initial decision shall be deemed the final order.

(4) In cases involving allegations of sexual misconduct that are not subject to Title IX, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The conduct review officer may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-1170 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or his or her designee, provided the respondent files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(2) The president or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the proceedings must be referred to the student disciplinary committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The order on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the reviewing officer does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The president or designee may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

(6) In cases involving allegations of sexual misconduct that are not subject to Title IX, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-125 Student conduct committee—General. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members recommended by the faculty association and appointed by the president;

(c) The conduct review officer or other member of the administration appointed by the president at the beginning of the academic year.

(2) The conduct review officer shall serve as the committee chair and may take action on preliminary hearing matters prior to the appointment of the committee. The committee chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student disciplinary committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

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

~~(6)~~)) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

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

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-131 Student disciplinary committee hearing—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request

for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

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

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

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

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

~~(i) Spousal/domestic partner privilege;~~

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

~~(iii) Clergy privileges;~~

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

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

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

~~(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.~~

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

~~(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent~~

~~may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.~~)) The president of the college or designee, the chair of the student disciplinary committee, the administrators assigned to the student disciplinary committee, deans, and/or the student conduct officer have the authority to issue subpoenas.

(8) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student disciplinary committee. Each party is responsible for informing their witnesses of the time and place of the hearing.

(9) The committee chair may accommodate concerns for the personal safety, well-being, or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by videoconferencing, telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced, and the parties must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.

(10) The chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

(11) In cases involving allegations of sexual misconduct that are not subject to Title IX, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

(12) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee may also permit each party to propose findings, conclusions, and/or an order for its consideration.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-140 Student disciplinary committee—Initial decision. (1) Within ((~~twenty~~)) 20 calendar days following the conclusion of the hearing or the committee's receipt of closing arguments (whichever is later), the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(2) The committee's initial decision shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall determine any disciplinary sanction or conditions authorized herein. If the matter is an appeal by the respondent, the committee may af-

firm, reverse, or modify the discipline imposed by the student conduct officer and/or impose any other disciplinary sanction or conditions authorized herein.

(3) The committee chair shall provide copies of the initial decision to the parties and any legal counsel who have appeared. The committee chair shall also promptly transmit a copy of the order and the record of the committee's proceedings to the college president and the vice president of learning and student success.

(4) In cases involving allegations of sexual misconduct that are not subject to Title IX, the committee chair, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of his or her appeal rights.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-150 Appeal from student conduct committee initial decision. (1) Any party((~~, including a complainant in sex-based harassment cases,~~)) who is aggrieved by the findings of conclusions issued by the student disciplinary committee may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

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

(a) Procedural irregularity that would change the outcome;

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

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

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

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

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of

the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of ((~~sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator~~)) sexual misconduct that are not subject to Title IX, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-300 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132R-04-010 through 132R-04-200, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-305 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" ((~~encompasses the following conduct~~)) means conduct on the basis of sex that satisfies one or more of the following:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct ((~~that~~)) determined by a reasonable person ((~~would find~~)) to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities((~~, or employment~~)).

(3) Sexual assault. Sexual assault includes the following conduct:

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

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

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

(d) Statutory rape. ((~~Consensual~~)) Nonforcible sexual intercourse between someone who is ((~~eighteen~~)) 18 years of age or older and someone who is under the age of ((~~sixteen~~)) 16.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, ((~~or stalking~~)) coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW ((~~26.50.010~~)) 26.55.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-315 Initiation of discipline. (1) Upon receiving ((~~the~~)) a Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplina-

ry action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

((~~(3)~~)) (f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

AMENDATORY SECTION (Amending WSR 25-02-065, filed 12/23/24, effective 1/23/25)

WAC 132R-04-320 Prehearing procedure. (1) ((~~Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.~~

~~(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:~~

~~(a) A copy of the student conduct code;~~

~~(b) The basis for jurisdiction;~~

~~(c) The alleged violation(s);~~

~~(d) A summary of facts underlying the allegations;~~

~~(e) The range of possible sanctions that may be imposed; and~~

~~(f) A statement that retaliation is prohibited.~~

~~(3) The chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.~~

~~(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.~~

~~(5) The chair may provide to the committee members in advance of the hearing copies of:~~

~~(a) The student conduct officer's notification of imposition of discipline (or referral to the committee); and~~

~~(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.~~

~~(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.~~

~~(7) (Optional: The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.)~~

~~(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.~~

~~(9) (Optional: In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.)~~

~~(10) (Optional: For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing.) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.~~

~~(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.~~

~~(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:~~

~~(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.~~

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

~~(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.~~

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

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

~~(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:~~

~~(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:~~

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

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

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

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

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

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

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

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

~~(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party~~

~~solely through the disciplinary process which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.~~

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

~~(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.~~)) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132R-04-130. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-330 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) ((~~Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility~~)) Complainant and respondent may not ask questions directly of one another. Questions may be asked through a party's advisor or by the chair, after the chair determines the question is relevant and not privileged or otherwise impermissible. The chair has discretion to follow this procedure for other witnesses as well.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-335 Initial order. (1) In addition to complying with WAC 132R-04-140, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the ((~~grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility~~)) procedural steps taken from receipt of the formal complaint through the determination, including ((~~notices~~)) any notifications to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination ((~~of responsibility~~));

(d) Reaches conclusions ((~~as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX~~)) by applying the conduct code to the facts;

(e) Contains a statement of, and rationale for, the ((~~committee's determination of responsibility for each allegation~~)) result as to each allegation, including a determination regarding responsibility;

(f) Describes any disciplinary sanctions or conditions imposed against the respondent, if ((~~any~~)) the committee determines the respondent violated the conduct code;

(g) ((~~Describes to what extent, if any, complainant is entitled to~~)) Determines whether remedies designed to restore or preserve complainant's equal access to the college's education programs or activities will be provided by the college; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-340 Appeals. (1) ((~~The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132R-04-150.~~

~~(2) The president or their delegate~~)) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or in part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions in the initial order or notice of dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

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

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

Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or notice of dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their reviews of the parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and ((~~condition(s)~~)) conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanctions and/or condition(s).

((~~(3)~~)) (5) President's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

WSR 26-01-069
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed December 12, 2025, 10:33 a.m., effective January 12, 2026]

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

Purpose: The health care authority (agency) amended these rules to remove reference to "other medically necessary services" to align with SHB 2051, chapter 367, Laws of 2025 (which struck subsection (13)(b) and (c) from RCW 74.09.520). Additionally, the agency updated 3M to Solventum™. This permanent rule adoption supersedes the emergency rules filed under WSR 25-23-068 on November 18, 2025.

Citation of Rules Affected by this Order: Amending WAC 182-550-2590, 182-550-2600, 182-550-3000, 182-550-3381, and 182-550-4550.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Other Authority: SHB 2051, chapter 367, Laws of 2025; and RCW 74.09.520.

Adopted under notice filed as WSR 25-22-073 on October 31, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a 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 5, 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 0.

Date Adopted: December 12, 2025.

Wendy Barcus
Rules Coordinator

RDS-6527.2

AMENDATORY SECTION (Amending WSR 25-10-099, filed 5/7/25, effective 6/7/25)

WAC 182-550-2590 Agency prior authorization requirements for Level 1 and Level 2 LTAC services. (1) The medicaid agency requires prior authorization for Level 1 and Level 2 long term acute care (LTAC) inpatient stays. The prior authorization process includes all the following:

(a) For an initial 30-day stay:

(i) The client must:

(A) Be eligible under one of the programs listed in WAC 182-550-2575; and

(B) Require Level 1 or Level 2 LTAC services as defined in WAC 182-550-1050.

(ii) The LTAC provider of services must:

(A) Before admitting the client to the LTAC hospital, submit a request for prior authorization to the agency as published in the agency's LTAC billing instructions;

(B) Include sufficient medical information to justify the requested initial stay;

(C) Obtain prior authorization from the agency's medical director or designee, when accepting the client from the transferring hospital; and

(D) Meet all the requirements in WAC 182-550-2580.

(b) For any extension of stay, the criteria in (a) of this subsection must be met, and the LTAC provider of services must submit a request for the extension of stay to the agency with sufficient medical justification.

(2) The agency authorizes Level 1 or Level 2 LTAC services for initial stays or extensions of stay based on the client's circumstances and the medical justification received.

(3) A client who does not agree with a decision regarding a length of stay has a right to an administrative hearing under chapter 182-526 WAC. After receiving a request for an administrative hearing, the agency may request additional information from the client and the facility, or both. After the agency reviews the available information, the result may be:

(a) A reversal of the initial agency decision;

(b) Resolution of the client's issue(s); or

(c) An administrative hearing conducted according to chapter 182-526 WAC.

(4) The agency may authorize an administrative day rate payment, ((~~as well as payment for medically necessary ancillary services as determined by the agency, pharmacy services,~~)) and pharmaceuticals, for a client who meets one or more of the following. The client:

(a) Does not meet the requirements for Level 1 or Level 2 LTAC services;

(b) Is waiting for placement in another hospital or other facility; or

(c) If appropriate, is waiting to be discharged to the client's residence.

AMENDATORY SECTION (Amending WSR 24-09-027, filed 4/10/24, effective 5/11/24)

WAC 182-550-2600 Inpatient psychiatric services. (1) The medicaid agency or the agency's designee pays for covered inpatient psychiatric services for eligible Washington apple health clients.

(2) The definitions found in chapter 182-500 WAC and WAC 182-550-1050 apply to this section.

(3) To be paid for an inpatient psychiatric admission, the hospital provider or hospital unit provider must meet the requirements for payment including the applicable general conditions of payment criteria in WAC 182-502-0100.

(4) When billing the agency directly for Washington apple health clients not enrolled in an agency-contracted managed care organization (MCO) plan, hospitals may use the expedited prior authorization (EPA) process for inpatient psychiatric services that require authorization when the EPA criteria is met.

(a) To meet the EPA criteria, the inpatient admission must:

(i) Be medically necessary;

(ii) Have psychiatric needs as the focus of treatment and not have an acute medical condition;

(iii) Not have a less-restrictive placement available; and

(iv) Be approved or ordered by the professional in charge of the facility.

(b) If the EPA criteria is not met, a hospital may request prior authorization from the agency or the agency's designee.

(5) Authorization of elective, nonemergency, or emergency-related poststabilization services by an agency-contracted MCO plan are subject to federal rules, including 42 C.F.R. 438.114 and 438.210.

(6) When clients enrolled in an agency-contracted MCO plan are involuntarily detained or committed under chapter 71.05 or 71.34 RCW, the stay must be treated as either an emergency or poststabilization service, and authorization must follow the rules found in 42 C.F.R. 438.114.

(7) When a hospital or hospital unit bills the agency directly, the agency pays the administrative day rate and pays for ((~~pharmacy services,~~)) pharmaceuticals((~~, and medically necessary ancillary services, as determined by the agency,~~)) for any authorized days that meet the administrative day definition in WAC 182-550-1050 when less restrictive alternative treatments are not available, posing a barrier to the client's safe discharge.

(8) The agency may review paid claims and recoup any improperly paid claims, including determining whether the client did not meet EPA criteria or other conditions of payment. See WAC 182-502-0230 and chapter 182-502A WAC.

AMENDATORY SECTION (Amending WSR 23-04-049, filed 1/26/23, effective 2/26/23)

WAC 182-550-3000 Payment method. (1) The medicaid agency uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC 182-550-4300 and 182-550-4400.

(2) The agency assigns a DRG code to each claim for an inpatient hospital stay using ((~~3M~~)) Solventum™ software (AP-DRG or APR-DRG) or other software currently in use by the agency. That DRG code determines the method used to pay claims for prospective payment system (PPS) hospitals. For the purpose of this section, PPS hospitals include all in-state and border area hospitals, except both of the following:

(a) Critical access hospitals (CAH), which the agency pays per WAC 182-550-2598; and

(b) Military hospitals, which the agency pays using the following payment methods depending on the revenue code billed by the hospital:

(i) Ratio of costs-to-charges (RCC); and

(ii) Military subsistence per diem.

(3) For each DRG code, the agency establishes an average length of stay (ALOS). The agency may use the DRG ALOS as part of its authorization process and payment methods as specified in this chapter.

(4) An inpatient claim payment includes all hospital covered services provided to a client during days the client is eligible. This includes, but is not limited to:

(a) The inpatient hospital stay;

(b) Outpatient hospital services, including preadmission, emergency department, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim;

(c) Any hospital covered service for which the admitting hospital sends the client to another facility or provider during the client's inpatient hospital stay, and the client returns as an inpatient to the admitting hospital.

(5) The agency's claim payment for an inpatient stay is determined by the payment method. The agency pays hospitals for inpatient hospital covered services provided to clients using the following methods:

Payment Method	General Description of Payment Formula	WAC Reference
DRG (Diagnostic Related Group)	DRG specific relative weight times hospital specific DRG rate times maximum service adjustor	182-550-3000
Per Diem	Hospital-specific daily rate for the service (psych, rehab, withdrawal management, or SUPP) times covered allowable days	182-550-2600 and 182-550-3381
Fixed Per Diem for Long Term Acute Care (LTAC)	Fixed LTAC rate per day times allowed days plus ratio of cost to charges times allowable covered ancillaries not included in the daily rate	182-550-2595 and 182-550-2596
Ratio of Costs-to-Charges (RCC)	RCC times billed covered allowable charges	182-550-4500
Cost Settlement with Ratio of Costs-to-Charges	RCC times billed covered allowable charges (subject to hold harmless and other settlement provisions of the Certified Public Expenditure program)	182-550-4650 and 182-550-4670
Cost Settlement with Weighted Costs-to-Charges (WCC)	WCC times billed covered allowable charges subject to Critical Access Hospital settlement provisions	182-550-2598
Military	Depending on the revenue code billed by the hospital: • RCC times billed covered allowable charges; and • Military subsistence per diem.	182-550-4300
Administrative Day	Standard administrative day rate times days authorized by the agency combined with RCC times ((~~ancillary~~)) pharmaceutical charges that are allowable and covered for administrative days	182-550-3381

(6) For claims paid using the DRG method, the payment may not exceed the billed amount.

(7) The agency may adjust the initial allowable calculated for a claim when one or more of the following occur:

(a) A claim qualifies as a high outlier (see WAC 182-550-3700);

(b) A claim is paid by the DRG method and a client transfers from one acute care hospital or distinct unit per WAC 182-550-3600;

(c) A client is not eligible for a Washington apple health program on one or more days of the hospital stay;

(d) A client has third-party liability coverage at the time of admission to the hospital or distinct unit;

(e) A client is eligible for Part B medicare, the hospital submitted a timely claim to medicare for payment, and medicare has made a payment for the Part B hospital charges;

(f) A client is discharged from an inpatient hospital stay and, within 14 calendar days, is readmitted as an inpatient to the same hospital or an affiliated hospital. The agency or the agency's designee performs a retrospective utilization review (see WAC 182-550-1700) on the initial admission and all readmissions to determine which inpatient hospital stays qualify for payment. The review may determine:

(i) If both admissions qualify for separate reimbursement;

(ii) If both admissions must be combined to be reimbursed as one payment; or

(iii) Which inpatient hospital stay qualifies for individual payment.

(g) A readmission is due to a complication arising from a previous admission (e.g., provider preventable condition described in WAC 182-502-0022). The agency or the agency's designee performs a retrospective utilization review to determine if both admissions are appropriate and qualify for individual payments; or

(h) The agency identifies an enhanced payment due to a provider preventable condition, hospital-acquired condition, serious reportable event, or a condition not present on admission.

(8) In response to direction from the legislature, the agency may change any one or more payment methods outlined in chapter 182-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the agency in the Biennial Appropriations Act. In response to this legislative direction, the agency may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the agency and applied to existing inpatient hospital rates to meet targeted expenditure levels as directed by the legislature.

(b) The agency will apply the inpatient adjustment factor when the agency determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The agency will apply any such inpatient adjustment factor to each affected rate.

(9) The agency does not pay for a client's day of absence from the hospital.

(10) The agency pays an interim billed hospital claim for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 182-550-2900.

(11) The agency applies to the allowable for each claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(12) The agency pays hospitals in designated bordering cities for allowed covered services as described under WAC 182-550-3900.

(13) The agency pays out-of-state hospitals for allowed covered services as described under WAC 182-550-4000.

(14) The agency's annual aggregate payments for inpatient hospital services, including payments to state-operated hospitals, will not

exceed the estimated amounts that the agency would have paid using medicare payment principles.

(15) When hospital ownership changes, the agency's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(16) Hospitals participating in the apple health program must annually submit to the agency:

(a) A copy of the hospital's CMS medicare cost report (Form 2552 version currently in use by the agency) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 182-550-4900 for the requirements for a hospital to qualify for a DSH payment.

(17) Reports referred to in subsection (16) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by the agency.

(18) The agency requires hospitals to follow generally accepted accounting principles.

(19) Participating hospitals must permit the agency to conduct periodic audits of their financial records, statistical records, and any other records as determined by the agency.

(20) The agency limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

(21) For psychiatric hospitals and psychiatric hospital units, when a claim groups to a DRG code that pays by the DRG method, the agency may manually price the claim at the hospital's psychiatric per diem rate.

AMENDATORY SECTION (Amending WSR 23-21-063, filed 10/12/23, effective 1/1/24)

WAC 182-550-3381 Payment method for acute PM&R services and administrative day services. This section describes the agency's payment method for acute physical medicine and rehabilitation (PM&R) services provided by acute PM&R hospitals.

(1) The agency pays an acute PM&R hospital for acute PM&R services based on a rehabilitation per diem rate. See chapter 182-550 WAC and WAC 182-550-3000.

(2) Acute PM&R room and board includes, but is not limited to:

(a) Facility use;

(b) Social services (e.g., discharge planning);

(c) Bed and standard room furnishings; and

(d) Dietary and nursing services.

(3) When the agency authorizes administrative day(s) for a client as described in WAC 182-550-2561(8), the agency pays the facility:

(a) The administrative day rate; and

(b) For pharmaceuticals prescribed for the client's use during the administrative portion of the client's stay((~~; and~~

~~(c) Medically necessary ancillary services as determined by the agency~~)).

(4) The agency pays for transportation services provided to a client receiving acute PM&R services in an acute PM&R hospital according to chapter 182-546 WAC.

AMENDATORY SECTION (Amending WSR 23-21-063, filed 10/12/23, effective 1/1/24)

WAC 182-550-4550 Administrative day rate and swing bed day rate. (1) **Administrative day rate.**

(a) The medicaid agency allows hospitals an administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because:

(i) An appropriate placement outside the hospital is not available (no placement administrative day); or

(ii) The postpartum parent's newborn remains on an inpatient claim for monitoring post-in utero exposure to substances that may lead to physiologic dependence and continuous care by the postpartum parent is the appropriate first-line treatment (newborn administrative day). "Postpartum parent" means the client who delivered the baby(ies).

(b) The agency uses the annual statewide weighted average nursing facility medicaid payment rate to update the all-inclusive administrative day rate on November 1st of each year.

(c) The agency pays for ((~~pharmacy services,~~)) pharmaceuticals ((~~and medically necessary ancillary services, as determined by the agency,~~)) when these services are provided during administrative days.

(d) The agency identifies administrative days during the length of stay review process after the client's discharge from the hospital.

(e) The agency pays for up to five newborn administrative days. The agency pays for additional days with expedited prior authorization (EPA). For EPA, a hospital must establish that the clinically appropriate EPA criteria outlined in the agency's published billing guides have been met. The hospital must use the appropriate EPA number when billing the agency.

(f) The agency pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a no placement administrative day stay.

(g) The agency pays the hospital the newborn administrative day rate only if:

(i) The postpartum parent rooms in with their newborn and provides parental support/care; and

(ii) The hospital provides all prescribed medications to the postpartum parent for the duration of the stay, including medications prescribed to treat substance use disorder.

(2) **Swing bed day rate.** The agency allows hospitals a swing bed day rate for those days when a client is receiving agency-approved nursing service level of care in a swing bed. The agency's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The agency does not pay a hospital the rate applicable to the acute inpatient level of care for those days of a hospital stay when a client is receiving agency-approved nursing service level of care in a swing bed.

(b) The agency's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC 182-550-6000 and 182-550-7200. These ancillary services may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The agency allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that are provided to a client receiving agency-approved nursing service level of care, to be billed directly by a pharmacy through the point of sale system. The agency does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim.

WSR 26-01-076
PERMANENT RULES
EASTERN WASHINGTON UNIVERSITY
[Filed December 12, 2025, 3:58 p.m., effective January 12, 2026]

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

Purpose: Updates the definition of directory information. Information contained in the definition of directory information may be disclosed from a student education record consistent with the Family Education Rights and Privacy Act unless a student opts out of disclosure.

Citation of Rules Affected by this Order: Amending WAC 172-191-100.

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

Adopted under notice filed as WSR 25-21-047 on October 9, 2025.

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: December 12, 2025.

Annika Scharosch
Chief of Staff and Compliance

RDS-6750.1

AMENDATORY SECTION (Amending WSR 20-12-061, filed 5/29/20, effective 6/29/20)

WAC 172-191-100 Directory information. Directory information is defined to include: Student's name, ((~~address,~~)) university email address, telephone number((~~,~~)); participation in officially recognized activities and sports((~~,~~)); weight, height and ((~~birth dates of~~)) the month and day of birth for athletic team members; dates of attendance at the university, enrollment status, and class standing; major field of study, degrees and awards received((~~,~~)); and the most recent previous educational agency or institution attended by the student.

The university may release "directory information" unless the student ((~~files a written~~)) submits a formal request restricting the disclosure of the information to the registrar's office. A student's election to opt out of directory information disclosures does not prevent the university from disclosing or requiring a student to disclose ((~~his/her~~)) their name, identifier, or university email address in a class in which the student is enrolled.

WSR 26-01-079
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed December 15, 2025, 7:13 a.m., effective January 15, 2026]

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

Purpose: The categories of when a brief adjudicative proceeding (BAP) can be used were expanded to include disciplinary matters where alleged violations are simple and can be proven solely with documentary evidence, and the types of records required for a BAP were also updated. Amendments to both sections improve consistency in the disciplinary process while continuing to provide due process and allowing the process to move quickly and fairly for all parties.

Citation of Rules Affected by this Order: Amending WAC 196-09-050 and 196-09-055.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 25-21-159 on October 22, 2025.

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 2, 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 2, Repealed 0.

Date Adopted: December 11, 2025.

Ken Fuller
Director

RDS-6770.1

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-050 Brief adjudicative proceedings. (1) The board may conduct brief adjudicative proceedings as provided in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act.

(2) Brief adjudicative proceedings may ((~~only~~)) be ((~~allowed~~)) offered when a respondent challenges the following categories of board decisions:

(a) A denial of application for licensure, including renewal, reinstatement, or denial of eligibility to take examinations;

(b) A finding that a licensee has failed to meet continuing professional development requirements;

(c) A finding that a licensee has violated the terms of a final order or agreed order issued by the board or the board's designee;

(d) A finding that a person has engaged in false, deceptive, or misleading advertising, or engaged in unlicensed practice;

(e) A finding that a professional land surveyor has violated the provisions of the Survey Recording Act, chapter 58.09 RCW and the survey standards, chapter 332-130 WAC;

(f) A finding that a licensee has violated the provisions of chapter 196-23 WAC, Stamping and seals, chapter 196-27A WAC, Rules of professional conduct, or chapter 196-33 WAC, Rules of professional practice for licensees designing on-site wastewater treatment systems.

(3) A brief adjudicative proceeding may be offered only where the violations alleged are simple and can be proven solely with documentary evidence and where no oral testimony or opinion is needed for the presiding officer to make a fully informed decision on the matter.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-055 Records required for brief adjudicative proceeding. The records for the brief adjudicative proceeding may include, but are not limited to:

(1) License related denials and violations of law:

(a) All correspondence, including emails, between the applicant or respondent, complainant, and the board staff regarding an initial determination ((~~including copies of~~)) such as complaints, requests for information, responses, applications, renewal notice(s), denials, or appeals;

(b) All documents ((~~received by the board from or on behalf of the applicant, licensee or respondent~~)) or data relating to ((~~information, payments, or explanations that have been provided to the board~~)) violations or license denials including records from educational institutions, company employment records, attestations by licensees, plans, maps, drawings, recorded documents, contracts, advertisements, letterhead, business cards, invoices, and records from financial institutions;

(c) ((~~Copies of all supplementary information related to application or complaint review by staff or board member;~~

~~(d)~~)) All documents relied upon by board staff and case manager or board member in reaching the initial determination;

((~~(c)~~)) (d) Any other ((~~information~~)) documentary evidence that may be of assistance to the presiding officer in deciding the case.

(2) Determination of compliance with previously issued board order:

(a) The previously issued final order, default, or ((~~agreement~~)) agreed order;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the board regarding compliance with the final order, default, or ((~~agreement~~)) agreed order; and

(d) All documents relied upon by the board staff and case manager showing that the license holder has failed to comply with the previously issued final order, default, or ((~~agreement~~)) agreed order.

WSR 26-01-082
PERMANENT RULES
STATE BOARD OF HEALTH
[Filed December 15, 2025, 8:10 a.m., effective January 15, 2026]

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

Purpose: Per- and polyfluoroalkyl substances (PFAS); state action levels, state maximum contaminant levels and public notifications for Group A public water supplies in chapter 246-290 WAC.

The state board of health (board) adopted amendments to WAC 246-290-315, State action levels (SALs) and state minimum contaminant levels (MCLs), and 246-290-71006 Public notice for contaminants with a SAL and other unregulated contaminants, to align with the federal Environmental Protection Agency's (EPA) new standards for PFAS. The board adopted an emergency rule, WSR 25-13-104 on June 18, 2025, to amend WAC 246-290-315 to keep state protections for drinking water in place until EPA's new federal standards take effect. The board adopted subsequent emergency rules while this rule making is ongoing in WSR 24-21-138, 25-05-095, 25-13-104, and 25-21-086. The board adopted permanent rule amendments to incorporate the changes from the emergency rule making to keep current state protections in place until the federal provisions take effect and to amend the SALs to align with the new EPA MCL values before the federal effective date.

Citation of Rules Affected by this Order: Amending WAC 246-290-315 and 246-290-71006.

Statutory Authority for Adoption: RCW 43.20.050 (2)(a).

Adopted under notice filed as WSR 25-20-085 on September 30, 2025.

A final cost-benefit analysis is available by contacting Shay Bauman, P.O. Box 47990, Olympia, WA 98504-7790 [7990], phone 564-669-8929, fax 360-236-4088, TTY 711, email shay.bauman@sboh.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.

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

Date Adopted: November 19, 2025.

Michelle A. Davis, MPA
Executive Director

RDS-5531.2

AMENDATORY SECTION (Amending WSR 21-23-097, filed 11/17/21, effective 1/1/22)

WAC 246-290-315 State action levels (SALs) and state maximum contaminant levels (MCLs). (1) The department shall consider the following criteria to select a contaminant for developing a SAL:

(a) Drinking water contributes to human exposure to the contaminant.

(b) The contaminant is known or likely to occur in public water systems at levels of public health concern. Sources of occurrence information include, but are not limited to:

(i) Washington state department of agriculture;

(ii) Washington state department of ecology; and

(iii) Monitoring results reported in accordance with 40 C.F.R. 141.35.

(c) The contaminant has a possible adverse effect on the health of persons exposed based on peer-reviewed scientific literature or government publications, such as:

(i) An EPA health assessment such as an Integrated Risk Information System assessment;

(ii) Agency for Toxic Substances and Disease Registry toxicological profiles;

(iii) State government science assessment; and

(iv) EPA guidelines for exposure assessment such as the EPA exposure factors handbook.

(d) A certified drinking water lab can accurately and precisely measure the concentration of the contaminant in drinking water at and below the level of public health concern using EPA-approved analytical methods.

(2) After consideration of the criteria in subsection (1) of this section, the department may develop a SAL based on the following:

(a) Evaluation of available peer-reviewed scientific literature and government publications on fate, transport, exposure, toxicity and health impacts of the contaminant and relevant metabolites;

(b) An assessment based on the most sensitive adverse effect deemed relevant to humans and considering susceptibility and unique exposures of the most sensitive subgroup such as pregnant women, fetuses, young children, or overburdened and underserved communities; and

(c) Technical limitations to achieving the SAL such as insufficient analytical detection limit achievable at certified drinking water laboratories.

(3) The state board of health shall consider the department's findings under subsections (1) and (2) of this section when considering adopting a SAL under this chapter.

(4) Contaminants with a SAL.

(a) If a SAL under Table 9 of this section is exceeded, the purveyor shall take follow-up action as required under WAC 246-290-320. For contaminants where the SAL exceedance is determined based upon an RAA, the RAA will be calculated consistent with other organic contaminants per WAC 246-290-320(6) or other inorganic contaminants per WAC 246-290-320(3).

TABLE 9
STATE ACTION LEVELS

Contaminant or Group of Contaminants	SAL	SAL Exceedance Based On:
Per- and polyfluoroalkyl substances (PFAS)		
PFOA	((~~10~~)) 4.0 ng/L	((~~Confirmed detection~~)) Running annual average
PFOS	((~~15~~)) 4.0 ng/L	((~~Confirmed detection~~)) Running annual average
PFHxS	((~~65~~)) 10 ng/L	((~~Confirmed detection~~)) Running annual average
PFNA	((~~9~~)) 10 ng/L	((~~Confirmed detection~~)) Running annual average
((~~PFBS~~	~~345 ng/L~~	~~Confirmed detection~~))
HFPO-DA	10 ng/L	Running annual average
Hazard Index PFAS (HFPO-DA, PFBS, PFHxS, and PFNA)[1]	1 (unitless)[1]	Running annual average

[1] The PFAS Mixture Hazard Index (HI) is the sum of component hazard quotients (HQs), which are calculated by dividing the measured component PFAS concentration in water by the relevant health-based water concentration when expressed in the same units (shown in ng/l for simplification). The HBWC for PFHxS is 10 ng/l; the HBWC for HFPO-DA is 10 ng/l; the HBWC for PFNA is 10 ng/l; and the HBWC for PFBS is 2000 ng/l.

Hazard Index: = ([HFPO-DA$_{water}$ ng/l]/[10 ng/l]) + ([PFBS$_{water}$ ng/l]/[2000 ng/l]) + ([PFNA$_{water}$ ng/l]/[10 ng/l]) + ([PFHxS$_{water}$ ng/l]/[10 ng/l])
HBWC = health-based water concentration
HQ = hazard quotient
ng/L = nanograms per liter
PFAS$_{water}$ = the concentration of a specific PFAS in water

(b) If a system fails to collect and submit a confirmation sample to a certified lab within ((~~ten~~)) 10 business days of notification of the sample results, or as required by the department, the results of the original sample will be used to determine compliance with the SAL.

(5) The department shall consider the following when developing a state MCL:

(a) The criteria in subsection (1) of this section;

(b) Whether regulating the contaminant presents a meaningful opportunity to reduce exposures of public health concern for persons served by public water systems;

(c) The need for an enforceable limit to achieve uniform public health protection in Group A public water systems; and

(d) The need for an enforceable limit to support source water investigation and clean-up of a contaminant in drinking water supplies by responsible parties.

(6) In addition to the requirements in subsection (5) of this section, the department shall:

(a) Meet the requirements of subsection (2) of this section;

(b) Comply with the requirements in RCW 70A.130.010 to establish standards for chemical contaminants in drinking water;

(c) Consider the best available treatment technologies and affordability taking into consideration the costs to small water systems; and

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs.

(7) The state board of health shall consider the department's findings under subsections (5) and (6) of this section and follow the requirements under chapters 34.05 and 19.85 RCW when adopting a state MCL under this chapter.

(8) ((~~Upon federal adoption of an MCL~~)) When a federal MCL takes effect, the federal MCL will supersede a SAL or a less stringent state MCL((~~, and the associated requirements, including for monitoring and public notice~~)). If the ((~~federally adopted~~)) federal MCL is less stringent than a SAL or state MCL, the board may take one of the following actions:

(a) Adopt the federal MCL; or

(b) Adopt a state MCL, at least as stringent as the federal MCL, using the process in subsections (6) and (7) of this section.

(9) When a state MCL takes effect, it will supersede a SAL.

(10) When a federal or state MCL takes effect for a contaminant that has a SAL, public water systems that are not subject to the MCL shall continue to comply with SAL requirements.

RDS-6483.1

AMENDATORY SECTION (Amending WSR 21-23-097, filed 11/17/21, effective 1/1/22)

WAC 246-290-71006 Public notice for contaminants with a SAL and other unregulated contaminants. (1) The purveyor shall provide public notice to the water system users when the department determines that a contaminant exceeds a SAL listed in WAC 246-290-315, Table 9.

(2) The public notice must be in conformance with the requirements under WAC 246-290-71001 through 246-290-71004 and based upon the public notice tier designation of the contaminant or group of contaminants in Table 17 of this section.

TABLE 17
PUBLIC NOTICE TIER DESIGNATION FOR CONTAMINANTS WITH A SAL

Contaminant or Group of Contaminants	Public Notice Tier	((~~Bioaccumulative~~)) SAL Exceedance Based on:
PFOA	Tier 2	((~~Yes~~)) Running annual average
PFOS	Tier 2	((~~Yes~~)) Running annual average

Contaminant or Group of Contaminants	Public Notice Tier	((~~Bioaccumulative~~)) SAL Exceedance Based on:
PFHxS	Tier 2	((~~Yes~~)) Running annual average
PFNA	Tier 2	((~~Yes~~)) Running annual average
((~~PFBS~~	~~Tier 2~~	~~Yes~~))
HFPO-DA	Tier 2	Running annual average
Hazard Index PFAS (HFPO-DA, PFBS, PFHxS, and PFNA)	Tier 2	Running annual average

(a) The purveyor shall complete public notice for an initial exceedance of a Tier 1 designated SAL within ((~~twenty-four~~)) 24 hours of confirmation, and for every subsequent quarter in which analytical results exceed a SAL.

(b) The purveyor shall complete public notification for an initial exceedance of a Tier 2 designated SAL as soon as practical, but no less than within ((~~thirty~~)) 30 days of exceeding the SAL per Table 9 in WAC 246-290-315, and every three months thereafter as long as the results continue to exceed the SAL per Table 9 in WAC 246-290-315, or as directed by the department.

(3) The department may require public notice for other unregulated contaminants that are reported per requirements in WAC 246-390-075.

WSR 26-01-083
PERMANENT RULES
EASTERN WASHINGTON UNIVERSITY
[Filed December 15, 2025, 8:13 a.m., effective January 15, 2026]

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

Purpose: Updates the title of the administrator responsible for compliance efforts.

Citation of Rules Affected by this Order: Amending WAC 172-325-010.

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

Adopted under notice filed as WSR 25-21-048 on October 9, 2025.

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: December 12, 2025.

Annika Scharosch
Chief of Staff and Compliance

RDS-6751.1

AMENDATORY SECTION (Amending WSR 92-21-047, filed 10/16/92, effective 11/16/92)

WAC 172-325-010 State Environmental Policy Act (SEPA). It is the policy of Eastern Washington University that any project shall be accomplished in compliance with chapter 43.21C RCW, the State Environmental Policy Act (SEPA) and in accordance with chapter 197-11 WAC, guidelines for the State Environmental Policy Act implementation. Further, it is the policy of the university to provide leadership in resource conservation and environmental protection. Environmental issues will be considered in the decision-making and planning process. To this end, Eastern Washington University adopts by reference chapter 197-11 WAC SEPA guidelines and all subsequent amendments thereto.

In compliance with chapter 197-11 WAC, the ((~~executive~~)) vice president of business and strategy is the responsible official for carrying out this policy.

WSR 26-01-084
PERMANENT RULES
STATE BOARD OF HEALTH
[Filed December 15, 2025, 8:13 a.m., effective January 15, 2026]

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

Purpose: Chapter 246-282 WAC, Sanitary control of shellfish. The state board of health (board) has adopted amendments to chapter 246-282 WAC, with the exception of WAC 246-282-990, and created two new sections, WAC 246-282-017 and 246-282-044, to modify harvest control requirements by setting more proactive measures to prevent illnesses and protect public health. The adopted rule also updates definitions, makes changes to seed size and various tagging requirements, and makes technical and editorial changes as needed.

The majority of chapter 246-282 WAC has not been updated since 2002 and 2015 and many of the changes adopted in this rule making are editorial or technical, to enhance readability and conform with the style guide used by the office of the code reviser. In addition to these changes, the adopted rule amends controls found in the Washington state vibrio parahaemolyticus control plan, WAC 246-282-006, to address rising early season temperatures that can result in increased illnesses. The department of health, using delegated rule-making authority from the board, has filed two emergency rules, once in 2023 and again in June 2025, to address this issue. The board also adopted additional changes in chapter 246-282 WAC to address various gaps in the regulation of commercial shellfish and to align with federal regulations.

Citation of Rules Affected by this Order: New WAC 246-282-017 and 246-282-044; and amending WAC 246-282-001, 246-282-005, 246-282-006, 246-282-010, 246-282-012, 246-282-014, 246-282-016, 246-282-020, 246-282-032, 246-282-034, 246-282-036, 246-282-042, 246-282-050, 246-282-060, 246-282-070, 246-282-080, 246-282-082, 246-282-092, 246-282-100, 246-282-102, 246-282-104, 246-282-110, 246-282-120, and 246-282-130.

Statutory Authority for Adoption: RCW 69.30.030 and 43.20.050.

Adopted under notice filed as WSR 25-18-076 on August 29, 2025.

Changes Other than Editing from Proposed to Adopted Version: Several nonsignificant corrections were made based on comments received during the formal comment period. They include grammar and citation edits, as well as clarifications that do not change the effect of the rule.

- Removed a redundant sentence in WAC 246-282-010.
- Removed an unnecessary clause in WAC 246-282-012, 246-282-014, 246-282-020, and 246-282-080.
- Made edits in WAC 246-282-016, 246-282-044, and 246-282-082 to provide clarity to the rule and to correct a citation.
- Corrected a citation related to adjudicative proceedings in WAC 24-282-100.
- Made grammatical edits in WAC 246-282-102 and 246-282-110.

A final cost-benefit analysis is available by contacting Shay Bauman, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4110, TTY 711, email shay.bauman@sboh.wa.gov, website https://sboh.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 3, 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 2, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 6, 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 24, Repealed 0.

Date Adopted: November 19, 2025.

Michelle A. Davis, MPA
Executive Director

RDS-6417.3

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-001 Scope and purpose. These requirements, as authorized under chapter 69.30 RCW, establish minimum performance standards for the growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption or bait. These requirements do not apply to persons who conduct activities limited to:

(1) Retail food service, in compliance with the requirements of chapter 246-215 WAC, Food service;

(2) Personal use, in compliance with requirements of chapters 77.32 RCW, Licenses, and 77.15 RCW, Fish and wildlife enforcement code; and

(3) Transporting as a common carrier of freight.

AMENDATORY SECTION (Amending WSR 25-06-081, filed 3/4/25, effective 4/4/25)

WAC 246-282-005 Minimum performance standards. (1) ((~~Any~~)) A person engaged in a shellfish operation ((~~or~~)), possessing a commercial quantity of shellfish, or possessing any quantity of shellfish for sale for human consumption or bait, must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (2023) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of ((~~shellfish and water protection~~)) environmental health and safety);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the

Washington state department of health, office of ((~~food safety and shellfish programs~~)) environmental health and safety); ((~~and~~))

(c) Chapter 69.30 RCW; and

(d) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

AMENDATORY SECTION (Amending WSR 15-08-083, filed 3/31/15, effective 5/1/15)

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) This section establishes the ((~~Washington state~~)) *Vibrio parahaemolyticus* (*Vp*) control plan (control plans) for the months of May 1st through September 30th (control months). The requirements of this section are an extension of the NSSP Model Ordinance.

(2) ((~~All~~)) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) harvesting or delivering oysters to a certified shucker packer for shucking or postharvest processing (PHP) during the control months ((~~must~~)) shall label the oysters with a harvest tag stating "For shucking by a certified dealer" or "For PHP by a certified dealer." Oysters harvested and tagged in compliance with this subsection are exempt from subsections (3) through ((~~(20)~~)) (23) of this section.

(3) ((~~The following definitions apply throughout this section:~~

~~(a) "Single-source *Vibrio parahaemolyticus* case" or "case" means a laboratory-confirmed *Vibrio parahaemolyticus*-associated illness or illnesses with a common exposure that are reported to the department. The case must:~~

~~(i) Be associated with commercially harvested shellstock;~~

~~(ii) Not involve documented postharvest abuse; and~~

~~(iii) Be traced back to a single growing area.~~

~~(b) "Control months" means May 1st through September 30th.~~

~~(c) "Cool" or "cooling" means to:~~

~~(i) Adequately ice or place in a controlled environment with a temperature of 45°F (7.2°C) or less; and~~

~~(ii) Reach and maintain an internal oyster tissue temperature of 50°F (10°C) or less.~~

~~(d) "Harvest temperature" means the water temperature or internal oyster tissue temperature at the time of harvest. The harvester or shellfish dealer shall state whether they use water temperature or internal oyster tissue temperature for harvest temperature in their harvest plan.~~

~~(4) All~~)) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) harvesting or processing oysters during the control months shall report the volume of oysters harvested or processed. This information must be reported by month, oyster species, size class, utilization type (raw, shucked, postharvest processed), and growing area for all control months. This information must be compiled and reported to the department by December 31st ((~~each year~~)) annually. A harvester((~~s and~~)) or shellfish dealer((~~s~~)) that ((~~do~~)) does not submit this information to the department may not harvest oysters during the control months during the next calendar year.

((~~(5)~~)) (4) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) harvesting oysters during the control months shall complete, submit to

the department, and keep on file a current ((~~*Vibrio parahaemolyticus*~~)) *Vp* harvest plan of operations (harvest plan). ((~~In order for the department to review the harvest plan prior to May 1st,~~)) The harvest plan must be submitted ((~~by March 1st each year~~)) to the department for review at least 14 calendar days before the first planned harvest within the control months unless no changes have been made to the existing harvest plan. Each harvester((~~s and~~)) or shellfish dealer((~~s~~)) shall sign and date their harvest plan each year and make it available to the department upon request.

((~~(6)~~)) (5) The harvest plan must include, at a minimum:

(a) ((~~Describe~~)) The harvest, temperature collection, cooling, and conveyance methods((~~.~~));

(b) ((~~Include~~)) An example of the harvest temperature record designed to meet the requirements in subsection ((~~(11)~~)) (10) of this section((~~.~~)); and

(c) ((~~Identify~~)) If water temperature or internal oyster tissue temperature ((~~is~~)) will be used as the harvest temperature to meet the requirements in subsection ((~~(11)~~)) (10) of this section and specifically how this measurement will be taken.

((~~(7)~~)) (6) The department shall review and either approve or deny the harvest plan within ((~~thirty~~)) 14 calendar days of receipt. If the department denies approval of the harvest plan, the department shall notify the applicant of the decision in writing stating the reasons for the denial and providing the opportunity to correct the deficiencies. A harvester((~~s and~~)) or shellfish dealer((~~s~~)) may not harvest oysters during the control months unless the department has approved the plan.

(7) A harvester or shellfish dealer shall follow their approved harvest plan. Failure to follow the approved harvest plan subjects the shellfish operation to actions in WAC 246-282-110.

(8) Time of harvest to cooling requirements and harvest controls are based on a risk categorization of each growing area. The department shall assign each growing area a category of 1, 2, or 3, ((~~(~~))where 1 corresponds to the least stringent and 3 the most stringent harvest controls((~~)~~)). These categories are based on the number of single source cases that occurred during the previous consecutive five-year period that were within the control months and ((~~were~~)) attributed to that growing area.

(9) ((~~The department shall categorize coastal growing areas in Willapa Bay and Grays Harbor as Category 1 for the first year of implementation attributing no illnesses to these areas for the years 2010 to 2014. For subsequent years, the department shall categorize coastal growing areas based on the criteria in subsection (8) of this section.~~

~~(10)~~)) The department shall complete risk categorization and publish a list of all growing areas by risk category ((~~no later than~~)) by February 1st annually. The department shall use a rolling five-year average number of cases to calculate risk categories as follows:

(a) Category 1: An average of 0.2 or fewer cases attributed to the growing area over a five-year period.

(b) Category 2: An average of more than 0.2, but less than 1.0 cases attributed to the growing area over a five-year period.

(c) Category 3: An average of 1.0 or more cases attributed to the growing area over a five-year period.

((~~(11) Time of harvest begins after the first oysters to be harvested are exposed to the air.~~)) (10) Time of harvest to cooling requirements ((~~and harvest controls are as follows:~~)) during control

months are listed in the tables in (a), (b), and (c) of this subsection. If multiple conditions apply at the time of harvest, then the most stringent time of harvest to cooling must be used.

(a) Category 1:

((~~Requirements~~)) Condition at Harvest:	Time of Harvest to Cooling:
Except as noted below, the time of harvest to cooling requirement ((~~from June 1st through September 30th~~)) is:	9 hours
When **ambient air temperature** ((~~at harvest is greater than 90°F, the time of harvest to cooling requirement~~)) is 90.0°F or above:	7 hours
When **harvest temperature** is ((~~between 68°F and 70°F from July 1st through August 31st, the time of harvest to cooling requirement is~~)) 68.0°F to 70.0°F:	5 hours
((~~**Harvest Control:** From July 1st through August 31st, harvest is not allowed for twenty-four hours~~)) When **harvest temperature** is above 70.0°F((~~.~~)):	Harvest is not allowed for 24 hours

(b) Category 2:

((~~Requirements~~)) Condition at Harvest:	Time of Harvest to Cooling:
Except as noted below, the time of harvest to cooling requirement ((~~from May 1st through September 30th~~)) is:	7 hours
When **ambient air temperature** ((~~at harvest is greater than 85°F, the time of harvest to cooling requirement~~)) is 85.0°F or above:	5 hours
When **harvest temperature** is ((~~between 66°F and 68°F from July 1st through August 31st, the time of harvest to cooling requirement is~~)) 66.0°F to 68.0°F:	3 hours
((~~**Harvest Control:** From July 1st through August 31st, harvest is not allowed for twenty-four hours~~)) When **harvest temperature** is above 68.0°F((~~.~~)):	Harvest is not allowed for 24 hours

(c) Category 3:

((~~Requirements~~)) Condition at Harvest:	Time of Harvest to Cooling:
Except as noted below, the time of harvest to cooling requirement ((~~from May 1st through September 30th~~)) is:	5 hours
When **ambient air temperature** ((~~at harvest is greater than 80°F, the time of harvest to cooling requirement~~)) is 80.0°F or above:	3 hours

((~~Requirements~~)) Condition at Harvest:	Time of Harvest to Cooling:
When **harvest temperature** is ((~~between 64°F and 66°F from July 1st through August 31st, the time of harvest to cooling requirement is~~)) 64.0°F to 66.0°F:	1 hour
((~~**Harvest Control:** From July 1st through August 31st, harvest is not allowed for twenty-four hours~~)) When **harvest temperature** is above 66.0°F((~~,~~)):	Harvest is not allowed for 24 hours

(d) When a harvester or shellfish dealer places oysters in a container or conveyance, but does not remove them from the ((~~tide flat~~)) harvest site as part of their harvest ((~~and the harvest exceeds the time to cooling requirements in subsection (11) of this section, then~~)), the following conditions must be met:

(i) The harvester or shellfish dealer shall hold a valid site certification for that site;

(ii) The oysters in the container or conveyance must be returned to approximately the same tidal level or lower than where they were collected; and

(iii) The oysters must be covered by the tide for a minimum of four hours before harvest can be completed.

((~~(12) Harvesters and shellfish dealers shall take the following measurements at the times specified below and record this information in a harvest temperature record for each harvest site for all harvests occurring within the control months.~~)) (11) A harvester or shellfish dealer shall record and maintain a harvest temperature record for each harvest site for all harvests during the control months. The harvest temperature record must be maintained for three years and made available to the department upon request. The following measurements must be taken at the date, time, and location of harvest and recorded in the harvest temperature record:

(a) Air temperature; and

(b) Harvest temperature. A harvester or shellfish dealer using water temperature for the harvest temperature must take the water temperature at the depth of oysters unless another method is documented in their harvest plan.

(12) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) shall take ((~~these~~)) the measurements required by subsection (11) of this section with ((~~a~~)) either:

(a) A thin-tip digital thermometer that is verified ((~~weekly~~)) monthly using manufacturer specifications or with a method approved in a harvest plan((~~. Thermometer verification must be documented and maintained~~)); or

(b) A thermometer certified by the National Institute of Standards and Technology (NIST) with a manufacturer certificate that does not need to be verified monthly.

(13) A harvester or shellfish dealer using a thermometer according to subsection (12)(a) of this section shall document and maintain the thermometer verification with operational records. ((~~Harvesters and shellfish dealers shall record the following measurements and the date and time they were taken in the record, maintain the record for three years, and make the record available to the department upon request:~~

~~(a) Air temperature at time and location of harvest; and~~

~~(b) Harvest temperature at time and location of harvest. Harvesters and shellfish dealers using water temperature for harvest temperature shall take water temperature at depth of oysters unless another method is documented in their harvest plan.~~

~~(13)~~)) (14) A harvester or shellfish dealer using a thermometer according to subsection (12)(b) of this section shall keep the manufacturer certificate with operational records.

(15) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) shall initiate cooling as soon as practical from the time of harvest and within the time of harvest to cooling requirements for the growing area where the oysters were harvested to ensure that the *Vp* growth is minimized and maximum ((~~number of~~)) time of harvest to cooling hours specified in subsection (10) of this section is not exceeded.

((~~(14)~~)) (16) If shellstock is beach wet stored or stored in a flow-through wet storage system in a growing area with a different risk category than where it was harvested, the more stringent time of harvest to cooling requirement must be used.

(17) If the required time of harvest to cooling requirements are not met after removal from the ((~~tide flat~~)) harvest site, the harvester or shellfish dealer shall dispose of the oysters using one of the methods below and record the disposition on the harvest record:

(a) Destroy the oysters;

(b) Place the oysters within the original growing area or another approved growing area and allow a minimum of ((~~fourteen~~)) 14 days before reharvesting; or

(c) Deliver the oysters to a certified shucker packer for shucking or PHP and attach a harvest tag meeting the requirements in subsection (2) of this section.

((~~(15)~~)) (18) If ownership of oysters is transferred ((~~prior to~~)) before the oysters ((~~being~~)) are cooled ((~~in accordance with the time of harvest to cooling requirements~~)) to an internal temperature of 50.0°F or less, the receiving dealer shall meet the time of cooling requirement outlined in subsection (10) of this section. The harvester shall ((~~include in the harvest record required under WAC 246-282-080 the~~)) provide the following information to the receiving dealer:

(a) Temperatures recorded under subsection ((~~(12)~~)) (11) of this section;

(b) Date, time, and name of the person or entity ((~~to whom the oysters were transferred~~)) who received the oysters; ((~~and~~))

(c) Growing area risk category for the harvested ((~~product.~~

~~(d) The receiving shellfish dealer shall meet the time of harvest to cooling requirements for the original harvest time.~~

~~(16) *Vibrio parahaemolyticus* training requirements are as follows:~~

~~(a)~~)) oysters; and

(d) The total time of harvest to cooling for the oysters based on the growing area risk category. If shellstock is wet stored after purchase, the purchasing dealer shall comply with subsection (16) of this section.

(19) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) shall complete an initial department-approved training specific to the requirements of this section ((~~prior to~~)) before harvesting or shipping oysters during the control months.

((~~(b)~~)) (a) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) shall complete department-approved refresher training within one year following any revision of this ((~~rule~~)) section considered significant under RCW 34.05.328 or at least every five years.

((~~(c) Those~~)) (b) A person responsible for the on-site management of harvest activities must be trained by either((~~:~~

~~(i) Harvesters and shellfish dealers at their operation who completed the department-approved training; or~~

~~(ii) The department~~)) the department or a person who completed the department approved training within the last five years.

((~~(d)~~)) (c) A harvester((~~s and~~)) or shellfish dealer((~~s~~)) shall maintain a record ((~~those trained in their operational records~~)) of all persons who completed training.

((~~(17)~~)) (20) A harvester or shellfish dealer may request a waiver from specific requirements of this section from the department. The request must:

(a) Be in writing;

(b) Identify the requirement requested to be waived;

(c) State the reason for the waiver; and

(d) Provide supporting information.

((~~(18)~~)) (21) The department may grant a waiver request if it:

(a) Is consistent with the applicable standards and the intent of this section; and

(b) Provides a comparable level of public health protection to the requirement being waived.

((~~(19)~~)) (22) If the department approves a waiver request, the department shall notify the requestor of the decision in writing.

((~~(20)~~)) (23) If the department denies a waiver request, the department shall notify the requestor of the decision in writing stating the reasons for the denial. The requestor shall comply with the provision that was the subject of the waiver request.

((~~(21) The department shall review this section to evaluate the effectiveness of the rules and determine areas where revisions may be necessary by November 2017.~~)) (24) For the purposes of this section:

(a) "Control months" means May 1st through September 30th.

(b) "Cool" or "cooling" means to:

(i) Adequately ice or place in a controlled environment with a temperature of 45.0°F (7.2°C) or less; and

(ii) Reach and maintain an internal oyster tissue temperature of 50.0°F (10.0°C) or less.

(c) "Harvest temperature" means the water temperature or internal oyster tissue temperature when harvested.

(d) "Single source *Vp* case" or "case" means a laboratory-confirmed *Vp* associated illness or illnesses with a common exposure that are reported to the department. The case must:

(i) Be associated with commercially harvested shellstock;

(ii) Not involve documented postharvest abuse; and

(iii) Be traced back to a single growing area.

(e) "Time of harvest" begins when the first oyster to be harvested in a lot is removed from the water or is no longer submerged by the tide.

AMENDATORY SECTION (Amending WSR 14-09-003, filed 4/3/14, effective 5/4/14)

WAC 246-282-010 Definitions. The ((~~following~~)) definitions in this section, as well as those in chapter 69.30 RCW and the NSSP Model Ordinance, apply ((~~in the interpretation and the implementation of~~

~~these rules and regulations~~)) throughout chapter 246-282 WAC unless the context clearly requires otherwise.

(1) "Abatement" means an action or series of actions to eliminate a public health hazard or reduce it to a level acceptable to the ((~~secretary~~)) department.

(2) "Approved" means acceptable to ((~~the secretary based on the department's determination as to~~)) the department based on conformance with appropriate standards and good public health practice.

(3) "Approved laboratory" means a laboratory that is in conformance with requirements of the NSSP Model Ordinance.

(4) "Beach wet storage" or "beach wet stored" means when shellstock greater than maximum seed size is harvested from one harvest site and placed in another harvest site for less than 14 days.

(5) "Certificate of approval" means a license issued by the department.

((~~(5)~~)) (6) "Civil penalty" means a monetary penalty administratively issued by the ((~~secretary~~)) department. It does not include any criminal penalty; damage assessment; wages, premiums, or taxes owed; or interest or late fees on any existing obligation.

((~~(6) "Commercial quantity" means any quantity exceeding:~~

~~(a) Forty pounds of mussels;~~

~~(b) One hundred oysters;~~

~~(c) Fourteen horse clams;~~

~~(d) Six geoducks; or~~

~~(e) Fifty pounds of other hard or soft shell clams; or~~

~~(f) Fifty pounds of scallops.~~))

(7) "Cultch" means any material, other than live shellfish, used for the attachment of seed shellfish.

(8) "Department" means the state department of health.

(9) "Export certificate" means a certificate issued by the department to a licensed shucker-packer or shellstock shipper for use in the foreign export of a lot or shipment of shellfish.

(10) "Harvest" means the act of removing shellstock from a harvest site and its placement on or in a container for transport.

(11) "Harvester" means a shellfish operation with activities limited to growing shellstock, placing shellstock in a container, harvesting shellstock, transporting shellstock using proper transportation conveyances within Washington state, and delivering shellstock to a shellfish dealer licensed by the department within four hours of landing it. A harvester does not process shellfish, ship shellfish outside of Washington state, sell shellfish outside of Washington state, sell shellfish to retail outlets, shuck shellfish, repack shellfish, or store shellfish in any location outside of the approved growing area from where the shellfish is harvested.

(12) "Harvest site" means an area of intertidal or subtidal property within a commercial shellfish growing area, that is described by a unique county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, tribal identification number, or other government identification.

(13) "Harvest site certificate" means a type of certificate of approval that designates one or more harvest sites approved for the harvesting of shellfish.

(14) "Hatchery" means an operation where shellfish larvae are produced and grown to the first sessile stage of life.

(15) "Marina" means any water area with a structure including, but not limited to, docks, basins, floating docks, or mooring buoys used for docking and constructed to provide temporary or permanent

docking or buoy moorage space for more than 10 boats. This only includes boats with a marine sanitation device.

(16) "Mooring area" means any portion of a growing area that is used to provide temporary or permanent anchorage or attachment to a mooring buoy for more than 10 boats. This only includes boats with a marine sanitation device.

(17) "Mooring buoy" means a floating marker permanently secured to a waterway bed with an anchoring line that can be used by boats instead of a dock.

(18) "Notice of correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance and is not subject to civil penalties as provided for in RCW 43.05.110. It is not a formal enforcement action and is not subject to appeal. It is a public record.

((~~(16)~~)) (19) "NSSP Model Ordinance" means the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish, as adopted in WAC 246-282-005.

((~~(17)~~)) (20) "Nursery" means an operation where shellfish are grown from an early sessile stage of life up to a maximum size meeting the definition of shellfish seed.

((~~(18)~~)) (21) "Number of previous violations" means the number of prior violations of the same or a similar nature for which the department has taken a license action or assessed a civil penalty.

((~~(19) "Person" means any individual, firm, corporation, partnership, company, association, or joint stock association, and the legal successor thereof.~~

~~(20)~~)) (22) "Person in charge" means an individual responsible for the supervision of employees and the management of any shellfish operation.

((~~(21)~~)) (23) "Public health threat" is either:

(a) "Low," which means a violation that poses a minor possibility of direct or indirect hazard to public health;

(b) "Intermediate," which means a violation that poses a moderate possibility of direct or indirect hazard to public health; or

(c) "High," which means a violation that poses a known significant hazard or possibility of significant direct or indirect hazard to public health.

((~~(22)~~)) (24) "Sale" means to sell; offer for sale; barter; trade; deliver; consign; hold for sale, consignment, barter, trade, or delivery; donate; and/or possess with intent to sell or dispose of in a commercial manner.

((~~(23) "Secretary" means the secretary of the department of health or the secretary's authorized representative.~~

~~(24)~~)) (25) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:

(a) Thirteen millimeters (1/2 inch) for mussels;

(b) Twenty-five millimeters (1 inch) for scallops;

(c) Nineteen millimeters (3/4 inch) for Olympia oysters;

(d) Nineteen millimeters (3/4 inch) for ((~~Kumomoto~~)) Kumamoto oysters;

(e) ((~~Fifty-one~~)) Thirty-eight millimeters (((~~2~~)) 1 and 1/2 inches) for other oyster species;

(f) Thirty-eight millimeters (1 and 1/2 inch) for geoducks; and

(g) Thirteen millimeters (1/2 inch) for other clam species.

((~~(25)~~)) (26) "Shellfish" means all varieties of fresh or fresh-frozen oysters, clams, scallops or mussels, either shucked or in the shell, and all fresh or fresh-frozen edible products thereof.

((~~(26)~~)) (27) "Shellfish dealer" means a person with a shellstock shipper or shucker-packer license.

((~~(27)~~)) (28) "Shellfish growing area" means the classified lands and waters in and upon which shellfish ((~~are~~)) may be grown for harvesting in commercial quantities or for sale for human consumption.

((~~(28)~~)) (29) "Shellfish operation" means growing, placing in a container, harvesting, transporting, processing, culling, shucking, packing, and repacking, storing, shipping, or reshipping of shellfish in commercial quantities or for sale for human consumption.

((~~(29)~~)) (30) "Shellfish operation license" means a type of certificate of approval applying to the overall activities of a shellfish operation.

((~~(30)~~)) (31) "Shellstock shipper" means a shellfish operation that does not shuck shellfish or repack shucked shellfish.

((~~(31)~~)) (32) "Shucker-packer" means a shellfish operation that may shuck and pack shellfish.

((~~(32)~~)) (33) "Technical assistance" means information provided by the department to a person regarding chapter 69.30 RCW; this chapter; technologies or other methods to achieve compliance with these rules; assistance in applying for a departmental license or permit required by these rules; or the goals and objectives of these rules. This is not intended to modify the definition of "technical assistance" as provided in RCW 43.05.010(3).

((~~(33)~~)) (34) "Transplant" means when shellstock greater than maximum seed size is moved from one harvest site and placed in another harvest site for 14 days or more.

(35) "Violation" means the commission of an act or acts prohibited by the provisions of chapter 69.30 RCW, ((~~these rules~~)) this chapter, or the NSSP Model Ordinance.

((~~(34)~~)) (36) "Wet storage" or "wet stored" means the ((~~temporary storage~~)) placement of harvested shellstock in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater. Types of wet storage include beach wet storage, flow-through wet storage, and recirculating wet storage.

((~~(35)~~)) (37) "Wild seed" means naturally set seed shellfish.

AMENDATORY SECTION (Amending WSR 11-19-011, filed 9/7/11, effective 10/8/11)

WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates. (1) The department shall issue((~~s two types of~~)) the following certificates of approval to a person((~~s~~)) who conducts shellfish operations((~~. They are~~))and meets the requirements in this chapter and chapter 69.30 RCW:

(a) A shellfish operation license((~~s~~)); and

(b) A harvest site certificate((~~s~~)).

(2) ((~~Any~~)) A person ((~~who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses,~~)) engaged in the actions listed in WAC 246-282-005(1) must have a valid shellfish operation license.

((~~To obtain~~)) (3) An applicant for a shellfish operation license((~~, a person must~~)) shall:

(a) Submit to the department a ((~~completed~~)) complete application on a form ((~~developed~~)) provided by the department((~~;~~

~~(b) Submit to the department an acceptable~~)) and a written plan of operations that completely describes the shellfish operation;

((~~(c)~~)) (b) Pass a preoperational inspection demonstrating compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance; and

((~~(d)~~)) (c) Pay the ((~~department any shellfish operation license~~)) applicable fee required by ((~~this chapter~~)) WAC 246-282-990.

((~~(3) Any person who harvests~~)) (4) A person harvesting a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption ((~~must possess, or act on behalf of a person who possesses,~~)) or bait shall have a valid harvest site certificate. ((~~In order for a person to obtain a harvest site certificate, all of the following requirements must be met.~~))

(5) To qualify for a harvest site certificate, an applicant shall:

(a) ((~~The person possesses~~)) Have a valid shellfish operation license((~~.~~))~~;~~

(b) ((~~The person~~)) Submit((~~s~~)) to the department a completed application ((~~that describes~~)) on a form provided by the department. The form must require, at a minimum, the following characteristics ((~~of~~)) describing the site:

(i) Geographic location;

(ii) Map showing legal boundaries;

(iii) Unique government identification number, such as county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, or tribal identification number; and

(iv) Documentation of legal ownership or lease for shellfish harvesting((~~.~~

~~(c) The harvest site is in a growing area that meets the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance for a commercial shellfish growing area.~~

~~(d) The harvest site is not impacted by any actual or potential sources of pollution.~~

~~(e) The harvest site passes a pollution assessment inspection conducted by the department if necessary to determine if the site is impacted by any actual or potential sources of pollution.~~

~~(f) The person signs the current conditionally approved area management plan, if applicable.~~

~~(g) The person pays the department any harvest site application fee required by this chapter~~)); and

(c) Pay the applicable fee required by WAC 246-282-990.

((~~(4) All~~)) (6) The department shall issue a harvest site certificate if all of the requirements in subsection (5) of this section are met and:

(a) The harvest site is in a growing area that meets the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance for a shellfish growing area;

(b) The harvest site is not impacted by any actual or potential sources of pollution. If necessary to determine whether the site is impacted by any actual or potential sources of pollution, the harvest site must pass a pollution assessment inspection conducted by the department; and

(c) The applicant signs the current conditionally approved area management plan, if applicable.

(7) A shellfish operation license((~~s~~)) and harvest site certificate((~~s~~)) for a shellfish dealer((~~s~~)) expires on ((~~the thirtieth day of June each year~~)) June 30th annually. ((~~All~~))

(8) A shellfish operation license((~~s~~)) and harvest site certificate((~~s~~)) for a harvester((~~s~~)) expires on ((~~the thirty-first day of March each year~~)) March 31st annually.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-014 Operating provisions. (1) ((~~Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid shellfish operation license~~)) A person engaged in the actions listed in WAC 246-282-005(1) shall show a valid shellfish operation license, upon request, to ((~~any~~)) an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The shellfish operation license can be an electronic copy, photocopy, or the original issued by the department. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(2) ((~~Any person who harvests~~)) A person harvesting a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption ((~~must display a photocopy or original of~~)) or bait shall show a valid harvest site certificate, upon request, to ((~~any~~)) an authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. The harvest site certificate can be an electronic copy, photocopy, or the original issued by the department. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(3) ((~~Any person who places~~)) A person placing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption or bait in containers at a harvest site ((~~must do so only at a site for which the person possesses~~)) shall have a valid harvest site certificate.

(4) The owner(s) of a shellfish operation ((~~must~~)) shall designate an individual as the person in charge of the operation. The owner(s) of a shellfish operation that includes one or more harvest sites may designate a different individual as the person in charge of the operation's harvest site(s) than the individual designated as the person in charge of all other phases of the shellfish operation.

(5) The owner(s) and the designated person in charge of a shellfish operation ((~~must~~)) shall:

(a) Ensure that at least one individual harvesting shellfish on behalf of the operation at each harvest site carry a copy, either electronic or paper, of ((~~both the~~)) a valid operation license and ((~~the~~)) a valid harvest site certificate ((~~designating that the site is approved by the department for harvesting by that operation~~));

(b) Ensure the individuals harvesting on behalf of the operation furnish shellfish tags ((~~meeting~~)) that comply with the requirements of chapter 69.30 RCW, ((~~these rules~~)) this chapter, and the NSSP Model

Ordinance ((~~to those individuals harvesting on behalf of the operation~~));

(c) Ensure, by supervision at harvest sites or other adequate means, that ((~~those~~)) the individuals working on behalf of the operation harvest only from harvest sites approved by the department for the operation; and

(d) Notify the department if ((~~an owner or person in charge has~~)) they have reason to believe that ((~~any~~)) an individual is using the operation's tags, shellfish operation license, or harvest site certificate for ((~~any~~)) a purpose other than ((~~one~~)) a purpose approved by the department.

(6) The designated person in charge of a shellfish operation ((~~must~~)) shall have a functioning telephone ((~~message device or service issued by a telephone service provider~~)) with voice mail capabilities and an email address belonging to the owner(s) or person in charge. The person in charge ((~~must~~)) shall:

(a) Monitor the ((~~device or service~~)) telephone, voice mail inbox, and email each day that the shellfish operation is active, regarding messages from the department about emergency closure of harvest areas or recall of shellfish products; and

(b) Notify the department whenever the telephone number or email used for this purpose changes; or

(c) Maintain another equivalent method of contact with the department approved in the plan of operations.

AMENDATORY SECTION (Amending WSR 19-14-094, filed 7/1/19, effective 8/1/19)

WAC 246-282-016 Aquaculture. ((~~Any person who conducts an aquaculture operation and is in possession of a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must meet all requirements of this chapter.~~)) (1) A person who engages in aquaculture activities must have an aquaculture permit. To qualify for an aquaculture permit approved by the department, the person shall comply with the NSSP Model Ordinance Chapter 6 - Shellfish Aquaculture.

(2) The department shall approve an operation for aquaculture activities in prohibited and unclassified areas if the following requirements are met:

(a) The person has a valid shellfish operation license;

(b) The operation has an aquaculture plan of operations and aquaculture permit approved by the department;

(c) Shellfish must not exceed the defined maximum seed size. The person shall limit the production of seed larger than maximum seed size commingled with the smaller seed to less than five percent of the total number of seed in the lot. Depletion of the shellstock above maximum seed size is required if more than five percent of the seed lot is above maximum seed size;

(d) The beginning of the minimum grow-out period for a lot is the moment when the entire lot is added to the grow-out site;

(e) Shellfish are moved to approved or conditionally approved areas for a minimum of 120 days in open status; and

(f) The initial and grow-out sites are listed on the shellfish dealer's harvest site certificate.

(3) If the person intends to harvest oyster seed, other than Kumamoto and Olympia, that have a seed size greater than one inch and less than one and one-half inches, from a prohibited or unclassified area, the operation must:

(a) Begin the lot minimum grow-out period the moment when the entire lot is added to the grow-out site; and

(b) Keep records for each lot of shellfish that show the species, location, date, and quantity moved from the initial site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

(4) The department may grant a waiver for a shellfish operation to use a measurement other than length when determining seed size if:

(a) It is consistent with the applicable standards and the intent of this section, as related to market size and 120-day grow-out time;

(b) Studies are completed that determine shellfish growth in the defined time period; and

(c) It provides a comparable level of public health protection to the requirement being waived.

(5) If the department approves a waiver request, the department shall notify the requestor of the decision in writing.

(6) Waiver approval will only be granted for the growing areas evaluated in subsection (4) of this section.

(7) If the department denies a waiver request, the department shall notify the requestor of the decision in writing stating the reasons for the denial.

NEW SECTION

WAC 246-282-017 Mooring areas. In a mooring area with a density of greater than one boat per acre, the department shall conduct a pollution assessment to support the classification of that portion of the growing area in accordance with the NSSP Model Ordinance. The department may amend the density requirement in this section if the mean water depth in an enclosed bay is less than 12 feet or under certain hydrographic conditions where dilution calculations show the area cannot meet 14 fecal coliform/100 ml at the sanitary line.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-020 Growing areas. (1) ((~~Any person who harvests~~)) A person harvesting a commercial quantity of shellfish or any quantity of shellfish for sale, for human consumption ((~~must do so~~)) or bait shall harvest only from a harvest site that meets one or more of the following conditions:

(a) The department has classified the shellfish growing area as ((")) approved ((")) or ((")) conditionally approved, ((")) according to provisions of the NSSP Model Ordinance and the harvest site is in open status ((~~at the time of harvest~~)) when harvested;

(b) The department has approved the harvest site according to provisions of a permit for relay, wild seed, or bait;

(c) The harvest site is used for shellfish activities limited to a hatchery or a nursery operation handling only seed obtained from a hatchery; or

(d) The harvest site is used for shellfish activities limited to the initial harvest of seed attached to containerized empty shellfish shells or other cultch material.

(2) The department classifies a shellfish growing area as ((")) restricted((")) or ((")) prohibited((")) according to provisions of the NSSP Model Ordinance. ((~~However, the department considers classifying a harvest site as "restricted" only when the department has received a valid application for a permit for relay or wild seed harvest from the site.~~)) A restricted classification will be considered when the department receives a complete application for a permit for relay or wild seed harvest for the site and there is no impact from a wastewater treatment plant or wastewater collection system, marina, combined sewage overflow, or other pathogens of human origin.

(3) While a harvest site is in closed status, ((~~no~~)) a person may not move shellfish ((~~from it~~)) to a location outside of the harvest site or above the mean low tide line of the harvest site, unless the department has approved:

(a) Harvesting shellfish by that person from the site according to provisions of a permit for relay, wild seed harvest, or bait harvest; or

(b) Moving shellfish by that person from the site to another site in a natural body of water within the same ((")) conditionally approved((")) growing area under a written plan of operations.

(4) Harvesting is prohibited ((~~from~~)) in all ((~~growing areas~~)) unclassified ((~~by the department~~)) areas except for bait harvest according to WAC 246-282-036 and aquaculture according to WAC 246-282-016.

AMENDATORY SECTION (Amending WSR 11-17-104, filed 8/22/11, effective 9/22/11)

WAC 246-282-032 Relay permit. (1) The department ((~~will~~)) shall issue a relay permit ((~~to a person~~)) to move shellfish from a harvest site in a shellfish growing area classified as ((")) restricted((")) or ((")) conditionally approved((")) in closed status meeting the criteria for ((")) restricted((")) classification((~~, if all of the following conditions~~)) if the requirements in this section and chapter 69.30 RCW are met.

(2) An applicant for a relay permit shall:

(a) ((~~The person possesses~~)) Have a valid shellfish operation license((~~.~~));

(b) ((~~The person possesses~~)) Have a valid harvest site certificate listing both the initial harvest site and the grow-out site((~~.~~));

(c) ((~~The initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.~~

~~(d) The person submits a completed written~~)) Submit a complete application on a form provided by the department and a written plan of operations ((~~approved by the department~~)) that completely ((~~describing~~)) describes the procedures and conditions of the relay operation((~~.~~));

((~~(e) The person conducts~~)) (d) Conduct and document((~~s~~)) a separate validation study approved by the department for each of the following periods of time when shellfish will be relayed:

(i) May 1st through October 31st; and

(ii) November 1st through April 30((~~.~~))th; and

((~~(f) The person pays the department a relay permit application fee or renewal~~)) (e) Pay the applicable fee as required by ((~~this chapter~~)) WAC 246-282-990.

((~~(2) Each~~)) (3) The department shall issue a relay permit if all of the requirements in subsection (2) of this section are met and the initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.

(4) A validation study for a relay permit must demonstrate that shellfish harvested from a specified initial site do not contain excessive levels of fecal coliform bacteria and when relayed to a specified grow-out site for a specified ((~~time~~)) period consistently purge themselves of bacteria to approved levels. ((~~Each~~)) The validation study must ((~~meet all of the following conditions.~~)):

(a) ((~~It must~~)) Document that the geometric mean fecal coliform bacteria level in a minimum of five 100-gram tissue samples, representative of shellfish of the same species in the entire initial harvest site, is equal to or less than 1,300, with no sample having more than 2,300((~~.~~));

(b) ((~~It must~~)) Document that specified relay procedures, times, and environmental conditions reduce fecal coliform bacteria in a minimum of five 100-gram tissue samples, representative of the entire lot of shellfish relayed, to levels that are equal to or less than:

(i) 330, with no more than two samples having greater than 230; or

(ii) Ten percent greater than the geometric mean of a minimum of five 100-gram tissue samples representative of the same shellfish species grown continuously for a minimum of six months at the grow-out site((~~.~~));

(c) ((~~It must be repeated~~)) Repeat a minimum of once every ((~~twelve~~)) 12 years for a continuing operation and whenever relay conditions change((~~.~~)); and

(d) Document that all samples ((~~must be~~)) are analyzed by an approved laboratory.

((~~(3) A person operating under a relay permit must follow all procedures in~~)) (5) The plan of operations ((~~approved by the department, including~~)) required in subsection (2)(c) of this section must describe the following activities:

(a) How staking ((~~or~~)), marking, or documenting will be done to easily identify the grow-out site ((~~to be easily identified by the person~~)) until the minimum relay period ((~~of time~~)) is passed; and

(b) ((~~Considering the beginning of the minimum relay time period for a lot to be the moment that the last part of the lot is added to the grow-out site;~~

~~(c) Relaying~~)) How the person will relay the shellfish to a designated grow-out site for a minimum of seven days, or longer period ((~~of time~~)) as approved by the department((~~; and~~

~~(d) Keeping records for each relayed lot of shellfish that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.~~

~~(4)~~)) (6) The beginning of the minimum relay period for a shellfish lot is the moment when the last part of the lot is added to the grow-out site.

(7) The operation shall keep documentation for each relayed lot, that shows:

(a) A lot identification number;

(b) The species, location, date, and quantity moved from the initial harvest site;

(c) The grow-out location; and

(d) The date of first harvest of any of those shellfish from the grow-out site.

(8) For ((~~each lot of~~)) shellfish relayed to a site for a grow-out period of less than ((~~fourteen~~)) 14 days, a person ((~~must~~)) shall:

(a) Collect at least one sample from the ((~~shellfish~~)) lot at the initial harvest site and have it analyzed by an approved laboratory to demonstrate that the lot contains no more than 2,300 fecal coliform bacteria per 100 grams of shellfish tissue; and

(b) Collect at least one sample from the ((~~shellfish~~)) lot at the grow-out site at the end of the relay period and have it analyzed by an approved laboratory to demonstrate that the lot contains fecal coliform bacteria within the maximum limits determined by a validation study, as described in subsection ((~~(2)~~)) (3)(b) of this section, before releasing control of the ((~~shellfish~~)) lot.

((~~(5)~~)) (9) A person is exempt from ((~~any~~)) fees required by WAC 246-282-990 for an initial application and a validation study conducted by the department for a relay permit for the purpose of relaying shellfish from a growing area that the department downgraded from a classification of ((~~"~~))approved((~~"~~)) or ((~~"~~))conditionally approved((~~"~~)) to ((~~"~~))restricted((~~"~~)) within the previous ((~~twenty-four~~)) 24 months.

((~~(6)~~)) (10) A ((~~person's~~)) relay permit issued under this section expires on the same date as the ((~~person's~~)) shellfish operation license.

((~~(7)~~)) (11) A person is exempt from the provisions of subsection ((~~(1)(c)~~)) (2)(d) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of ((~~six months~~)) 60 days. Only microbiological contaminates need to be reduced.

((~~(8)~~)) (12) A person ((~~possessing~~)) must have a valid shellfish operation license ((~~may~~)) to act as an agent for another person ((~~possessing~~)) with a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the relay permit, ((~~provided that~~)) if the agent conducting the harvest is:

(a) Documented in the permit;

(b) In possession of a copy of the permit ((~~at the time of harvest~~)) when harvesting; and

(c) Conducting activities described in the written plan of operations approved by the department for the agent's shellfish operation.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-034 Wild seed permit. (1) The department ((~~will~~)) shall issue a wild seed permit ((~~to a person~~)) to move shellfish from a harvest site in a growing area classified by the department as ((~~"conditionally approved" in closed status, "restricted," or "pro-~~

~~hibited," if all of the following conditions are met~~)) prohibited if the requirements in this section and chapter 69.30 RCW are met.

(2) To qualify for a wild seed permit:

(a) The ((~~person possesses~~)) applicant shall:

(i) Have a valid shellfish operation license((~~.~~)); and

((~~(b) The person possesses~~)) (ii) Have a harvest site certificate listing both the initial harvest site for the seed and the grow-out site((~~.~~));

((~~(c)~~)) (b) The original harvest site ((~~has~~)) must have acceptable levels of poisonous chemicals, is not in an area known to be a hazardous chemical disposal site, and is not in a closure zone of a wastewater treatment plant or marina((~~.~~));

((~~(d)~~)) (c) The grow-out site ((~~is~~)) must be in a natural body of water classified by the department as ((~~"~~))approved((~~"~~)) or ((~~"~~))conditionally approved.((~~"~~))

((~~(e) The person submits a completed written~~)) (3) To apply for a wild seed permit the applicant shall:

(a) Submit to the department a complete application on a form provided by the department and a written plan of operations ((~~approved by the department~~)) that completely ((~~describing~~)) describes the procedures of the wild seed operation, including the size distribution of the seed((~~.~~)); and

((~~(f) The person pays the department a wild seed permit application fee or renewal~~)) (b) Pay the applicable fee as required by ((~~this chapter~~)) WAC 246-282-990.

((~~(2)~~)) (4) A person operating under a wild seed permit ((~~must~~)) shall:

(a) Follow all procedures in the plan of operations approved by the department;

(b) Harvest seed from an area classified as ((~~"~~))prohibited((~~"~~)) only during daylight hours;

(c) Harvest seed from an area classified as ((~~"~~))prohibited((~~"~~)) only under direct monitoring by a person approved by the department;

(d) Leave seed in a grow-out site for a minimum of ((~~six months~~)) 120 days before final harvest;

(e) Limit harvest of live shellfish larger than seed size attached to, or commingled with, the seed to less than five percent of the total number of the shellfish harvested from the site;

(f) Place any live shellfish larger than seed size attached to, or commingled with, the seed in the grow-out site for a minimum of ((~~six months~~)) 120 days after initial harvest; and

(g) ((~~Stake or mark the grow-out site to be easily identified by the person for a minimum of six months from the time of moving to the site any seed attached to, or commingled with, shellfish larger than seed size; and~~

~~(h)~~)) Keep records for each lot of seed harvested that show ((~~a lot identification number;~~)) the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

((~~(3) A person's~~)) (5) A wild seed permit issued under this section expires on the same date as the ((~~person's~~)) shellfish operation license.

((~~(4)~~)) (6) A person is exempt from the requirements of this section for the activity of harvesting seed attached to containerized empty shellfish shells or other cultch material, provided that the person:

(a) Meets the conditions of subsection ((~~(1)~~)) (2)(a) through ((~~(d)~~)) (c) of this section;

(b) Leaves the seed in the grow-out site for a minimum of ((~~six months~~)) 120 days before final harvest; and

(c) ((~~Fully describes the seed harvest and grow-out activities in~~)) Submits a written plan of operations ((~~approved by~~)) to the department that completely describes the seed harvest and grow-out activities for the person's shellfish operation license.

(7) Wild seed harvested from a conditionally approved area in closed status or a restricted area must follow the relay standards listed in WAC 246-282-032.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-036 Bait permit. (1) The department ((~~will approve and~~)) shall issue a bait permit ((~~to a person~~)) to harvest shellfish from a harvest site in a growing area classified by the department as ((")) prohibited,((")) ((")) restricted,((")) or ((")) conditionally approved((")) in closed status ((~~if all of the following conditions are met.~~)) or from an unclassified area if the requirements in this section and chapter 69.30 RCW are met.

(2) To qualify for a bait permit:

(a) The ((~~person possesses~~)) applicant shall:

(i) Have a valid shellfish operation license((~~.~~)); and

((~~(b) The person possesses~~)) (ii) Have a valid harvest site certificate for the site((~~.~~));

((~~(c)~~)) (b) The harvest site ((~~is not~~)) must not be impacted by biotoxin levels that would cause the department to close it for harvest for human consumption((~~.~~));

((~~(d) The person submits a completed written~~)) (3) To apply for a bait permit the applicant shall:

(a) Submit a complete application to the department on a form provided by the department and written plan of operations ((~~approved by the department~~)) that completely ((~~describing~~)) describes the procedures of the bait operation((~~.~~)); and

((~~(e) The person pays the department a bait permit application fee or renewal~~)) (b) Pay the applicable fee as required by ((~~this chapter~~)) WAC 246-282-990.

((~~(2)~~)) (4) A person operating under a bait permit ((~~must~~)) shall:

(a) Follow all procedures in the plan of operations approved by the department;

(b) Harvest bait from an area classified as ((")) prohibited((")) or unclassified only during daylight hours;

(c) Harvest bait from an area classified as ((")) prohibited((")) or unclassified only under direct monitoring by a person approved by the department;

(d) Completely immerse the shellfish in an approved dye that imparts an easily noticeable permanent color to the tissue immediately upon landing the shellfish;

(e) Label each container of shellfish "NOT FOR HUMAN CONSUMPTION - BAIT USE ONLY" ((~~prior to~~)) before removal from the harvest site;

(f) Store the shellfish physically separated from any shellfish intended for human consumption; and

(g) Keep records for each lot of shellfish harvested for use as bait showing a lot identification number, the species, the harvest site, the harvest date, the quantity harvested, the names of all buyers, and the quantity sold to each buyer.

((~~(3) A person's~~)) (5) A bait permit issued under this section expires on the same date as the ((~~person's~~)) shellfish operation license.

((~~(4) Any~~)) (6) A person possessing a commercial quantity of bait shellfish is exempt from the requirement to obtain a bait permit ((~~provided~~)) if that ((~~the~~)) person:

(a) Obtains the shellfish from a person with a valid bait permit;

(b) Possesses a sales invoice for the shellfish from a person with a valid bait permit; and

(c) Maintains each container of shellfish prominently labeled "NOT FOR HUMAN CONSUMPTION - BAIT USE ONLY."

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-042 Wet storage permit. ((~~(1) Any person who wet stores a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must have a written plan of operations, approved by the department, completely describing the activity.~~

~~(2) A person licensed as a harvester may wet store only in a natural body of water that is part of the same growing area as the harvest site of the shellfish.~~

~~(3) Any person who operates a recirculating or flow-through wet storage system must possess a wet storage permit issued by the department. A wet storage permit will be issued to a person for a recirculating or flow-through wet storage system if the person:~~

~~(a) Possesses a valid shellfish operation license;~~

~~(b) Submits a completed written application and plan of operations to the department completely describing the procedures of the wet storage operation;~~

~~(c) Documents that the water used for the operation meets the requirements of the NSSP Model Ordinance;~~

~~(d) Passes an inspection by the department; and~~

~~(e) Pays the department a wet storage application fee or renewal fee as required by this chapter.~~

~~(4) If a person uses a natural body of water for a wet storage operation, the person must possess a valid harvest site certificate listing the body of water.~~

~~(5) If a person uses artificial seawater for a wet storage operation, the chemicals used to make the seawater must be approved food grade.~~

~~(6) A person operating under a wet storage permit must follow all procedures in the plan of operations approved by the department.~~

~~(7) A person's wet storage permit expires on the same date as the person's shellfish operation license.~~)) (1) The department shall issue a wet storage permit for recirculating, flow-through, or beach wet storage if the requirements in this section and chapter 69.30 RCW are met.

(2) To qualify for a wet storage permit the applicant shall:

(a) Have a valid shellfish operation license;

(b) Have a valid harvest site certificate for the applicable site(s);

(c) Submit to the department a complete application on a form provided by the department and a written plan of operations that completely describes the procedures of the wet storage operation;

(d) Document that the water used for the operation meets the requirements of the NSSP Model Ordinance;

(e) Pass an inspection by the department; and

(f) Pay the applicable fee required by WAC 246-282-990.

(3) If shellstock are beach or flow-through wet stored, the following requirements must be met:

(a) The person shall have a valid wet storage permit for where the shellstock are stored;

(b) Both the original harvest site and the wet storage site must be classified as approved or conditionally approved in open status;

(c) The shellstock must:

(i) Contain a tag as specified in WAC 246-282-080 when moved from one harvest site to another;

(ii) Be identified by lot, with each lot containing shellstock of the same harvest site and date. Shellstock must not be commingled with other lots;

(iii) Be held in containers and stored in a manner that ensures the free flow of water to all shellstock; and

(iv) Be tagged according to requirements listed in WAC 246-282-080 once harvested.

(4) If shellstock are wet stored in a recirculating system, the following requirements must be met:

(a) The person shall have a valid wet storage permit for where the shellstock are stored;

(b) The operation shall undergo and pass a validation study as described in the NSSP Model Ordinance;

(c) The operation shall maintain water testing requirements as described in the NSSP Model Ordinance;

(d) The shellstock must:

(i) Contain a tag as specified in WAC 246-282-080;

(ii) Be identified by lot, with each lot containing shellstock of the same harvest site and date. The shellstock must not be commingled with other lots; and

(iii) Be held in containers and stored in a manner that ensures the free flow of water to all shellstock; and

(e) If the operation uses artificial seawater for a recirculating wet storage operation, the chemicals used to make the seawater must be approved food grade.

(5) If shellstock is wet stored for less than 14 days, the shellstock will keep the characteristics and properties of the original harvest site.

(6) If shellstock is wet stored, excluding a recirculating wet storage system, on a site for 14 days or more, the shellstock will take on the characteristics and properties of that harvest site and be considered transplanted. These shellstock must meet the requirements under WAC 246-282-044.

(7) A person operating under a wet storage permit shall follow all procedures in the plan of operations approved by the department.

(8) A wet storage permit issued under this section expires on the same date as the shellfish operation license.

NEW SECTION

WAC 246-282-044 Transplant. (1) To transplant shellstock, the following requirements must be met:

(a) The person shall have a valid shellfish operation license;

(b) The person shall have a valid harvest site certificate for the original harvest site(s) and the original harvest site(s) are classified as approved or conditionally approved in the open status.

(c) The person shall have a valid harvest site certificate for the grow-out site(s);

(d) During transit, the shellstock must be identified by tagging or other methods approved by the department. The identification must include:

(i) The date the shellstock was removed from the original harvest site(s);

(ii) The quantity of shellstock;

(iii) The species of shellstock; and

(iv) The original harvest site(s) and grow-out site(s); and

(e) The operation shall keep and maintain accurate and detailed records of the original harvest site, transplant method, and destination of transplanted shellstock for one year.

(2) After 14 days, the shellstock will take on the characteristics and properties of the transplant site.

(3) While in transit, shellstock under this section are exempt from the requirements in WAC 246-282-006.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-050 Packing, handling, and storing of shucked shellfish. ((~~(1) Any person who packs, handles, or stores shucked shellfish must maintain it at an internal product temperature of forty-five degrees Fahrenheit or less beginning within three hours after it is shucked.~~

~~(2) Any~~)) A person who packs, handles, or stores shucked shellfish or operates a shucked shellfish repacking plant ((~~must~~)) shall meet all the requirements specified in this chapter and the NSSP Model Ordinance for packing plants.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-060 Personal health and cleanliness. (1) ((~~Any~~)) A person may not work in any growing area, shucking, packing, or repacking plant in any capacity when ill with or the carrier of a communicable disease which is transmissible through food and is in the infectious stage ((~~may not work in any growing area, shucking, packing or repacking plant in any capacity~~)) where that person might contaminate the shellfish or food contact surfaces with pathogenic organisms. The owner, the person in charge, and the employee are all responsible for compliance with the requirements of this section.

(2) ((~~Any~~)) A person who is an owner, a person in charge, or an employee of a shellfish operation must practice good personal cleanli-

ness while handling shellfish. ((~~These~~)) The person((~~s must~~)) shall wash their hands thoroughly with soap and water before ((~~starting to handle~~)) handling shellfish and as often as ((~~is~~)) necessary to remove filth and soil that might contaminate shellfish.

(3) If the department determines by investigation that an owner or employee of a shellfish operation might be the source of a food-borne illness transmitted through shellfish, ((~~then the secretary~~)) it may require medical examination of that person and laboratory examination of clinical specimens from that person to determine presence of infection. ((~~Any~~)) A person failing to ((~~obtain~~)) get an examination required by the ((~~secretary~~)) department may not work for a shellfish operation, for a period ((~~of time~~)) the department determines that person could be infectious, in any capacity that could result in contamination of shellfish with pathogenic organisms.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-070 Construction and maintenance. (1) ((~~All owners and persons~~)) An owner or person in charge of shellfish operations ((~~must~~)) shall arrange their physical facilities to aid in the flow of shellfish products through all handling, processing, and storage areas in a manner that will minimize contamination of the shellfish.

(2) ((~~Any~~)) An owner of a shellfish operation ((~~must~~)) shall submit to the department for consultation properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities at least ((~~thirty~~)) 30 days before the facilities are:

(a) Originally constructed;

(b) Converted from another use; or

(c) Extensively remodeled to the extent that a plan for a building permit is required by the city or county where located.

(3) The department ((~~will~~)) shall review properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities required by subsection (2) of this section within ((~~thirty~~)) 30 days of receipt and provide technical assistance to the owner of the shellfish operation regarding whether the proposed physical facilities would meet the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-080 Identification and records. (1) ((~~Any~~)) A person ((~~who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess~~)) engaged in the actions listed in WAC 246-282-005(1) shall have a written record documenting that the shellfish came from one or more of the following sources:

(a) A harvest ((~~site(s)~~)) site or sites for which the person ((~~possesses~~)) has a valid harvest site certificate;

(b) Another shellfish operation licensed by the department; or

(c) A shellfish dealer located outside of the state who ((~~is in compliance~~)) complies with the requirements of the NSSP Model Ordi-

nance and is eligible for inclusion on the current Interstate Certified Shellfish Shippers List, published by the U.S. Food and Drug Administration.

(2) ((~~Any person who possesses~~)) A person possessing a commercial quantity of shellstock or any quantity of shellstock for sale for human consumption ((~~must~~)) or bait shall identify the shellstock by an approved tag with permanent marking, according to requirements of the NSSP Model Ordinance, upon removal from the harvest site.

(3) ((~~Any~~)) If the person possessing shellstock in subsection (2) of this section is the harvester, the tag must include the growing area name and either the department harvest site application number (ex: 2012-23), harvest ID, parcel number, or other approved harvest site identifier. This information must be listed on the harvester tag, harvest record, and harvest site certificate.

(4) When retagging shellstock, the dealer tag must have the exact harvest site information as provided on the original harvest tag.

(5) A person ((~~who packs~~)) packing a commercial quantity of shucked shellfish or any quantity of shucked shellfish for sale for human consumption ((~~must do so~~)) or bait, shall pack the shellfish in approved containers that are legibly labeled by permanent marking, in accordance with the requirements of the NSSP Model Ordinance and with:

(a) Wording equivalent to "keep refrigerated" on containers of fresh shellfish; and

(b) Wording equivalent to "keep frozen" on containers of frozen shellfish.

((~~(4)~~)) (6) The owner or person in charge of a shellfish operation ((~~must~~)) shall keep accurate records of all lots of shellfish harvested, received, wet stored, shucked, packed, shipped, or sold by the shellfish operation for a minimum of three years.

((~~(5) Information recorded by~~)) (7) The harvester-shipper shall ((~~include~~)) record the following:

(a) Location of harvesting area(s) by name or code((~~,~~));

(b) Name and quantity of shellfish((~~,~~));

(c) Date of harvest((~~,~~)); and

(d) Date shipped.

((~~(6)~~)) (8) All tags for shellstock and labels for containers of shucked shellfish required by this section ((~~must be used~~)) are only for use with the original lot of shellfish for which they were intended and must not be reused.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-082 Export certificate. (1) The department ((~~will~~)) shall issue an export certificate to a shellfish dealer for a specific lot of shellfish if ((~~the dealer:~~

~~(1) Is exporting~~))all requirements are met.

(2) To qualify for an export certificate from the department, a shellfish dealer shall:

(a) Be exporting the lot to ((~~an Asian~~)) a country that requires a production certificate from a governmental health authority;

((~~(2) Possesses a~~)) (b) Have a valid shellfish operation license issued by the ((~~secretary~~)) department;

((~~(3) Is in compliance~~)) (c) Comply with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance;

((~~(4) Completes an application specified~~)) (d) Submit to the department a complete application on a form provided by the department;

((~~(5)~~)) (e) Document((~~s~~)) use of each export certificate as specified by the department; and

((~~(6) Pays the department any fee for each export certificate~~)) (f) Pay the applicable fee required by ((~~this chapter~~)) WAC 246-282-990.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-092 Inspection by department. (1) The department ((~~enters and inspects any~~)) may enter or inspect a harvest site, physical facility, records, vehicle, or vessel used by a shellfish operation as often as necessary to determine compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance.

(2) The department shall inspect((~~s~~)) each shellfish operation:

(a) A minimum of once per year;

(b) Before issuing a new shellfish operation license to a person;

(c) Within 30 days after issuing a new shellfish operation license;

(d) Before a shellfish operation uses any physical facility for the first time; and

((~~(d)~~)) (e) Before the shellfish operation uses any extensively remodeled physical facility.

(3) If the department determines by inspection or investigation that an owner, person in charge, or ((~~any~~)) a person working on behalf of the shellfish operation is in violation of any of the requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance, then the department may conduct a reinspection of the shellfish operation. If the same violation is identified by the department during the reinspection, then another reinspection may be conducted by the department within one month. The department may charge the owner of a shellfish operation a fee for a second or subsequent reinspection.

(4) If necessary to conduct an inspection, ((~~then~~)) the department may apply to a court of competent jurisdiction for an administrative warrant in accordance with RCW 69.30.120.

(5) During inspections, the department ((~~has~~)) shall have free and unimpeded access to any of the following ((~~in order~~)) to determine whether the operation ((~~is in compliance~~)) complies with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance:

(a) Buildings, yards, warehouses, storage facilities, transportation facilities, vehicles, vessels and other places reasonably considered to be or to have been used in connection with the shellfish operation;

(b) Ledgers, books, accounts, memorandums, or records reasonably believed to be or to have been used in connection with the shellfish operation;

(c) Shellfish, shellfish products, components, or other materials reasonably believed to be or to have been used, processed or produced by or in connection with the shellfish operation;

(d) Copies of any documents reasonably believed to be or to have been used in connection with the shellfish operation; and

(e) Samples of shellfish to determine whether they are safe for human consumption.

(6) The department may inspect shellfish growing areas at any time of day and will inspect any other aspect of a shellfish operation:

(a) Between 8:00 a.m. and 5:00 p.m. on any weekday that is not a legal holiday;

(b) During any time the shellfish operation has established as its business hours;

(c) During any time the shellfish operation is open for business or is otherwise in operation; and

(d) During any other time with the consent of the owner or the person in charge of the shellfish operation.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-100 Notice of decision—Adjudicative proceeding. (1) ((~~The department's~~)) A notice of a denial, suspension, modification, or revocation of a license ((~~is consistent~~)) from the department must comply with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(2) ((~~The department's~~)) A notice of imposition of a civil penalty ((~~is consistent~~)) from the department must comply with RCW 43.70.095. A person ((~~upon whom the department imposes~~)) who receives a civil fine from the department has the right to an adjudicative proceeding to contest the decision.

(3) A license applicant or holder or a person ((~~upon whom the department imposes a civil penalty~~)) who receives a notice as described in subsection (1) or (2) of this section from the department, may contest a department decision, within ((~~twenty-eight~~)) 28 days of receipt of the decision by filing a written application for an adjudicative proceeding by a method showing proof of receipt with the administrative hearings unit, department of health. The person ((~~must~~)) shall include the following in or with the application:

(a) A specific statement of the issue or issues and law involved;

(b) The grounds for contesting the department decision; and

(c) A copy of the contested department decision.

(4) An adjudicative proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter ((~~246-08~~)) 246-10 WAC. If a provision in this chapter conflicts with chapter ((~~246-08~~)) 246-10 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-102 Denial, revocation, suspension of license, certificate, or permit—Civil penalties. (1) The department may deny, revoke, or suspend a shellfish operation license, harvest site certificate, or permit and may assess a civil penalty if a person:

(a) Fails to comply with any of the provisions of chapter 69.30 RCW, ((~~these rules, and~~)) this chapter, or the NSSP Model Ordinance;

(b) Refuses an inspection by the department;

(c) Harvests shellfish from any harvest site for which the ((~~secretary~~)) department has not issued a harvest site certificate to the person;

(d) Knowingly obtains shellfish from a person who is not in compliance with any requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance;

(e) Makes false statements or misrepresentations to the department during any investigation, inspection, or application for a shellfish operation license or any permit required by ((~~these rules~~)) this chapter;

(f) Makes false statements or misrepresentations to the department during any investigation, inspection, or application for a shellfish harvest site certificate;

(g) Fails to cooperate with the department or the department of fish and wildlife during an inspection or investigation;

(h) Aids another person in violating any requirement of chapter 69.30 RCW, ((~~these rules~~)) this chapter, or the NSSP Model Ordinance;

(i) Provides the department with false or fraudulent records of the shellfish operation;

(j) Transfers or reassigns a shellfish operation license to another person without the written approval of the department; or

(k) Fails to comply with the terms of a conditional area management plan, shellfish operation license, harvest site certificate, or any permit required by this chapter.

(2) The department may treat violations of chapter 69.30 RCW, ((~~these rules~~)) this chapter, or the NSSP Model Ordinance committed by a person in charge, employee, or agent of a person issued a shellfish operation license ((~~may be treated by the department~~)) as a violation committed by the licensee.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-104 Penalty assignment—Calculation of penalty and proportionate adjustment—Aggravating and mitigating factors. (1) The department calculates an appropriate penalty based on the following factors:

(a) The level of threat to public health;

(b) The number of previous violations attributed to the violator; and

(c) The presence of aggravating or mitigating factors.

(2) The department determines administrative penalties from the range in the following penalty schedule. The standard penalty is assessed unless either a proportionate adjustment is warranted ((~~and/~~))or there are aggravating or mitigating factors present or both.

Penalty Schedule

NUMBER OF PREVIOUS VIOLATIONS	ADJUSTMENT FACTORS	PUBLIC HEALTH THREAT		
		LOW License Action/ Civil Penalty	INTERMEDIATE License Action/ Civil Penalty	HIGH License Action/ Civil Penalty
0	Mitigated	0 Months/$150	0 Months/$300	3 Months/$350
	Standard	0 Months/$200	1 Month/$350	6 Months/$400
	Aggravated	1 Month/$250	3 Months/$400	9 Months/$450
1	Mitigated	0 Months/$200	1 Month/$350	6 Months/$400
	Standard	0 Months/$250	3 Months/$400	9 Months/$450
	Aggravated	3 Months/$300	6 Months/$450	12 Months/$500
2	Mitigated	0 Months/$250	3 Months/$400	12 Months/$500
	Standard	3 Months/$300	6 Months/$450	18 Months/$500
	Aggravated	6 Months/$350	9 Months/$500	24 Months/$500
3 or More	Mitigated	3 Months/$300	6 Months/$450	18 Months/$500
	Standard	6 Months/$350	9 Months/$500	24 Months/$500
	Aggravated	9 Months/$400	12 Months/$500	36 Months/$500

(3) The department reserves the right to proportionately increase the civil penalty and decrease the license action under certain circumstances. These circumstances include situations where license actions as a deterrent are ineffective and include, but are not limited to, violations by persons who are not licensed.

(4) The department reserves the right to proportionately decrease the civil penalty and increase the license action when circumstances in a particular case demonstrate the ineffectiveness of a civil penalty as a deterrent.

(5)(a) When assessing a civil penalty or license action, the department considers any previous violation(s) for the following period ((~~of time~~)), depending on the severity of the previous violation(s):

(i) Three years for low public health threat;

(ii) Five years for intermediate public health threat; or

(iii) No limit for high public health threat.

(b) The ((~~time~~)) period will begin on the date of adjudication or settlement of the previous violation(s), rather than the date on which the incident or conduct occurred.

(6) The department considers circumstances that increase the seriousness of a violation((~~,~~)) including, but not limited to, the following aggravating factors:

(a) The extent to which the violation is part of a pattern of the same or substantially similar conduct;

(b) The extent to which previous education, technical assistance, or notice of correction has been provided for the same or substantially similar conduct; and

(c) The extent to which the violation caused serious and actual injury or death to a person or persons.

(7) If the department determines that one or more aggravating factors are present, ((~~then~~)) the department may assess the aggravated penalty or may increase the penalty to a level greater than listed in the penalty schedule((~~,~~)) including, but not limited to, revocation of the license.

(8) The department will consider circumstances that decrease the seriousness of a violation((~~,~~)) including, but not limited to, the following mitigating factors:

(a) Voluntary disclosure of the violation;

(b) Complete cooperation and voluntary disclosure during the investigation of the violation; and

(c) ((~~Voluntary~~)) Voluntarily taking ((~~of~~)) remedial measures that will result in increased public health protection and that will result in a decreased likelihood that the violation will be repeated and that other violations will occur.

(9) If the department determines that one or more mitigating factors are present, ((~~then~~)) the department may assess the mitigated penalty or may decrease the penalty to a level less than listed in the penalty schedule.

(10) The maximum civil penalty that may be imposed by the department is ((~~five hundred dollars~~)) $500 per day for each violation.

(11) The department considers each violation to be a separate and distinct event. Each day a violation is continued is a separate and distinct violation. When a person has committed multiple violations, the violations are cumulative for the purpose((~~s~~)) of calculating the appropriate penalty. Penalties are added together, rather than served concurrently.

(12) Nothing in this section prevents the department from responding to a violation by:

(a) Declining to pursue an administrative penalty;

(b) Issuing a notice of correction instead of pursuing an administrative penalty; or

(c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-110 Administrative provisions. (1) If the department finds during an inspection that ((~~any~~)) an owner or person working on behalf of a shellfish operation fails to comply with any requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance, ((~~then~~)) the department may issue a written statement of deficiencies or notice of correction ((~~to the owner, person in charge, or other employee of the operation who is present~~)).

(a) The statement of deficiencies or notice of correction ((~~specifies the manner in which~~)) must specify how the operation fails to comply with chapter 69.30 RCW ((~~and these rules. It specifies~~)), this chapter, or the NSSP Model Ordinance. The statement of deficiencies or notice of correction must also specify a reasonable period ((~~of time~~)) for the owner or person in charge to correct the violation(s).

(b) ((~~In the event~~)) If the owner or person in charge fails to correct the violation(s) specified in the statement of deficiencies or notice of correction, the department may revoke the license and certificate of compliance for that shellfish operation or may initiate any other enforcement proceeding authorized by law.

(2) ((~~Any~~)) An authorized representative of the department, fish and wildlife patrol officer or ex officio patrol officer may, without previously providing a statement of deficiencies or notice of correc-

tion, immediately seize shellfish or issue written hold orders prohibiting the disposition or sale of shellfish whenever a commercial quantity of shellfish or any amount of shellfish for sale for human consumption is on the premises of, or in the possession of, ((~~any~~)) a person who:

(a) Fails to ((~~display~~)) show an original, electronic copy, or photocopy of a valid shellfish operation license;

(b) Is reasonably expected to have harvested the shellfish and fails to ((~~display~~)) show an original, electronic copy, or photocopy of a valid shellfish operation license and a valid harvest site certificate; or

(c) Fails to maintain each container of shellfish properly tagged or labeled as required by chapter 69.30 RCW, ((~~these rules~~)) this chapter, and the NSSP Model Ordinance.

(3) If the department determines during an inspection or investigation that there is reasonable cause to believe that shellfish is potentially unsafe for human consumption, ((~~then~~)) the department may issue a hold order prohibiting the disposition or sale of the shellfish pending further investigation by the department of the safety of the shellfish.

(a) The department must complete its further investigation within ((~~ten~~)) 10 days.

(b) At the conclusion of the investigation, the department may release the shellfish for sale or issue a written abatement order regarding the shellfish.

(c) Any person in possession of shellfish for which the department has issued a hold order must store the shellfish in a suitable place prescribed by the department and prevent the shellfish from being offered for human consumption or other use until:

(i) The hold order is lifted by the department or by a court of competent jurisdiction; or

(ii) The person disposes of the shellfish in accordance with an abatement order issued by the department.

(4) Shellfish that the department seizes or places under a hold order and determines are unsafe for human consumption are subject to such abatement as the department considers appropriate. The department may require ((~~any~~)) one or more of the following measures be taken by a person ((~~in possession of~~)) possessing shellfish that are the subject of an abatement order:

(a) Permanent prohibition on the disposition of the shellfish for human consumption;

(b) Immediate destruction of the shellfish by measures such as denaturing and placing in a sanitary landfill, witnessed by an authorized representative of the department who provides a record of destruction to the person; or

(c) Temporary prohibition on the disposition of the shellfish for human consumption pending relay to an approved growing area for a sufficient period ((~~of time~~)) to assure natural purification of the shellfish.

(5) The ((~~secretary~~)) department may issue an abatement order to the owner or person in charge of a shellfish operation whenever the department, after conducting an appropriate investigation, determines that a shellfish operation, or person working on behalf of a shellfish operation, presents a potential risk for transmitting an infectious disease to consumers of shellfish.

(a) The ((~~secretary~~)) department may require any or all ((~~of~~)) the following measures be taken by the owner or person in charge of a shellfish operation who is issued the abatement order:

(i) Immediate closure of the shellfish operation until, in the opinion of the ((~~secretary~~)) department, no further danger of a disease outbreak exists;

(ii) Immediate exclusion of any person suspected to be infected with a disease agent transmissible through food from all activities with the shellfish operation; and

(iii) Restriction of the activities of ((~~any~~)) a person who is suspected to be infected with a disease agent transmissible through food to some area of the shellfish operation where there would be no danger of the person transmitting disease agents to shellfish consumers.

(b) As an alternative to the abatement order described in this section, the ((~~secretary~~)) department may require the owner, or ((~~any~~)) a person working on behalf of the shellfish operation to submit to adequate medical and laboratory examinations, including examination of their bodily discharges as needed to determine if the person is infected with a microbial agent transmissible through food.

(6) ((~~No~~)) A person ((~~may~~)) shall not remove or alter a notice or tag constituting a hold order or abatement order placed on shellfish by the department.

(7) ((~~No~~)) A person may not relabel, repack, reprocess, alter, dispose of, destroy, or release shellfish or containers of shellfish for which the department has issued a hold order or abatement order without:

(a) Permission of the department; or

(b) An order by a court of competent jurisdiction.

(8) If the owner or person in charge of a shellfish operation fails to comply with a hold order or an abatement order issued according to this section, ((~~then~~)) the department may revoke the license of the shellfish operation or initiate other legal enforcement proceedings authorized by law.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-120 Penalty clause. ((~~Any~~)) A person found violating any of the provisions of ((~~these regulations~~)) this chapter or chapter 69.30 RCW is guilty of a gross misdemeanor, and upon conviction will be subject to:

(1) A fine; or

(2) Imprisonment in the county jail of the county in which the offense was committed; or

(3) Both fine and imprisonment.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-130 ((~~Separability~~)) Severability clause. Should any section, paragraph, clause or phrase of these rules and regula-

tions be declared unconstitutional or invalid for any reason, the remainder of these rules and regulations are not affected.

WSR 26-01-099
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 16, 2025, 8:26 a.m., effective January 16, 2026]

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

Purpose: The purpose of this rule making is to implement 2SHB 1524, related to isolated employee protections. Currently, chapter 49.60 RCW requires employers in the janitorial, hospitality, retail, and security industries to take certain precautions to prevent sexual harassment and sexual assault of isolated employees. Isolated employees are those working as a janitor, security guard, hotel or motel housekeeper, or room service attendant and spending a majority of their working hours alone without another coworker present. 2SHB 1524 (chapter 47, Laws of 2025) amends chapter 49.60 RCW to add additional protections for isolated employees and provides for department of labor and industries (L&I) enforcement of the requirements. 2SHB 1524 becomes effective January 1, 2026.

Citation of Rules Affected by this Order: New WAC 296-137-010, 296-137-020, 296-137-030, 296-137-040, 296-137-050, 296-137-060, 296-137-070, 296-137-080, 296-137-090, 296-137-100, 296-137-110, 296-137-120, and 296-137-130.

Statutory Authority for Adoption: Chapter 49.60 RCW.

Adopted under notice filed as WSR 25-21-069 on October 14, 2025.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-137-010 Definitions, amended the definition of "employer" in response to public comment and in order to clarify that the definition applies to entities subject to the requirements in RCW 49.60.515(1).

WAC 296-137-030 Mandatory training, amended in response to public comment and in order to provide L&I's interpretation of when the training required by RCW 49.60.515 (1)(b) must be provided.

WAC 296-137-050 Panic buttons, amended in response to public comment and in order to clarify L&I's interpretation of panic button requirements in RCW 49.60.515.

WAC 296-137-060 Additional property service contractor requirements, amended in order to further clarify timing of annual reporting requirements for property services contractors in RCW 49.60.515.

A final cost-benefit analysis is available by contacting Bridget Osborne, L&I, Division of Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-902-5552, fax 360-902-5300, email ESRules@Lni.wa.gov, website https://www.lni.wa.gov/rulemaking-activity/?query=296-137&cardNo=AO25-16.

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 13, 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: December 16, 2025.

Joel Sacks
Director

RDS-6677.3

Chapter 296-137 WAC
LABOR STANDARDS FOR ISOLATED EMPLOYEES

NEW SECTION

WAC 296-137-010 Definitions. For the purposes of RCW 49.60.515 and this chapter:

(1) "Department" means the department of labor and industries.

(2) "Employer" means any person, association, partnership, property services contractor, or public or private corporation, whether for-profit or not, who employs one or more persons. This definition will be applied to hotel, motel, retail, or security guard entity, or property services contractors as referenced in RCW 49.60.515(1).

(3) "Isolated employee" means an employee who:

(a)(i) Performs work in an area where two or more coworkers, supervisors, or a combination thereof are unable to immediately respond to an emergency without being summoned by the employee; or

(ii) Spends at least 50 percent of their working hours without a supervisor or another coworker present; and

(b) Is employed by an employer as a janitor, security guard, hotel or motel housekeeper, or room service attendant.

(4) "Panic button" means an emergency contact device carried by an isolated employee by which the isolated employee may summon immediate on-scene assistance from another worker, a security guard, or a representative of the employer. A panic button must:

(a) Be designed to be carried by the isolated employee;

(b) Be simple to activate without delays caused by entering passwords or waiting for the system to turn on;

(c) Provide an effective signal for the circumstances when activated; and

(d) Be able to summon immediate assistance and allow responders to accurately identify the isolated employee's location.

(5) "Property services contractor" means any person or entity that employs workers:

(a) To perform labor for another person to provide commercial janitorial services; or

(b) On behalf of an employer to provide commercial janitorial services. "Property services contractor" does not mean the employment security department or individuals who perform labor under an agreement for exchanging their own labor or services with each other, provided the work is performed on land owned or leased by the individuals.

(6) "Repeat willful violator" means any employer that has been the subject of a final and binding citation for a willful violation of

one or more requirements under this section and all applicable rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more requirements.

(7) "Security guard" means an individual who is principally employed as, or typically referred to as, a security officer or guard, regardless of whether the individual is employed by a private security company or a single employer or whether the individual is required to be licensed under chapter 18.170 RCW.

(8) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

NEW SECTION

WAC 296-137-020 Sexual harassment policies. Every hotel, motel, retail, security guard entity, or property services contractor, who employs an isolated employee, must adopt a sexual harassment policy. Such an employer may comply with this requirement by adopting model sexual harassment policies issued by the Washington state human rights commission.

NEW SECTION

WAC 296-137-030 Mandatory training. Every hotel, motel, retail, security guard entity, or property services contractor, who employs an isolated employee, must:

(1) Provide training before an isolated employee works in isolation and at least annually to the employer's managers, supervisors, and isolated employees with a primary focus on:

(a) Prevention of sexual assault and sexual harassment in the workplace;

(b) Prevention of sexual discrimination in the workplace;

(c) Educating the employer's workforce regarding protections for isolated employees who report violations of a state or federal law, rule, or regulation; and

(d) Informing isolated employees on how to use panic buttons, and inform managers and supervisors on the responsibility to respond to the use of panic buttons. Additional training must be provided in advance of the effective date of any changes made to the technology or procedures related to panic buttons or their use.

(2) Document each manager's, supervisor's, and isolated employee's completion of the mandatory training required by this section and provide the documentation to the department upon request.

(3) Provide a copy of the mandatory training required by this section to the department upon request.

NEW SECTION

WAC 296-137-040 Mandatory resource lists. (1) Every hotel, motel, retail, security guard entity, or property services contractor, who employs an isolated employee, must provide a list of resources for the employer's isolated employees to utilize, at least annually and

upon request. At a minimum, the resources must include contact information of the equal employment opportunity commission, the Washington state human rights commission, and local advocacy groups focused on preventing sexual harassment and sexual assault.

(2) The department will consider the inclusion of mandatory resource lists provided in employee handbooks or on signage displayed in a conspicuous place for the isolated employee to be in compliance with this section.

(3) Mandatory resource lists should be provided in the isolated employee's preferred language when the preferred language is available to the hotel, motel, retail, security guard entity, or property services contractor.

NEW SECTION

WAC 296-137-050 Panic buttons. (1) Every hotel, motel, retail, security guard entity, or property services contractor, who employs an isolated employee, must provide a panic button to each isolated employee.

(2) Panic buttons must accurately identify the isolated employee's specific location. The location must be as specific as the work location necessitates to allow immediate assistance to be provided when an alarm is triggered. Employers may use different methods in order to pinpoint an employee's specific location including, but not limited to:

(a) A schedule of where the isolated employee would be at a certain time;

(b) An auditory alarm that also produces a signal to a responder;

(c) An isolated employee providing status updates of their specific location as it changes; or

(d) An isolated employee working in the presence of another worker.

(3) Responders may include properly trained representatives of the employer, including managers or supervisors, security guards, and in some cases, other workers with proper training, experience, and education that qualifies them to respond to emergency incidents.

(4) Effective signals must allow responders to accurately detect the isolated employee's location and distinguish it from other audible or visual alarms or noise without physical or electronic barriers such as poor cellular service or WiFi signals. The activation of one panic button must not obscure the activation of others.

(5) Immediate assistance must include on-scene assistance provided within a reasonable amount of time to:

(a) Confirm an emergency is taking place or an isolated employee reasonably believes they are at risk of harm;

(b) Confirm an equipment failure did not occur; and

(c) Summon applicable emergency services.

(6) A panic button must be simple to activate. A panic button will not be considered "simple to activate" if it requires continued effort by the isolated employee to sustain a signal or if activation is delayed as in situations where the isolated employee must enter passwords, click through multiple screens or applications, or wait for the system to turn on.

(7) A panic button must reliably work in all locations that the isolated employee performs their work and during all shifts that the isolated employee works.

(8) An employer must maintain a record of the purchase and utilization of panic buttons provided to its isolated employees under this section. Records must be provided to the department upon request.

(9) The department must publish advice and guidance for employers with 50 or fewer employees relating to RCW 49.60.515 (1)(d).

(10) This section does not apply to contracted security guard companies licensed under chapter 18.170 RCW.

NEW SECTION

WAC 296-137-060 Additional property service contractor requirements. (1) A property services contractor shall submit at least annually, no later than January 31, 2027, and each January 31st thereafter, on a department issued physical or electronic form, the following:

(a) The date of adoption of the sexual harassment policy required in RCW 49.60.515 (1)(a);

(b) The number of managers, supervisors, and isolated employees trained, in the previous calendar year, as required by RCW 49.60.515 (1)(b); and

(c) The physical address of the work location or locations at which janitorial services were provided in the previous calendar year by workers of the property services contractor, and for each location:

(i) The total number of workers or contractors of the property services contractor who perform janitorial services; and

(ii) The total hours worked.

(2) The department must make aggregate data submitted as required in RCW 49.60.515 available upon request.

NEW SECTION

WAC 296-137-070 Investigations and enforcement. (1) The department must investigate if a complaint is filed with the department alleging a violation of RCW 49.60.515 or associated rules, or if the department has reason to believe that an employer has committed a violation of RCW 49.60.515 or associated rules.

(a) Except when a violation is otherwise resolved, the department must issue:

(i) A citation assessing a civil penalty under this chapter if it finds a violation has occurred; or

(ii) A closure letter detailing any findings if it finds that a violation cannot be substantiated.

(b) The notice of a citation or closure letter must be sent to the employer by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address.

(2) During an investigation, if the department discovers information suggesting additional violations of any other protections enforced by the department under Title 49 RCW 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 isolated employees for a violation of RCW 49.60.515 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 49.60.515 or associated rules, when there are common questions of law or fact involving isolated employees. If the department consolidates such matters into a single investigation, it will provide notice to the employer.

(4) The department may, for the purposes of enforcing RCW 49.60.515 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 an employer 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 employer in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, an employer must notify employees that the department is conducting an investigation. The department may require the employer to include a general description of each investigation as part of the notification, including the allegations and whether the employee may be affected. The department may consult with the employer to provide the information for the description.

NEW SECTION

WAC 296-137-080 Penalties. (1) If the department finds a violation of RCW 49.60.515 or this chapter, the department may order the employer to pay the department a civil penalty of $1,000 for each willful violation.

(2) For a repeat willful violator, the citation assessing a civil penalty must be at least $2,000 for each repeat willful violation, but no greater than $10,000 for each repeat willful violation.

(3) The department may, at any time, waive or reduce a civil penalty assessed under this section if the department determines that the employer has taken corrective action to resolve the violation.

(4) Penalties collected under this section must be deposited into the supplemental pension fund established under RCW 51.44.033.

NEW SECTION

WAC 296-137-090 Retaliation. (1) It is unlawful for an employer to interfere with, restrain, deny, or take any adverse action against an isolated employee for the exercise of their rights under RCW 49.60.515 or this chapter.

(2) The department may enforce allegations of retaliation by an isolated employee, who files a complaint with the department, under the provisions provided in WAC 296-128-770 through 296-128-800.

NEW SECTION

WAC 296-137-100 Appeals. (1) A person, firm, or corporation aggrieved by a citation assessing a civil penalty issued by the department under this chapter may appeal the citation assessing a civil penalty to the director by filing a notice of appeal with the director within 30 days of the department's issuance of the citation assessing a civil penalty. A citation assessing a civil penalty not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section will stay the effectiveness of the citation assessing a civil penalty pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director will assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures will be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation assessing a civil penalty will be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director will conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director will issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department.

NEW SECTION

WAC 296-137-110 Collection procedures. Collections of unpaid citations will be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION

WAC 296-137-120 Severability clause. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 296-137-130 More favorable standards. If any applicable federal, state, or local law or ordinance provides requirements that are more favorable to an isolated employee than the requirements provided under this chapter, that law shall apply.

WSR 26-01-101
PERMANENT RULES
DEPARTMENT OF HEALTH
(Occupational Therapy Practice Board)
[Filed December 16, 2025, 8:33 a.m., effective January 16, 2026]

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

Purpose: Occupational therapists; updating references to continuing competency hours. The occupational therapy practice board (board) is adopting amendments to WAC 246-847-055 and 246-847-067 to align references of required continuing competency hours throughout the chapter.

In 2025, the board adopted amendments to several sections in chapter 246-847 WAC to implement recently enacted law, RCW 18.130.077, addressing licensure requirement waivers for out-of-state and nationally certified applicants. One of the updates the board adopted was a change from 30 hours to 24 hours of continuing competency (CC) requirements to align with national standards.

During that rule making, WAC 246-847-055 and 246-847-067 were not included along with the other sections. The purpose of these adopted amendments is to align references of required CC hours in these sections with recent changes adopted in chapter 246-847 WAC.

Citation of Rules Affected by this Order: Amending WAC 246-847-055 and 246-847-067.

Statutory Authority for Adoption: RCW 18.59.130.

Adopted under notice filed as WSR 25-18-061 on August 28, 2025.

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 2, Repealed 0.

Date Adopted: December 16, 2025.

Ryan Wilson, OT, Chair
Occupational Therapy Board

RDS-6579.1

AMENDATORY SECTION (Amending WSR 18-09-032, filed 4/11/18, effective 8/1/18)

WAC 246-847-055 Initial application for individuals who have never practiced occupational therapy. (1) Any initial applicant must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC.

(2) An initial applicant who graduated more than three years but less than five years from date of application and never practiced must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof to the department of:

(a) Completion of ((~~thirty~~)) 24 hours of continued competency as described in WAC 246-847-065 for the previous two-year period; and

(b) Completion of a board-approved reentry program((~~.~~));

(c) Completion of any additional requirements as required by the board.

(3) Initial applicants who graduated five or more years ago and never practiced must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof to the department of:

(a) Completion of ((~~thirty~~)) 24 hours of continued competency as described in WAC 246-847-065 for the previous two-year period; and

(b) Completion of a board-approved reentry program;

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examinations specified in WAC 246-847-080((~~.~~));

(d) Completion of any additional requirements as required by the board.

(4) The applicant may be required to appear before the board for oral interview.

AMENDATORY SECTION (Amending WSR 20-01-102, filed 12/13/19, effective 5/15/20)

WAC 246-847-067 Initial application for individuals who have an expired license in a different state and are seeking Washington licensure. (1) An initial applicant with an expired license in a different state who has not practiced for less than three years must comply with the requirements for licensure as specified in chapter 18.59 RCW and this chapter.

(2) An initial applicant with an expired license in a different state who has not practiced for three or more years but less than five years from date of application must comply with the requirements for licensure as specified in chapter 18.59 RCW and this chapter and submit proof to the department of:

(a) Completion of ((~~thirty~~)) 24 hours of continued competency as described in WAC 246-847-065 for the previous two-year period; and

(b) Completion of any additional requirements as required by the board.

(3) An initial applicant with an expired license in a different state who has not practiced for five or more years from date of application must comply with the requirements for licensure as specified in chapter 18.59 RCW and this chapter and submit proof to the department of:

(a) Completion of ((~~thirty~~)) 24 hours of continued competency as described in WAC 246-847-065 for the previous two-year period;

(b) Completion of a board-approved reentry program; and

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examinations specified in WAC 246-847-080((.));

(d) Completion of any additional requirements as required by the board.

(4) The applicant may be required to appear before the board for oral interview.

WSR 26-01-102
PERMANENT RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed December 16, 2025, 8:40 a.m., effective January 16, 2026]

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

Purpose: Dental assistant registration; adding minimum age requirements. The dental quality assurance commission (commission) is adopting amendments to WAC 246-817-190 to align with the rule language in the department of labor and industries (L&I) WAC 296-125-030 Prohibited and hazardous employment—All minors.

Aligning this rule with L&I's WAC 296-125-030 allows the commission to enforce prohibiting minors from working in environments where there is the potential for exposure to bloodborne pathogens, unless the minor is a student in a bona fide health care career training or vocational education program. A minor is defined by L&I in WAC 296-125-015 as a person under the age of 18.

Citation of Rules Affected by this Order: Amending WAC 246-817-190.

Statutory Authority for Adoption: RCW 18.32.002, 18.32.0365, and 18.260.040.

Adopted under notice filed as WSR 25-19-063 on September 12, 2025.

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 1, Repealed 0.

Date Adopted: October 24, 2025.

Bryan Swanson, DDS, Chair
Dental Quality Assurance Commission

OTS-5918.2

AMENDATORY SECTION (Amending WSR 21-01-215, filed 12/23/20, effective 1/23/21)

WAC 246-817-190 Dental assistant registration. To be eligible for registration as a dental assistant ((~~you must~~)) the applicant shall:

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

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

(3) Provide to the department any other information determined by the ((~~secretary~~)) department; and

(4) Meet the age requirements of WAC 296-125-030.

WSR 26-01-103
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 23-09—Filed December 16, 2025, 8:41 a.m., effective January 16, 2026]

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

Purpose: Chapter 173-905 WAC is a new rule that clarifies plan and annual reporting requirements, establishes a determination of fees to cover the department of ecology's (ecology) costs of overseeing the program, and establish new battery management standards to ensure the safe and effective handling and disposal of collected batteries. The rule also clarifies performance targets and goals, defines demonstrable costs of local governments participating in a battery stewardship program that are eligible for reimbursement by a battery stewardship organization, and clarifies battery labeling requirements.

Citation of Rules Affected by this Order: New chapter 173-905 WAC.

Statutory Authority for Adoption: RCW 70A.555.100.

Other Authority: RCW 70A.555.040, 70A.555.060, 70A.555.070, and 70A.555.130.

Adopted under notice filed as WSR 25-15-152 on July 23, 2025.

Changes Other than Editing from Proposed to Adopted Version: Ecology made numerous changes to the rule after reviewing and considering public comments received on the rule proposal. This list does not include changes that were made for editorial purposes only. For the full list of changes, please see the concise explanatory statement.

WAC 173-905-020 added to the applicability section "Any person who disposes of a covered battery."

WAC 173-905-030 the "producer," "retailer," and "covered battery" definitions received minor changes to better align with language in statute.

WAC 173-905-030 the definition for "demonstrable costs" was reworked. The definition now clarifies that the list of possible demonstrable costs cannot be negotiated away and that they apply only to local governments participating in a battery stewardship program.

WAC 173-905-030 the definition of "chemistry" was reworked for clarity. This definition now refers to standards created by domestic or international recognized standards organizations, such as the America National Standards Institute, used by battery manufacturers to identify the electrochemical system of the battery. This clarification to the chemistry definition will ensure that battery marks are better aligned with current industry standards.

WAC 173-905-030 the definition for "periodic table" was removed since it is no longer referenced in the rule.

WAC 173-905-100(3) added a clarification that the administrative fee will be determined annually and posted online by the department. Also, clarified what specific costs of the department are used to calculate the administrative fee.

WAC 173-905-110 added language clarifying that the battery stewardship organization is required to consult with overburdened communities and vulnerable populations to ensure that education and outreach materials that it develops are conceptually, linguistically, and culturally accurate. This clarification was also added to WAC 173-905-120.

WAC 173-905-110 added language clarifying that, in the case of multiple battery stewardship organizations, unified messaging about

the program is required, including a single website, phone number, program name, and shared collection site locations.

WAC 173-905-120 added clarifying language from statute to specify that the target recycling efficiency rate that a battery stewardship organization establishes in its plan must be at least 60 percent for rechargeable batteries and at least 70 percent for primary batteries. Also, added language from statute clarifying the use of ecomodulated fees to encourage the reduction of environmental impacts.

WAC 173-905-120(9) clarified categories of the budget part of the plan that more closely reflect the steps that a battery being disposed of will pass through.

WAC 173-905-120 through 173-905-140 added clarification that a plan, or parts of a plan, may be submitted in a different file format from that specified in the rule with prior approval from the department.

WAC 173-905-120 and 173-905-150 streamlined the requirement for a battery stewardship organization to provide target collection rates for covered batteries by removing the requirement that a separate rate for primary and rechargeable be included in a plan and annual report. This change aligns the rule language more closely with statute.

WAC 173-905-140(2) provided an allowance for additional time for a battery stewardship organization to train collection site staff.

WAC 173-905-150(2) added a statement that the department will notify a battery stewardship organization six months prior to annual report submittal if it is requiring submittal of an independent financial audit as part of an annual report.

WAC 173-905-150 (5)(h) clarified that a battery stewardship organization must provide a summary of any violations of environmental or labor laws regardless of whether the violation is being contested, further investigated, or resolved.

WAC 173-905-160(5) removed the requirement that a battery stewardship organization provide as part of their quarterly update to the department a list of transporters and processors that have been added to or dropped from the program since this type of event already requires submittal of a plan amendment to the department for approval and, therefore, this information provided as part of the quarterly update would be duplicative.

WAC 173-905-160(5) added a clarification that in addition to a summary of education activities that occurred in the previous quarter, the quarterly update must also include a description of activities planned for the next quarter.

WAC 173-905-200(2) added a clarification to align with statute that retailers are also prohibited from selling or distributing large format batteries unless applicable marking requirements have been met.

WAC 173-905-310(2) removed reference to the periodic table of elements and streamlined the requirement. Producers are required to mark their batteries with information indicating the chemistry, as defined in the chapter.

WAC 173-905-400 (2)(a) added a clarification that the department will post on its website a list of producers and a separate list of brands. Also added clarification that a producer appearing on these lists will serve as certification of a producer's participation in a battery stewardship organization.

WAC 173-905-420 added a clarification that the department will issue a letter of approval by email or certified mail if an annual report is approved.

WAC 173-905-500(7) added a clarification that this subsection applies only to local government facilities not participating in a battery stewardship program.

WAC 173-905-500(1) added a clarification that each battery stewardship organization must allow for any person to discard each chemistry and brand of covered battery at each site identified in the stewardship plan.

WAC 173-905-520(4) added a clarification that emergency supplies appropriate for mitigating risks associated with damaged and defective batteries, such as spills and fires, shall be provided to each collection site.

A final cost-benefit analysis is available by contacting Chris Fredley, Department of Ecology, Solid Waste Management Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 564-233-1615, TTY 360-407-6831, email Batterystewardship@ecy.wa.gov, website https://apps.ecology.wa.gov/publications/summarypages/2507068.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 20, 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: December 16, 2025.

Casey D. Sixkiller
Director

RDS-6393.4

Chapter 173-905 WAC
BATTERY STEWARDSHIP PROGRAM

GENERAL

NEW SECTION

WAC 173-905-010 Purpose. (1) Chapter 70A.555 RCW requires establishment of a convenient, accessible, and environmentally sound product stewardship program for all covered batteries throughout Washington state. The legislature decided that such a system will ensure the proper handling, recycling, and end-of-life management of used batteries. Managing covered batteries through product stewardship removes them from the waste stream, prevents releases of toxic materials into the environment and ensures recycling of limited resources.

(2) This chapter implements chapter 70A.555 RCW, Batteries—Environmental stewardship. This chapter establishes:

(a) Processes and procedures that the department and battery stewardship organizations use to oversee and administer the program;

(b) Fees to be paid to the department to cover the agency's full costs of providing oversight of the implementation and administration of the program and enforcing chapter 70A.555 RCW and this chapter;

(c) Requirements for producers to mark batteries with their identification, an identification of the chemistry of the battery, and an indication that batteries should not be discarded with household garbage; and

(d) Standards to ensure the safe and effective collection and handling of batteries through a stewardship program.

NEW SECTION

WAC 173-905-020 Applicability. This chapter applies to:

(1) Any producer of covered batteries or battery-containing products, as defined in this chapter;

(2) Any battery stewardship organization as defined in this chapter;

(3) Any retailer that sells, offers for sale, distributes, or makes available for sale a covered battery or battery-containing product in or into Washington state;

(4) Any person who collects covered batteries in Washington state for a battery stewardship plan approved under this chapter;

(5) Any person who transports covered batteries in Washington state for a battery stewardship plan approved under this chapter;

(6) Any local government in Washington state collecting covered batteries; and

(7) Any person who disposes of a covered battery.

NEW SECTION

WAC 173-905-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Battery-containing product" means a product that contains or is packaged with rechargeable or primary batteries that are covered batteries. "Battery-containing product" does not include a covered electronic product under an approved plan implemented under chapter 70A.500 RCW.

"Battery management hierarchy" means a management system of covered batteries, prioritized in the following order:

(a) Waste prevention and reduction;

(b) Reuse, when reuse is appropriate;

(c) Recycling, as defined in this chapter; and

(d) Other means of end-of-life management, which may only be utilized after demonstrating to the department that it is not feasible to manage the batteries using priorities in (a) through (c) of the definition.

"Battery-related incident" means a spill, fire, release, or other hazard that poses a risk to public safety or environmental health resulting from the collection, handling, transportation, or processing of a covered battery.

"Battery stewardship organization" means a producer that directly implements a battery stewardship plan or a nonprofit organization designated by a producer or group of producers to implement a battery stewardship plan.

"Battery stewardship plan" or **"plan"** means a plan developed for the collection, transportation, recycling, and the safe and proper management of covered batteries.

"Best available technologies" means a recycling technology that results in the greatest recycling efficiency rate.

"Brand" means a name, symbol, word, logo, registered or unregistered trademark, or identifying or a traceable mark that identifies a covered battery and attributes the battery to the owner of the brand.

"Chemistry" means the names, symbols, or codes contained in standards created by domestic or internationally recognized standards organizations such as the American National Standards Institute (ANSI), the International Electrotechnical Commission (IEC), or Society of Automotive Engineers (SAE), used by battery manufacturers to identify the electrochemical system of the battery.

"Collection event" means a one-time or recurring activity at a site used by an operator to collect covered batteries on a particular day or days, storing them less than 48 hours.

"Collection rate" means a percentage that is calculated by dividing the total weight of primary and rechargeable batteries collected by a battery stewardship organization during the previous calendar year by the average annual weight of primary and rechargeable batteries that were estimated to have been sold in the state by all producers participating in an approved battery stewardship plan during the previous three calendar years.

"Collection site" means a permanent service location, run by an entity allowed to operate in Washington state, that accepts covered batteries under a battery stewardship plan.

"Covered battery" means a portable battery that has been used in Washington state regardless of where it was purchased. Beginning January 1, 2029, "covered battery" also means a medium format battery that has been used in Washington state regardless of where it was purchased. "Covered battery" does not include:

(a) A battery contained within a medical device that is not marketed to consumers for personal use;

(b) A wet cell battery, including a vehicle battery as defined in WAC 173-331-100; and

(c) A battery that is not intended or designed to be easily removable from a battery-containing product.

"Damaged and defective batteries" means batteries that have been damaged or identified by the manufacturer as being defective for safe-

ty reasons, that have the potential of producing a dangerous evolution of heat, fire, or short circuit.

"Demonstrable costs" means costs that a local government participating in a battery stewardship program incurs as a result of covered battery collection activities, at permanent collection sites or through collection events, including labor and nonlabor costs associated with:

(a) Sorting collected batteries;

(b) Packaging collected batteries for transport;

(c) Transportation and consolidation of batteries from satellite sites;

(d) Storage containers unless those containers are provided by the battery stewardship organization;

(e) Transportation to the battery stewardship organization's vendor, if cost effective or more efficient;

(f) Recycling batteries collected at collection events; and

(g) Additional agreed-to costs.

"Department" means the department of ecology.

"Easily removable" means designed by the manufacturer to be removable by the user of the product, without causing damage to the battery contained within the product, using only common household tools.

"Environmentally sound management practices" means practices that:

(a) Comply with all applicable laws and rules to protect workers, public health, and the environment;

(b) Provide for adequate recordkeeping, tracking, and documenting the fate of materials within the state and beyond; and

(c) Include comprehensive liability coverage for the battery stewardship organization, including environmental liability coverage that is commercially practicable.

"Final disposition" means the final processing of a collected battery to produce usable end products, at the point where the battery has been reduced to its constituent parts, reusable portions made available for use, and any residues handled as wastes in accordance with applicable law.

"Geographically isolated community" means a community that has limited or no access to services of other communities, or is otherwise physically separated from other communities, due to limited public transportation options or the presence of natural barriers.

"Large format battery" means:

(a) A rechargeable battery that weighs more than 25 pounds or has a rating of more than 2,000 watt-hours; or

(b) A primary battery that weighs more than 25 pounds.

"Medium format battery" means:

(a) A rechargeable battery weighing more than 11 pounds or has a rating of more than 300 watt-hours, or both, and no more than 25 pounds and has a rating of no more than 2,000 watt-hours; or

(b) A primary battery weighing more than 4.4 pounds but not more than 25 pounds.

"Portable battery" means:

(a) A rechargeable battery weighing no more than 11 pounds and has a rating of no more than 300 watt-hours;

(b) A primary battery weighing no more than 4.4 pounds.

"Primary battery" means a battery that is not capable of being recharged.

"Producer" means the following person responsible for meeting the requirements of chapter 70A.555 RCW and this chapter for a covered

battery or battery-containing product sold, offered for sale, or distributed in or into Washington state:

(a) For covered batteries:

(i) If the battery is sold under the battery manufacturer's brand, the manufacturer is the producer;

(ii) If the battery is sold under a retail brand or under a brand owned by a person other than the manufacturer, the brand owner is the producer;

(iii) If there is no person to which (i) or (ii) of this definition applies, the person licensed to use the brand or trademark for the battery is the producer;

(iv) If there is no person described in (i) through (iii) of this definition located in the United States, the importer of record for the battery into the United States is the producer;

(v) If there is no person described in (i) through (iv) of this definition with a commercial presence in the state, the person who first sells or distributes the battery in or into Washington is the producer.

(b) For battery-containing products:

(i) If the battery-containing product is sold under the product manufacturer's brand, the manufacturer is the producer;

(ii) If the battery-containing product is sold under a retail brand or under a brand owned by a person other than the manufacturer, the brand owner is the producer;

(iii) If there is no person to which (i) or (ii) of this definition applies, the person licensed to use the brand or trademark for the product is the producer;

(iv) If there is no person described in (i) through (iii) of this definition located in the United States, the importer of record for the product into the United States is the producer;

(v) If there is no person described in (i) through (iv) of this definition with a commercial presence in the state, the person who first sells, offers for sale, or distributes the product in or into Washington is the producer.

(vi) A producer does not include any person who only manufactures, sells, offers for sale, distributes, or imports into the state a battery-containing product if the only batteries used by the battery-containing product are supplied by a producer that has joined a registered battery stewardship organization as the producer for the covered battery under this chapter. Such a producer of covered batteries that are included in a battery-containing product must provide written certification of that membership to both the producer of the covered battery-containing product and the battery stewardship organization of which the battery producer is a member.

(c) A person is the "producer" of a covered battery or covered battery-containing product sold, offered for sale, or distributed in or into this state, as defined in (a) or (b) of this subsection, except where another party has contractually accepted responsibility as a responsible producer and has joined an approved battery stewardship organization as the producer for that covered battery or covered battery-containing product under this chapter.

"Program" means a program implemented by a battery stewardship organization consistent with an approved battery stewardship plan.

"Rechargeable battery" means a battery that contains one or more voltaic or galvanic cells, is electrically connected to produce electric energy, and is designed to be recharged.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than:

(a) Combustion;

(b) Incineration;

(c) Energy generation;

(d) Fuel production; or

(e) Beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover.

"Recycling efficiency rate" means the ratio of the weight, in pounds, of covered battery components and materials recycled from covered batteries to the weight, in pounds, of those covered batteries collected by the battery stewardship organization.

"Regulated generator" means a generator as defined in WAC 173-303-040.

"Retailer" means a person who sells, offers for sale, or otherwise makes available covered batteries or battery-containing products to a customer or business by any means including, but not limited to, sales outlets, catalogs, or an online marketplace.

"Urban area" means an area delineated by the United States census bureau, based on a minimum threshold of 2,000 housing units or 5,000 people, as of January 1, 2023.

BATTERY STEWARDSHIP ORGANIZATION REQUIREMENTS

NEW SECTION

WAC 173-905-100 Pay administrative and plan review fee. (1) **Legislative mandate.** Each battery stewardship organization shall pay annual fees to the department to cover the department's administrative costs related to overseeing the battery stewardship program authorized under chapter 70A.555 RCW.

(2) **Plan review fee.** Each battery stewardship organization shall pay a one-time plan review base fee when it submits a plan to the department for review and approval.

(a) The department will annually determine the plan review base fee and will post the fee on its website. If the actual cost of review exceeds the plan review base fee, the department will charge an additional per-hour fee to cover the additional cost. The department will also post the per-hour fee on its website.

(b) This fee covers:

(i) Costs of staff hours, including salaries and benefits required by law to be paid to, or on behalf of, employees; and

(ii) Other costs incurred as a direct result of department staff working on the plan including travel related to plan review, printing and publishing plan documents, and other work, contracted or otherwise.

(c) This fee does not apply to the submission of a plan renewal or plan amendment.

(3) **Administrative fee.** Beginning 2026, each stewardship organization shall pay an administrative fee to the department. This fee is due each year on June 1st.

(a) The department will annually determine the administrative fee and will post the fee on its website.

(b) The department will base the administrative fee on annual costs from the previous calendar year including:

(i) Costs of staff hours, including salaries and benefits required by law to be paid to, or on behalf of, employees; and

(ii) Other costs incurred as a direct result of department staff working on annual report review, plan amendments, quarterly meetings, required studies, maintaining websites, developing and publishing guidance documents, and other work, contracted or otherwise.

(c) The administrative fee amount may be adjusted by the fiscal growth factor (FGF) as calculated under RCW 43.135.025.

(d) If there is only one approved plan, that battery stewardship organization is responsible for the entire fee.

(e) In the case of multiple stewardship organizations, the fee will be allocated in proportion to the market share a stewardship organization represents. The department will base market share on data provided by stewardship organizations and any available data.

(i) By April 1st each year, battery stewardship organizations shall submit to the department the total sales, in pounds, of covered batteries or battery-containing products of their participating producers for the previous calendar year. The department will use the sales data to determine the aggregated market share of the battery stewardship organization.

(ii) If the department does not receive sales data from the battery stewardship organizations, the market share estimate will be calculated using available data.

(4) **Responsible battery management account.** Fees paid under this section must be deposited into the responsible battery management account created under RCW 70A.555.120.

NEW SECTION

WAC 173-905-110 Provide education and outreach. (1) At least once each quarter, each battery stewardship organization shall carry out activities to promote the program using education and outreach materials that are accessible for the communities where the outreach takes place. These promotional activities must include:

(a) Developing and maintaining a website and a customer service number with information about the program;

(b) Developing and distributing education and outreach materials that will be used to inform consumers about the prohibited disposal of covered batteries and provide information on how to properly drop off or discard covered batteries;

(c) Distributing periodic press releases and articles;

(d) Placing advertisements on social media or other relevant media platforms;

(e) Distributing consumer-focused educational and promotional materials to the operator of each collection site;

(f) Distributing educational materials to the operator of each collection site detailing how noncovered products and batteries, such as recalled batteries, should be managed;

(g) Providing educational materials to help facilitate transportation and processing of recalled batteries, which are not intended to be collected under the program;

(h) Distributing educational materials to the operator of each collection site detailing how damaged and defective batteries should be managed; and

(i) Providing educational materials describing collection opportunities for batteries to each retailer that requests them, for distribution to customers.

(2) In developing education and outreach materials for overburdened communities and vulnerable populations identified by the department, a battery stewardship organization shall consult with those communities to ensure the materials are conceptually, linguistically, and culturally accurate.

(3) If multiple battery stewardship organizations are implementing plans approved by the department, the battery stewardship organizations shall coordinate their education and outreach activities including providing a single website, a collection site locator, a phone number, and a program name, all of which must provide unified messaging.

(4) During the first year of program implementation and every five years thereafter, each battery stewardship organization shall carry out a survey of public awareness to evaluate education and outreach efforts.

NEW SECTION

WAC 173-905-120 Plan contents. A proposed battery stewardship plan must include the following components:

(1) **Program operation.** A description of how the program will collect all covered batteries on a free, continuous, convenient, visible, and accessible basis using environmentally sound management practices including:

(a) A list of transporters to be used by the program for transporting batteries from the collection sites and relevant information for each transporter including:

(i) Company name;

(ii) Name of a contact person;

(iii) Physical address of the company;

(iv) Email address and phone number for the contact person;

(v) A list of all applicable permits and licenses; and

(vi) A list of all applicable hazardous waste EPA/state identification numbers.

(b) A list of facilities to be used by the program for sorting and final disposition of batteries or battery components and relevant information for each facility including:

(i) Company name;

(ii) Name of a contact person;

(iii) Physical address of the company;

(iv) Email address and phone number for the contact person;

(v) A list of all applicable permits and licenses; and

(vi) A list of all applicable hazardous waste EPA/state identification numbers.

(c) A description of the recycling process used at each facility for each type of battery collected.

(d) A description of the factors the battery stewardship organization will use when choosing which facilities will be selected to recycle collected batteries.

(e) A description of how the battery stewardship organization will routinely monitor all companies involved in the collection, handling, transporting, and final disposition of covered batteries to ensure they are operating in compliance with all applicable laws and rules.

(f) A description of how the battery stewardship organization will manage batteries that cannot be recycled.

(g) A description of how the battery stewardship organization will coordinate with other stewardship organizations, public or private entities that collect covered batteries, and electronic waste recyclers to provide efficient delivery of services.

(2) **Covered producers and brands.** Information on producers of covered batteries and their brands, including:

(a) A list of producers covered in the plan;

(b) A list of battery brands and battery-containing product brands covered in the plan;

(c) For each producer covered by the battery stewardship plan, information for a contact person including name, mailing address, phone number, and email address; and

(d) If the plan is submitted after January 1, 2028, an indication of which producers meet the marking requirements in WAC 173-905-310.

(3) **Collection sites.** Information about the collection site network including:

(a) A list, provided in a spreadsheet in Microsoft Excel format, or a similar file format with prior approval from the department, of collection sites and site information, including the site name, physical address, phone number, latitude and longitude, an indication of whether the site accepts damaged and defective batteries, and beginning January 1, 2029, an indication of whether the site accepts medium format batteries. Site contact information, such as a contact name and email address, must also be included.

(b) A list and description of the criteria the battery stewardship organization will use to determine whether an entity may serve as a collection site or site of a collection event.

(c) A description of the types of collection containers that will be used at collection sites that allow for segregation from other solid waste including dangerous waste subject to chapter 173-303 WAC.

(d) A copy of signage or labels to be placed on or near collection containers providing specific instructions to customers disposing of batteries.

(e) A description of how damaged and defective batteries will be collected only at sites staffed by persons trained to collect, handle, and ship those batteries.

(f) A description of methods for hosting collection events to supplement permanent collection services, including proposed locations, frequency, and outreach efforts.

(g) A description of how the battery stewardship organization will ensure each collection site has the materials and equipment necessary to handle customer demand and has established a regular pick-up schedule to prevent overflow issues at collection sites.

(h) A description of how the battery stewardship organization will ensure that covered batteries at collection sites no longer participating under an approved plan will be delivered to a recycling facility.

(i) A description of how collection sites will be trained to deal with receiving batteries that are not required to be collected such as batteries that are not easily removable from a product or covered electronic products under chapter 70A.500 RCW.

(j) A description of how the battery stewardship organization will meet the statewide convenience standards described in WAC 173-905-500 including an explanation of how the requirement of sites established at special locations in WAC 173-905-500 (2)(e) was met.

(4) **Performance goals.** Numeric performance goals that measure, on an annual basis, the achievements of the program, including a description of how progress towards each goal will be measured. Performance goals must, at minimum, include:

(a) A target collection rate for covered batteries;

(b) A target recycling efficiency rate of at least 60 percent for rechargeable batteries and at least 70 percent for primary batteries;

(c) The percentage of people in Washington that are aware of the program, including a subgoal applicable to public awareness of the program in vulnerable populations and overburdened communities identified by ecology;

(d) The percentage of people that know how to find where to recycle covered batteries; and

(e) Goals to meet the convenience and accessibility requirements in WAC 173-905-500.

(5) **Education and outreach.** A description of the communications strategy the battery stewardship organization will use to promote the program to consumers, retailers, and others. The plan must include:

(a) Sample materials sent to retailers to make them aware of their obligation to sell only covered batteries and battery-containing products of producers participating in an approved plan;

(b) Sample materials that can be provided to retailers upon request, including in-store signage, written materials, or other promotional materials that retailers may use to inform customers of recycling options for covered batteries;

(c) Sample promotional materials such as flyers or social media posts that communicate:

(i) That the program provides free collection of covered primary and rechargeable batteries;

(ii) Guidance for safe handling of covered batteries, including damaged and defective batteries; and

(iii) Information on how to find collection sites.

(d) A description of how the battery stewardship organization will identify target audiences and appropriate outreach for those audiences, including through television or radio, news media, public service announcements, mailing, emails, online listservs, social media, and newsletters;

(e) A description of how the battery stewardship organization will consult with overburdened communities and vulnerable populations identified by ecology when developing outreach materials;

(f) A description of how the stewardship organization will document education and outreach efforts; and

(g) A summary of planned education and outreach activities.

(6) **Safety.** A description of how the battery stewardship organization will provide annual training to collection sites and a copy of all procedural materials that will be distributed to collection sites, including protocols for preventing and responding to battery-related incidents.

(7) **Program funding.** A description of how the battery stewardship organization will establish and administer a means for fully funding a program that:

(a) Equitably distributes the program's costs among the producers that are part of the battery stewardship organization; and

(b) Covers the full implementation of the program, including:

(i) Battery collection, transportation, sorting, and final disposition;

(ii) Education and outreach;

(iii) Program evaluation;

(iv) Local government reimbursement; and

(v) Payment of fees to the department.

(8) **Fee structure.** A description of how the stewardship organization will structure producer fees to encourage design attributes that reduce the environmental impacts of covered batteries. Examples of fee structures that meet these requirements include using eco-modulated fees that:

(a) Encourage recyclability or recycling;

(b) Encourage the use of recycled content;

(c) Encourage conservation of resources;

(d) Discourage the use of problematic materials that increase costs of managing covered batteries; or

(e) Other design attributes that reduce the environmental impacts of covered batteries.

(9) **Budget.** The program budget for the first three years of program implementation that includes separate line items for the following categories and describes what is included in each category:

(a) Collection costs;

(b) Transportation costs;

(c) Sorting costs;

(d) Recycling costs;

(e) Disposal costs for material that cannot be recycled;

(f) Education, outreach and communications costs;

(g) Program evaluation costs;

(h) Plan review and administrative fees paid to the department;

(i) Demonstrable costs paid to local governments or local government facilities; and

(j) Personnel, general, and other administrative costs.

(10) **Local government coordination.** The plan must describe how the stewardship organization will communicate and coordinate with local governments in implementation of the program including:

(a) A copy of a template local government reimbursement agreement and a description of how local governments participated in the template's development.

(b) Procedures that a local government collecting covered batteries at its own expense outside of the program must follow to meet the requirements in WAC 173-905-500(8).

(c) Procedures that a local government must follow to coordinate with a battery stewardship organization regarding collection events.

(d) Procedures that a local government seeking reimbursement from the stewardship organization must follow to coordinate with a battery stewardship organization on education and outreach efforts.

NEW SECTION

WAC 173-905-130 Submit a plan. (1) **Plan for managing portable batteries.** By July 1, 2026, each battery stewardship organization shall submit to the department a plan that covers the collection, transport, and processing of portable batteries. Information on the collection, transport, and processing medium format batteries, as required in subsection (2) of this section, may be included in the plan.

(2) **Plan for managing medium format batteries.** By January 1, 2028, each battery stewardship organization shall submit to the department a plan that covers the collection, transport, and processing of medium format batteries if the approved plan does not already include medium format batteries.

(3) **Plan amendments.** A battery stewardship organization shall submit a plan amendment to the department for review and approval when:

(a) There is a proposed change to the performance goals established in the approved plan;

(b) There is a change to the method of financing plan implementation;

(c) There are significant changes in the operation, administration, or implementation of the program that are not addressed in the approved plan;

(d) Another battery stewardship organization has received approval for a new plan;

(e) The program budget needs to be updated on the approved plan; or

(f) The department requests an amendment to the approved plan.

(4) **Plan renewal.** Every five years, each battery stewardship organization shall submit a revised plan to the department for approval. The previous plan will remain in effect until the revised plan is approved.

(5) **File format.** Plans and plan amendments must be submitted electronically with a hyperlinked table of contents, in Microsoft Word and PDF format, or a similar file format with prior approval from the department, unless specified otherwise in this chapter.

NEW SECTION

WAC 173-905-140 Implement an approved plan. (1) Beginning January 1, 2027, battery stewardship organizations shall begin to implement an approved plan;

(2) By July 1, 2027, unless specified below, each battery stewardship organization shall fully implement its approved plan for covered portable batteries. Full implementation is when:

(a) Collection convenience standards in WAC 173-905-500 have been met;

(b) By January 1, 2028, all collection sites have received proper training, collection containers, signage and educational materials;

(c) The battery stewardship organization's website is live, providing information to producers, retailers, collection sites, and consumers about the program;

(d) A collection site locator on the battery stewardship organization's website is operational, providing collection site address,

hours, phone number, website if applicable, and any special instructions or restrictions specific to the collection site; and

(e) The battery stewardship organization has paid all necessary fees to the department.

(3) By January 1, 2029, battery stewardship organizations shall fully implement an approved plan that includes the collection and management of covered medium format batteries;

(4) After July 1, 2027, additional stewardship organizations may begin implementation of approved plans between July 1st and December 31st.

NEW SECTION

WAC 173-905-150 Submit annual reports. By June 1, 2028, and each June 1st thereafter, each battery stewardship organization shall submit an annual report to the department for the preceding calendar year of battery stewardship plan implementation in a format prescribed by the department. The report must contain the following information:

(1) **Program operation.** A description of methods used to collect, transport, and recycle covered batteries by the battery stewardship organization including a discussion of best available processing technologies and the recycling efficiency rate.

(2) **Independent financial audit.** No later than six months prior to the due date of an annual report, the department will notify a battery stewardship organization if an independent financial audit of the program is required.

(3) **Program budget.** A summary of the program budget including revenue and a detailed analysis of program costs, expenses, and expenditures of the program comparing budgeted amounts to actual expenditures. Battery stewardship organizations implementing similar battery stewardship programs in multiple states may submit a financial statement including all covered states if the statement breaks out financial information pertinent to Washington.

(4) **Battery collections and collection site information.** The report must provide the weight, by chemistry, of covered batteries collected under the program. The report must include the URL address to the battery stewardship organization's web page containing an up-to-date interactive map of all collection sites used to implement the program. Additionally, the report must include the following information for each collection site:

(a) The name of the site;

(b) The address of the site;

(c) The latitude and longitude of the site;

(d) An indication of whether the site accepts damaged and defective batteries;

(e) An indication of whether the site accepts medium format batteries;

(f) A link to the website associated with the site, if applicable; and

(g) The weight of covered batteries collected annually at the site.

(5) **Sorting facility and final disposition facility information.** The following information for each facility used by the program for sorting or final disposition of batteries:

(a) The name of the facility;

(b) The address of the facility;

(c) The weight by battery chemistry of covered batteries received;

(d) The weight of materials recycled;

(e) The weight of residuals disposed;

(f) A description of the recycling process used;

(g) The recycling efficiency rate achieved; and

(h) A summary of violations of environmental or labor laws and regulations over the previous three calendar years issued by a regulatory body with oversight of those laws and regulations, regardless of whether the violation is being contested, further investigated or resolved.

(6) **Aggregate sales.** The estimated aggregate sales by weight and chemistry of covered batteries and batteries contained in or with battery-containing products sold in Washington by participating producers for each of the previous three calendar years. Sales data by battery chemistry may be grouped with prior approval from the department.

(7) **Education and outreach.** A summary of education and outreach activities carried out by the battery stewardship organization including:

(a) A description of how the education and outreach requirements under WAC 197-905-110 were met;

(b) Samples of education and outreach materials distributed to consumers, collection sites, producers, distributors, and retailers;

(c) If there were other battery stewardship organizations implementing an approved plan, a description of how education and outreach activities were coordinated and how associated costs were shared with other battery stewardship organizations;

(d) A summary of education and outreach activities conducted during the previous calendar year and a description of activities planned for the upcoming 12 month;

(e) The results of any public awareness surveys conducted during the previous calendar year.

(8) **Safety training.** A description of how the battery stewardship organization provided safety training and distributed safety information to operators of battery collection sites including covered topics, the number of trainings provided at each collection site, and a list of locations where trainings were conducted.

(9) **Battery related incidents.** For any collection site or facility used by the program that experienced a battery related incident in the preceding calendar year, a spreadsheet in Microsoft Excel format, or a similar file format with prior approval from the department, with the following information for each incident:

(a) The name of the site;

(b) The address of the site;

(c) Date and time the incident occurred;

(d) Description of the incident;

(e) Steps taken to remedy the incident; and

(f) A description of how the waste was managed.

(10) **Marking requirement certifications.** A list of producers that have certified to the battery stewardship organization their compliance with the marking requirements under WAC 173-905-310.

(11) **Progress on performance goals.** A summary of progress made towards program performance goals established in the plan and an explanation of why a goal was not met, if applicable. The annual report must include:

(a) The collection rate for covered batteries achieved by the program and a description of how the collection rate was calculated. Calculation of separate rates may be required by ecology.

(b) The recycling efficiency rates achieved by the program for each of the following:

(i) All covered batteries collected by the program;

(ii) Primary batteries collected by the program;

(iii) Rechargeable batteries collected by the program; and

(iv) Each recycling facility used by the program.

(c) An evaluation of the effectiveness of education and outreach activities.

(12) **Improving recycling rates.** If a battery stewardship organization disposed of covered batteries through energy recovery, incineration, or landfilling during the preceding calendar year, a description of the steps that the battery stewardship organization will take to increase battery recycling rates achieved by the program.

(13) **Battery management hierarchy.**

(a) The weight and percentage of batteries disposed of for each of the disposal options:

(i) Waste prevention and reduction;

(ii) Reuse;

(iii) Recycling; and

(iv) Other means of end-of-life management.

(b) For any covered batteries that were disposed of using a lower priority end-of-life battery management option on the battery management hierarchy, the battery stewardship organization must provide an explanation of why higher priority battery management options were not technically feasible or economically practical for those batteries.

NEW SECTION

WAC 173-905-160 Provide quarterly updates. Beginning January 1, 2028, each battery stewardship organization shall meet with the department once each quarter to provide a written and oral update on the program including:

(1) Notice of any producers that have started or ended participation in the program in the previous quarter;

(2) Notice of any civil action the battery stewardship organization has taken against a producer or another battery stewardship organization;

(3) Notice of any collection sites that have been added in the previous quarter;

(4) Notice of any collection sites that have been terminated or suspended in the previous quarter and the reason for the termination or suspension;

(5) A summary of outreach and education activities that occurred in the previous quarter and those planned for the next quarter;

(6) A list of collection events that occurred in the previous quarter;

(7) A summary of battery-related incidents that occurred in the previous quarter, including the location where each incident occurred and the outcome or resolution of each incident; and

(8) Other information requested by the department.

RETAILER REQUIREMENTS

NEW SECTION

WAC 173-905-200 Role of retailers. (1) Beginning July 1, 2027, retailers are prohibited from selling or distributing covered portable batteries or battery-containing products in or into the state of Washington unless the producer of the covered batteries or battery-containing products participates in an approved battery stewardship plan.

(2) Beginning January 1, 2028, retailers are prohibited from selling or distributing a large format battery, a covered battery, or a battery-containing product in or into the state of Washington unless they meet the marking requirements under WAC 173-905-310.

(3) Beginning July 1, 2029, retailers are prohibited from selling or distributing covered medium format batteries or battery-containing products in or into the state of Washington unless the producer of the covered batteries or battery-containing products participates in an approved battery stewardship plan.

(4) Retailers may use the list of producers on the department's website to verify compliance with subsections (1) through (3) of this section.

(5) A retailer selling covered batteries or battery-containing products in or into the state of Washington may request education and outreach materials from the stewardship organization to inform their customers about end-of-life management options for covered batteries.

(6) A retailer is not required to make retail locations available to serve as collection sites for a battery stewardship program.

(7) A retailer that serves as a collection site for a battery stewardship program must comply with the requirements for collection sites contained in a battery stewardship organization's approved plan and the requirements in WAC 173-905-520.

(8) A retailer may not charge a specific point-of-sale fee to consumers to cover the administrative or operational costs of the battery stewardship program.

PRODUCER REQUIREMENTS

NEW SECTION

WAC 173-905-300 Participate in an approved plan. (1) Beginning January 1, 2027, for portable batteries and July 1, 2029, for medium format batteries, each producer selling, making available for sale, or distributing a covered battery or a battery-containing product in or

into the state of Washington shall participate in an approved battery stewardship plan.

(2) A producer intending to cease participation in a battery stewardship organization shall provide written notice to their battery stewardship organization no later than 30 days before ceasing participation. This notice must include:

(a) The producer's name and any associated brands;

(b) The date the producer will cease participation; and

(c) The reason for ceasing participation.

(3) A producer that does not comply with the requirements under this chapter may not sell covered batteries or battery-containing products in or into Washington.

(4) Nothing under this chapter may be construed to limit a producer or group of producers from designating or otherwise forming a new battery stewardship organization.

NEW SECTION

WAC 173-905-310 Marking requirements. (1) **Applicability.** The requirements of this section apply to producers that sell, distribute, or offer for sale in or into Washington:

(a) Large format batteries;

(b) Covered batteries; or

(c) Battery-containing products.

(2) **Marking requirements for batteries.** Producers shall place permanent, clearly visible, and legible marks on their batteries.

(a) Beginning January 1, 2028, a producer shall mark their batteries with their brand;

(b) Beginning January 1, 2030, a producer shall mark their batteries with crossed-out wheeled bin, shown below, to indicate the battery should not be disposed of as household waste; and

(c) Beginning January 1, 2030, a producer shall mark their batteries with information indicating the battery chemistry.

(3) **Marking requirements for battery-containing products.** Producers of battery-containing products shall ensure the batteries contained in their products meet the requirements of subsection (2) of this section.

(4) **Exceptions.** The requirements described in subsection (2) of this section do not apply to batteries that do not have a surface whose length exceeds one-half inch. If the battery does not have a

surface whose length exceeds one-half inch, the package of the battery or battery-containing product must bear the marks required in subsection (2) of this section.

(5) **Certification.** A producer of a battery-containing product shall certify their compliance with this section to their customers or the retailer if the retailer is not the customer, and to the battery stewardship organization. A producer that meets the requirement in (a) of this subsection is in compliance with the certification requirement under RCW 70A.555.130(2). The following process will be used by the department to determine compliance with the requirements of this section:

(a) Producers shall certify their compliance with this section to the stewardship organization they participate in, or if they are not participating in a stewardship organization, they shall provide certification directly to the department.

(b) Each battery stewardship organization shall provide a list of its participating producers that have certified their compliance with this section on its annual report submitted to the department under WAC 173-905-150 and shall also provide a list of any producers removed or added to that list with each quarterly update to the department under WAC 173-905-160.

(c) The department will post the list of certified producers on its public website.

DEPARTMENT DUTIES

NEW SECTION

WAC 173-905-400 Maintain a web page. (1) The department will maintain a web page that may be used by producers, retailers, and the public as a resource to determine compliance with the program and view up-to date program data.

(2) Except for confidential information as granted under subsection (4) of this section, the department will post the following information to its website:

(a) Beginning January 1, 2027, a list of producers and a separate list of brands that participate in an approved plan. Appearing on these lists will serve as certification of a producer's participation in a battery stewardship organization;

(b) Beginning January 1, 2028, the list will contain producers that participate in an approved plan and that also have certified their compliance with the marking requirements under WAC 173-905-310;

(c) Plans and plan amendments submitted to the department;

(d) Annual reports submitted to the department; and

(e) The plan review base fee due at the time of first plan submittal.

(f) The per-hour fee the department may additionally charge as needed to cover additional plan review costs.

(3) The department will update the website within 30 days of receipt of any new information received in quarterly reports under WAC 173-905-160.

(4) A producer or battery stewardship organization that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, in accordance with RCW 43.21A.160. The director of the department will consider the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director will grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION

WAC 173-905-410 Review a submitted plan. (1) The department will post a copy of submitted plans and plan amendments on its website for public review and comment for at least 30 days.

(2) Within six months of submittal of a plan, or within three months of submittal of a plan amendment, the department will determine whether the plan or plan amendment meets the requirements of chapter 70A.555 RCW and this chapter and will issue a decision letter to the battery stewardship organization.

(a) If the plan or plan amendment is approved, the department will issue a letter of approval by email or certified mail.

(b) If the plan or plan amendment is disapproved by the department:

(i) The department will issue a letter of disapproval by email or certified mail. The letter will include the reasons the department rejected the plan or plan amendment; and

(ii) The battery stewardship organization shall submit a new or revised plan or plan amendment within 60 days of receipt of the letter of disapproval.

(3) If the department requests additional information or clarification during review of a plan or plan amendment, the battery stewardship organization shall submit the additional information requested within 30 days of its receipt of the notice.

(4) After two plan disapprovals, if the department determines that a submitted plan or plan amendment still does not meet the requirements of chapter 70A.555 RCW and this chapter, the department may amend the most recent plan submittal. A plan amended by the department in this manner becomes the approved plan.

NEW SECTION

WAC 173-905-420 Review an annual report. (1) The department will review annual reports submitted under WAC 173-905-150 within 90 days of submission to ensure compliance with that section.

(2) If the annual report is approved, the department will issue a letter of approval by email or certified mail.

(3) If an annual report is incomplete, the department will notify the battery stewardship organization in writing of the additional information needed to comply with the requirements of WAC 173-905-150.

The battery stewardship organization shall submit the additional information requested by the department within 30 days of its receipt of the notice.

NEW SECTION

WAC 173-905-430 Enforcement and penalties. (1) The following entities may not be found in violation of chapter 70A.555 RCW or this chapter:

(a) An owner or operator of a solid waste facility if the facility has posted a sign stating that covered batteries must be managed through collection sites established by a battery stewardship program and are not accepted for disposal;

(b) A solid waste collector if a generator places a covered battery in a disposal container serviced by the solid waste collector; and

(c) An individual or resident who improperly disposes of covered batteries in a noncommercial or residential setting.

(2) If the department determines that a person violated or is in violation of any of the requirements of chapter 70A.555 RCW or this chapter, the department will issue a written warning or an order requiring compliance.

(a) **Written warning.** The department will provide a producer, retailer, or battery stewardship organization with a written warning for a first violation of the requirements of chapter 70A.555 RCW or this chapter. Written warnings will be delivered with verified receipt and will inform a violator of the steps they must take to come into compliance.

(b) **Compliance order.** Whenever, based on any information, the department determines that a person has violated or is in violation of chapter 70A.555 RCW or this chapter, it may issue an order to that person requiring compliance either immediately or within a specified period of time. The compliance order will be delivered with verified receipt and will inform a violator of the steps they must take to come into compliance. A person who fails to take corrective action as specified in a compliance order is liable for a civil penalty as provided in subsection (3) of this section without receiving a written warning first.

(3) The department may impose civil penalties for violations of chapter 70A.555 RCW or this chapter as follows:

(a) If a person remains in violation after 30 days of receiving a written warning described in subsection (2)(a) of this section, the department may administratively impose a civil penalty in an amount of up to $1,000 per violation per day for a first violation.

(b) If a person fails to comply with a compliance order as described in subsection (2)(b) of this section, the department may administratively impose a civil penalty in an amount of up to $10,000 per violation per day, without first delivering a warning as described in subsection (2)(a) of this section.

(c) For repeated violations the department may impose a civil penalty in an amount up to $10,000 per violation per day.

(4) A person who is issued an order or incurs a penalty under this section may appeal the order or penalty to the pollution control hearings board established by chapter 43.21B RCW within 30 days of the date of receipt.

PROGRAM COLLECTION AND HANDLING REQUIREMENTS

NEW SECTION

WAC 173-905-500 Collection sites and collection events. (1) Each battery stewardship organization must allow any person to discard each chemistry and brand of covered battery at each collection site identified in the stewardship plan, except that medium format batteries and damaged and defective batteries may only be collected at sites with staff who are properly trained to handle those batteries.

(2) **Convenience standards - Portable battery collections.** Each battery stewardship organization shall provide statewide portable battery collection opportunities that include, but are not limited to, the provision of:

(a) At least one permanent collection site within a 15 mile radius for at least 95 percent of Washington residents;

(b) The establishment of collection sites that are accessible and convenient to overburdened communities identified by the department in an amount that is roughly proportional to the number and population of overburdened communities relative to the population or size of the state as a whole;

(c) In addition to the requirements of (a) of this subsection, one permanent collection site for every 30,000 residents of each urban area in this state;

(d) Collection events in areas without a permanent collection site, including service to island and geographically isolated communities; and

(e) Collection opportunities at special locations where batteries are often spent and replaced such as campgrounds, parks with stores, fire stations, homeless shelters, donation centers, schools, and solid waste facilities.

(3) **Convenience standards - Medium format battery collections.** Each battery stewardship organization shall provide statewide medium format battery collection opportunities that include, but are not limited to, the provision of:

(a) At least 25 permanent collection sites in Washington;

(b) Reasonable geographic dispersion of collection sites throughout the state;

(c) A collection site in each county of at least 200,000 persons, as determined by the most recent population estimate of the office of financial management;

(d) The establishment of collection sites that are accessible to public transit and that are convenient to overburdened communities identified by the department; and

(e) Collection events in areas without a permanent collection site, including service to island and geographically isolated communities. A battery stewardship organization shall ensure that there is a collection site or annual collection event in each county of the state.

(4) **Use existing collection services and facilities.** Battery stewardship programs shall use existing public and private waste col-

lection services and facilities, including battery collection sites that are established through other battery collection services, transporters, consolidators, processors, and retailers, where cost-effective, mutually agreeable, and otherwise practicable.

(5) **Use qualifying entities as collection sites.** Battery stewardship programs shall, upon request of an entity that meets the criteria for collection sites in the approved plan, use that entity as a collection site.

(6) **Collection events.** Battery stewardship organizations shall provide collection events at least once per year in each county without a permanent collection site.

(a) Battery stewardship programs shall hold collection events at the location of any entity that requests to participate if the entity meets criteria specified in the approved plan.

(i) All costs associated with a collection event initiated in this manner are the sole responsibility of the requesting entity unless otherwise agreed to by a battery stewardship organization.

(ii) A battery stewardship organization and the requesting entity must agree to terms for the collection event at least 60 days before the event is to take place.

(b) All collection events must be staffed to accept any covered battery for collection, including damaged and defective batteries.

(c) Batteries collected during collection events may be stored on-site for no more than 48 hours after the event has concluded.

(7) **Suspension or termination of a site or service.** A battery stewardship organization may suspend or terminate a collection site or service that does not adhere to the collection site criteria in the approved plan or that poses an immediate health and safety concern.

(8) **Sites at local government facilities not participating in a battery stewardship program.**

(a) A local government facility may collect batteries at its own expense through a collection site or collection event that is not a collection site or event under the program. Using procedures included in an approved battery stewardship plan, a local government facility that collects covered batteries under this subsection shall:

(i) Notify battery stewardship organizations of the local government's decision not to participate in the program;

(ii) Collect all covered batteries at its collection site or sites;

(iii) Collect, sort, package, and transport collected batteries according to the standards established in approved battery stewardship plans;

(iv) Either provide the collected batteries to the battery stewardship organization or transport the batteries directly to a facility that a battery stewardship organization has designated in an approved plan.

(b) A local government facility not participating in the program shall report to a battery stewardship organization the information necessary for the battery stewardship organization to fulfill its reporting obligations under WAC 173-905-150.

NEW SECTION

WAC 173-905-510 General battery disposal and collection requirements. Effective July 1, 2027, for portable batteries and July 1,

2029, for medium format batteries, or the first date on which an approved plan begins to be implemented under this chapter by a battery stewardship organization, whichever comes first:

(1) All persons shall dispose of unwanted covered batteries through one of the following disposal options:

(a) Disposal using the collection sites established by or included in the programs created by this chapter;

(b) For covered batteries generated by persons that are regulated generators of covered batteries under federal or state hazardous or solid waste laws, disposal in a manner consistent with the requirements of those laws; or

(c) Disposal using local government collection facilities that collect batteries consistent with RCW 70A.555.070 (4)(c) and WAC 173-905-500(8);

(2) A fee may not be charged at the time unwanted covered batteries are delivered or collected for management.

(3) Covered batteries collected by the program must be collected, transported, and processed according to the standards established in an approved battery stewardship plan.

(4) A person may not place covered batteries in a waste container for general disposal, or in or on a container for recyclables unless there is a separate location or compartment for the covered battery that complies with local collection standards or guidelines.

(5) Collected batteries must be managed consistent with the prioritization outlined in the battery management hierarchy as defined in WAC 173-905-030.

(6) Collected batteries must be managed using environmentally sound management practices as defined in WAC 173-905-030.

NEW SECTION

WAC 173-905-520 Collection site procedures, safety, and training. (1) **Battery collection and handling standards.** Collection sites shall adhere to the following collection and handling standards:

(a) Collected batteries exhibiting one or more of the dangerous waste characteristics or criteria identified in WAC 173-303-090 or 173-303-100 must be managed consistent with the standards for universal waste management in WAC 173-303-573.

(b) Collection sites must determine whether they meet the definition of a small quantity handler or large quantity handler of universal waste as defined in WAC 173-303-040. Once a collection site determines their status, they must meet the respective standards in WAC 173-303-573.

(c) A collection site that discovers material that is not a covered battery in a collection container becomes the generator and must determine whether the material is dangerous waste as defined under chapter 173-303 WAC and manage the waste accordingly.

(d) During collection and storage, lithium batteries, including both lithium metal and lithium-ion chemistries, must meet terminal protection requirements in a manner that complies with U.S. Department of Transportation shipping requirements in 40 C.F.R. 173.185.

(e) Collection sites shall monitor battery collection containers each operating day for evidence of materials that are not a covered battery and damaged batteries.

(f) The following restrictions apply to damaged and defective battery collection from generators:

(i) Collection sites may not accept damaged batteries with broken or breached cell casings from medium quantity generators and large quantity generators as defined in WAC 173-303-040;

(ii) Collection sites may not accept damaged batteries with broken or breached cell casings from small quantity generators as defined in WAC 173-303-040, unless the site is permitted to manage moderate risk waste under WAC 173-350-360, operates under a permit exemption under WAC 173-350-360, or is a treatment, storage, and disposal facility operating under a permit issued under chapter 173-303 WAC;

(g) For collection sites that collect or discover damaged and defective batteries, those batteries must be:

(i) Separated from all other batteries;

(ii) Stored in a dry environment away from extreme cold and extreme heat;

(iii) Stored separately from flammable and combustible materials;

(iv) Monitored once each operating day for evidence of worsening conditions such as swelling, fire, smoke, gas, melting, cracking, corrosion, leakage, or discoloration;

(v) In a container labeled as "damaged/defective battery"; and

(vi) Sent off-site for recycling or disposal no longer than 90 calendar days from the date of collection or discovery.

(2) **Safety training.**

(a) Collection sites shall inform all employees who handle, or have responsibility for handling, collected covered batteries of proper handling and emergency procedures appropriate to the types of batteries expected to be collected at the site.

(b) Battery stewardship organizations shall provide annual safety training to each collection site used by the program and maintain documentation for a minimum of five years.

(c) A collection site may not accept damaged and defective batteries unless the site is staffed by persons trained to handle damaged and defective batteries.

(3) **Safety information.**

(a) Battery stewardship organizations shall provide safety information related to covered battery collection to the operator of each collection site used by the program. At minimum, the information must include appropriate protocols to reduce the risk of spills or fires and response protocols in the event of a spill or fire, and the information must be updated as needed.

(b) Battery stewardship organizations shall provide all collection sites with safety information related to the discovery of damaged and defective batteries in a collection container.

(c) Collection sites shall establish specific emergency procedures relevant to their site and ensure facility personnel are able to effectively respond to emergencies.

(d) Collection sites shall post signage near the battery collection container with the name and telephone number of an on-site or on-call emergency contact such as a store manager, shift supervisor, or environmental health and safety lead.

(4) **Emergency supplies.** Battery stewardship organizations shall provide each collection site with emergency supplies and equipment appropriate for mitigating risks associated with damaged or defective batteries such as leaks and fires. This includes proper personal protective equipment and containment for damaged and defective batteries.

WSR 26-01-111
PERMANENT RULES
WASHINGTON STATE LOTTERY
[Filed December 16, 2025, 3:12 p.m., effective January 16, 2026]

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

Purpose: Washington's lottery (lottery) is revising Title 315 WAC, Lottery commission. The lottery's amendments update and clarify the claim and payment processes along with general housekeeping including, but not limited to, ensuring cross references are accurate and reflecting changes such as new office addresses.

Citation of Rules Affected by this Order: Amending Title 315 WAC.

Statutory Authority for Adoption: RCW 67.70.040(1).

Adopted under notice filed as WSR 25-20-007 on September 18, 2025.

Changes Other than Editing from Proposed to Adopted Version: One change was made to the proposed language in WAC 315-06-120(15). The proposed language created a "due by" date for the required proof of life form. However, it did not include a "no earlier than" date. Thus, there was no clear time frame given and could potentially result in a winner submitting the form far too early to be effective for the stated reason - to ensure the person was still living at the time they are paid a "for life" prize. For this reason, the commission added "but no earlier than 60 days preceding the annual payment date."

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 65, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 65, 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 65, Repealed 0.

Date Adopted: December 16, 2025.

Kristi Weeks
Director of Legal Services

RDS-6650.1

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-02-010 Washington state lottery commission. The Washington state lottery commission, hereinafter called "the commission," is the commission appointed by the governor pursuant to RCW 67.70.030 ((~~as the regulatory agency charged with the authority and duty to regulate lottery activities~~)) to adopt rules governing the operation of the lottery and advise the director regarding the operation and administration of the lottery.

AMENDATORY SECTION (Amending WSR 87-05-005, filed 2/6/87)

WAC 315-02-020 Time and place of meetings. (1) Regular public meetings of the commission shall be held pursuant to the schedule published annually in the *Washington State Register*. Each such regular meeting shall be held at a time and place designated by the director and published in the meeting agenda.

(2) Additional public meetings necessary to discharge the business of the commission may be called from time to time by the ((~~chairman~~)) chair or by a quorum of the commission.

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-02-050 Director of the Washington state lottery. The director of the Washington state lottery, hereinafter called "the director," is the director appointed by the governor pursuant to RCW 67.70.050, to be responsible for the supervision and administration of the operation of the lottery in accordance with the RCW 67.70.060 and with the rules of the commission. The director may delegate to ((~~his or her~~)) lottery employees such responsibilities as the director may deem necessary to carry out the duties and responsibilities of this chapter.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

WAC 315-02-070 Office of the director activities exempt from Environmental Protection Act. The director has reviewed ((~~his or her~~)) their authorized activities and has found them to be exempt pursuant to WAC 197-11-800.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

WAC 315-02-080 Filing of adopted rules. The commission hereby authorizes each of the following to act as an agent of the commission for the purpose of signing Form CR-103 promulgated by the code reviser for the purpose of filing adopted rules:

(1) Each member of the commission;
(2) Director or designee;
(3) Deputy director; and
(4) Director of legal services.

AMENDATORY SECTION (Amending WSR 93-04-004, filed 1/21/93, effective 2/21/93)

WAC 315-02-230 Claim defined. "Claim" means actual, physical receipt of a ticket, and claim form if necessary under these rules, by

a location authorized to pay the prize sought. Placement of the ticket, and claim form, if necessary, in the United States mail or another mail service does not constitute receipt. The lottery is not responsible for tickets or claims lost or delayed in the mail.

RDS-6651.1

AMENDATORY SECTION (Amending WSR 21-06-052, filed 2/25/21, effective 3/28/21)

WAC 315-04-095 Retailer credit criteria. (1) The director shall deny a lottery retailer license to any applicant whose credit is found to be poor as defined in this section.

(2) The director may grant a lottery retailer license to an applicant whose credit is rated as marginal or minimum as defined in this section. Provided, the director shall require:

(a) Applicants whose credit is rated as marginal as defined in this section to obtain a surety bond, security deposit, or savings certificate under terms and conditions established by the director prior to issuance of the license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond, security deposit, or certificate shall be in the amount of ((~~three thousand five hundred dollars~~)) $3,500 unless the director determines a higher amount is required.

(b) Applicants whose credit is rated as minimum as defined in this section may be required to obtain a surety bond or security deposit under terms and conditions established by the director prior to issuance of a lottery retailer license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or cash shall be in the amount of ((~~three thousand five hundred dollars~~)) $3,500 unless the director determines a higher amount is required, based on financial solvency of the retailer.

(3) In the event the retailer's credit is rated as poor or marginal as defined in this section subsequent to the issuance of the license the director may:

(a) Revoke or suspend a retailer's license; and/or

(b) Require such a retailer to secure a surety bond from a company licensed to do business in the state of Washington, submit a security deposit, or post a savings certificate under terms and conditions established by the director. The surety bond, security deposit, or savings certificate shall be in the amount of ((~~three thousand five hundred dollars~~)) $3,500 unless the director determines, based on sales volume and financial solvency of the retailer, a higher amount is required.

(4) Credit rating is defined as the ability to meet financial obligations when they become due. It includes current reporting accounts payable and public financial record information including, but not limited to, court records and other public records up to three years prior to the lottery's credit check request, and reports from credit bureaus or other credit reporting agencies up to two years prior to the lottery's credit check request. A significant incident may include a lien, judgment, bankruptcy, involuntary collection action, or any similar incident that reflects on the individual's willingness and

ability to pay creditors. A numerical rating of "one" represents excellent credit. A numerical rating of "nine" represents involuntary collection.

(a) A "poor" credit rating indicates public record showing three or more significant incidents within the past three years.

(b) A "marginal" credit rating indicates public record information showing one or more significant incidents within the past three years.

(c) A "minimum" credit rating indicates the information is insufficient for evaluation.

(d) An "acceptable" credit rating indicates that there have been no significant incidents in the public record within the past three years. Provided, at least three accounts must be evaluated in order to receive an "acceptable" rating.

(5) Credit rating checks shall be conducted as follows:

(a) Corporation business credit ratings shall be checked. Personal credit ratings of the corporate officers and owners of ten percent or more equity in the corporation may also be checked.

(b) Sole proprietors and partnership business credit ratings shall be checked. Personal credit ratings of:

(i) The sole proprietor and ((~~his or her~~)) their spouse; or

(ii) All partners and their spouses shall also be checked.

(c) Findings shall be applied in accordance with subsections (1), (2), and (3) of this section.

(d) Financial solvency status for licensees previously required to post a surety bond, security deposit, or savings certificate under this section shall be reviewed annually by the lottery for status improvement and possible reduction or release of the requirement.

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-220 Limited off premises sales permit. (1) The director may permit any lottery retailer who has been issued a general or provisional license to sell tickets in locations other than that specified on its license and to employ persons to make such sales provided that:

(a) A lottery retailer requesting a "limited off premises sales permit" shall submit an application, completed in its entirety, using a form approved by the director.

(b) An application for a "limited off premises sales permit" for lottery tickets must be submitted to the lottery a minimum of ((~~thirty~~)) 30 days prior to the event to provide adequate time for processing. Applications received after these time limits may not be approved.

(c) The geographical area and type of location in which such sales are requested shall be individually approved by the director.

(d) Each lottery retailer making such sales shall be individually approved by the director and shall display identification in such form and manner as shall be prescribed by the director.

(e) The lottery retailer and its employees shall abide by such other instructions and restrictions as may be prescribed by the director to govern such sales.

(2) Lottery retailers must redeem all tickets winning $600 or less presented for redemption at the off premises location and at

their licensed location. The location of the licensed location must be posted at the off premises location. Lottery retailers must also provide claim forms to holders of tickets winning more than $600 at both locations.

(3) The "limited off premises sales permit" shall be valid for not more than ((~~thirty~~)) 30 days and may be renewed twice, if approved by the director, for periods not to exceed ((~~thirty~~)) 30 days each.

(4) Lottery retailers granted "limited off premises sales permits" will not be required to conduct other licensed business activities at the off premises locations.

(5) Lottery retailers granted "limited off premises sales permits" shall bear all costs associated with such sales including but not limited to construction of booths, stands, etc.; telephone line installation; telephone line charges and installation of a dedicated electric circuit, provided, that the director, in ((~~his/her~~)) the director's sole discretion, may agree that the lottery will bear some or all of said associated costs.

RDS-6652.2

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

WAC 315-06-020 Authorization to sell tickets. Lottery retailers are authorized, as limited by WAC 315-04-140, to sell tickets directly to the public. ((~~Liquor stores of the state liquor control board and the lottery are not required to be licensed as lottery retailers. Liquor agencies of the state liquor control board are required to be licensed as lottery retailers.~~))

AMENDATORY SECTION (Amending WSR 18-17-086, filed 8/14/18, effective 9/14/18)

WAC 315-06-040 Disclosure of probability of purchasing a winning ticket. (1) The estimated probability of purchasing a winning ticket shall be conspicuously displayed on:

(a) The tickets for a specific game;

(b) All printed promotional and advertising materials for a specific game((~~,~~)) including, but not limited to, brochures, posters, billboards, placards, and point-of-sale displays.

(2) The estimated probability of purchasing a winning ticket shall be communicated in television and radio commercials for a specific game.

(3) The estimated probability of purchasing a winning ticket for each category of prize in a specific game shall be conspicuously displayed as part of:

(a) The "how-to-play" brochure which explains the procedures for the lottery's draw games; and

(b) The brochures of instructions to lottery retailers for the conduct of specific scratch games.

(4) The disclosure required by this section shall not apply to:

(a) Generic promotional and advertising materials publicizing the Washington state lottery which do not promote a specific draw game or a specific scratch ticket theme; or

(b) Promotional and advertising materials which promote multiple draw or scratch games or any combination of games in a single piece. Materials that promote or advertise multiple games or a combination of games in a single piece are required to include the following language or substantially similar language: "Please visit walottery.com for the latest odds." Such materials may include, but are not limited to, jackpot signs, banners, curb signs, building signage, vehicle wraps, and billboards.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-06-050 Location of sale. (1) Tickets may be sold by the lottery or by any person who is issued a license to act as a lottery retailer at the location specified on the license, subject to the director's authority as set forth in chapter 67.70 RCW, and these rules.

(2) No sales of lottery tickets shall be made on premises used primarily for residential purposes, in or on the property of any educational facility, or facility operated primarily for providing welfare services to the poor or infirmed, or maintained solely for religious worship.

(3) No sales of lottery tickets shall be made via an internet transaction or lottery courier service.

AMENDATORY SECTION (Amending WSR 86-01-060, filed 12/16/85)

WAC 315-06-060 Price of tickets—Limitations. No lottery retailer may sell a ticket at a price greater or less than that established in accordance with these rules. Service charges, convenience fees, or other charges in addition to the ticket price are prohibited.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-06-075 Game sell-out. No Washington state lottery retailer shall sell, and no purchaser shall purchase, a ticket or combination of draw game lottery tickets((~~, which~~)) that would guarantee the purchaser a jackpot or grand prize((~~, and in accordance with chapter 315-30 WAC~~)).

AMENDATORY SECTION (Amending WSR 99-04-077, filed 2/2/99, effective 3/5/99)

WAC 315-06-085 ((~~Hand-marked play slips.~~)) Entering plays. Plays may only be entered manually using the lottery terminal keypad

or lottery vending machine, or by means of a play slip provided by the lottery and hand-marked by the player. Retailers shall not permit the use of facsimiles of play slips, copies of play slips, or other materials that are inserted into the terminal's play slip reader that are not printed or approved by the lottery. Retailers shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the lottery.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-06-090 Video machines prohibited. ((~~Coin-operated,~~)) Instant video games ((~~which~~)) that pay out prizes, either by skill or chance, shall not be used in the conduct of games((~~,~~)) pursuant to RCW 67.70.040 (1)(a).

AMENDATORY SECTION (Amending WSR 10-16-025, filed 7/23/10, effective 8/23/10)

WAC 315-06-120 Payment of prizes—General provisions. (1) The director may designate claim centers for the filing of prize claims, and the location of such centers shall be publicized from time to time by the director.

(2) A claim shall be entered in the name of one claimant, which shall be either a natural person, association, corporation, general or limited partnership, club, trust, estate, society, company, joint stock company, receiver, trustee, or another acting in a fiduciary or representative capacity whether appointed by a court or otherwise. A claim ((~~which~~)) that includes one or more tickets with an address label or stamp on the back of the ticket shall be deemed to have been entered in the name of one claimant: Provided, That if the address label or stamp contains the name of more than one claimant, the prize payment will be made to the one who has signed the ticket and/or claim form or, if there is no signature, to the first claimant listed on the address label or stamp. If there are two or more claimant names written or signed on the ticket, lottery personnel shall return the ticket(s) to claimants and shall request that the claimants sign a notarized statement relinquishing ownership to one claimant. The claimant must submit ((~~his or her~~)) the claimant's valid government-issued identification and Social Security number (SSN) or the federal employer's identification number (FEIN) when claiming any prize exceeding ((~~six hundred dollars~~)) $600. "Valid government-issued identification" means any of the following that is either unexpired or has expired less than 90 days before the date of the claim:

(a) Driver's license or identification card issued by a U.S. state or territory;

(b) Driver's license or identification card issued by any province of Canada;

(c) Passport issued by the United States or a foreign government;

(d) U.S. military identification card;

(e) Global entry card;

(f) Other government-issued identification, including a tribal enrollment card, if the identification includes the person's name, date of birth, signature, and photograph.

(3) A claim may be entered in the name of a claimant other than a natural person only if the claimant is a legal entity and possesses a federal employer's identification number (FEIN) as issued by the Internal Revenue Service, such number is shown on the claim form, and the entity's terms comply with subsection (4) of this section. Groups, family units, organizations, clubs, or other organizations ((~~which~~)) that are not a legal entity, or do not possess a federal employer's identification number, shall designate one natural person or one legal entity in whose name the claim is to be entered.

(4) The terms governing a claimant other than a natural person, i.e., articles of incorporation, trust terms, etc., shall be submitted to the director or designee for approval. Terms not in compliance with lottery statutes or rules shall not be approved. Payment shall not be made to a claimant other than a natural person until the director has approved the terms.

All claimants other than natural persons shall have governing terms ((~~which~~)) that:

(a) Prohibit deletion, amendment, or addition of terms prior to the full payout of the prize without the director's approval;

(b) State the names of all natural persons who have a direct or indirect right or interest in the claimant, each of their percentage interests, and their Social Security numbers;

(c) Acknowledge that the debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be applied to the natural persons who hold interests in the claimant through their Social Security numbers; and

(d) Provide that in the event the claimant ceases to exist prior to the full payout of the prize, the lottery will not make further payment without court order.

(5) The lottery shall not make payment to a claimant other than a natural person unless the terms governing the claimant include those enumerated in subsection (4) of this section.

(6) Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and/or complete and sign a claim form approved by the director. The claimant shall submit the claim form and/or claimant's ticket to the lottery in accordance with the director's instructions as stated in the game brochure and/or on the back of the ticket or submit a request for reconstruction of an alleged winning ticket and sufficient evidence to enable reconstruction and that the claimant had submitted a claim for the prize, if any, for that ticket. The claimant, by submitting the claim or request for reconstruction, agrees to the following provisions:

(a) The discharge of the state, its officials, officers, employees, and the commission of all further liability upon payment of the prize; and

(b) The authorization to use the claimant's name and, upon written permission, photograph for publicity purposes by the lottery.

(7) A prize must be claimed within the time limits prescribed by the director in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later than ((~~one hundred eighty~~)) 180 days, except a shared game lottery, if applicable, after the official end of that instant game or draw game drawing for which that draw game ticket was purchased.

(8) The director may deny awarding a prize to a claimant if:

(a) The ticket was not legally issued initially;

(b) The ticket was stolen from the commission, director, its employees or retailers, or from a lottery retailer; ((~~or~~))

(c) The ticket was purchased or obtained through an internet transaction or lottery courier service; or

(d) The ticket has been altered or forged, or has otherwise been mutilated such that the authenticity of the ticket cannot be reasonably assured by the director.

(9) No natural person or legal entity entitled to a prize may assign the right to payment, except under the following limited circumstances:

(a) That payment of a prize may be made to any court appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court appointed assignees; and

(b) When payment of all or part of the remainder of an annuity and the right to receive future annual prize payments has been voluntarily assigned to another person, pursuant to an appropriate judicial order that meets the requirements of RCW 67.70.100(2) and WAC 315-06-123.

(10) In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the director may refrain from making payment of the prize pending a final determination by the director or by a court of competent jurisdiction relative to the same.

(11) A ticket that has been legally issued by the lottery or a lottery retailer is a bearer instrument until signed. The person who signs the ticket or has possession of an unsigned ticket is considered the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the state, its officials, officers, and employees and of the commission, director and employees of the commission terminates upon payment.

(12) All prizes shall be paid within a reasonable time after the claims are validated by the director and a winner is determined. Provided, prizes paid for claims validated pursuant to WAC 315-10-070(2) shall not be paid prior to ((~~one hundred eighty-one~~)) 181 days after the official end of that instant game.

(13) The date of the first installment payment of each prize to be paid in installment payments shall be the date the claim is validated, or the date the winner makes a choice of payment by annual payments or by single cash payment ((~~pursuant to WAC 315-34-057~~)), if applicable. Subsequent installment payments shall be made as follows:

(a) If the prize was awarded as the result of a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date of the drawing in accordance with the type of prize awarded.

(b) If the prize was awarded in a manner other than a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date the claim is validated in accordance with the type of prize awarded.

(14) The director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim or any other matter that may have come to ((~~his or her~~)) the director's attention. All delayed payments shall be brought up to date immediately upon the director's confirmation and continue to be paid on each originally scheduled payment date thereafter.

(15) If any prize is payable for the life of the winner, only a natural person may claim such a prize. Such "win for life" type prizes

shall cease upon the death of the winner or the end of a guaranteed payment period (if any), whichever is later. Win for life prizes may be assigned; and the following conditions apply to such assignments:

(a) The original winner's actual life shall determine when prize payments cease; ((~~and~~))

(b) The original winner shall verify, on a form provided by the lottery, that they continue to be entitled to their annual lifetime prize. The notarized form must be provided to the lottery at least 30 days preceding the annual payment date but no earlier than 60 days preceding the annual payment date. Failure to timely submit the notarized form may result in the payment being delayed or forfeited; and

(c) The assignee shall be responsible for notifying the lottery of the original winner's death.

(16) The director's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery.

(17) To the extent feasible, each lottery retailer shall pay all prizes authorized to be paid by the lottery retailer by these rules during its normal business hours at the location designated on its license.

(18) In the event a dispute between the director and the claimant occurs as to whether the ticket is a winning ticket, and if the ticket prize is not paid, the director may, solely at ((~~his or her~~)) the director's option, replace the disputed ticket with an unplayed ticket (or tickets of equivalent sales price from any game). This shall be the sole and exclusive remedy of the claimant.

(19) At the director's discretion, the lottery may designate an alternative payment date for prize payment.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-06-123 Voluntary assignment of prize pursuant to an appropriate judicial order. (1) In the case of a petition for an order or an amended order for the voluntary assignment of a prize, a copy of a petition shall be served on the director of the lottery or designee, in addition to service on the attorney general, no later than ((~~ten~~)) 10 days before any hearing or entry of any order or amended order. After superior court entry of voluntary assignment of a right to a prize pursuant to an appropriate judicial order or amended order, the director shall make payment to the person designated by a certified copy of the order or amended order which has been served upon the director personally or by certified mail provided that the order contains, in addition to the requirements set forth in RCW 67.70.100(2), the following provisions:

(a) The assignor's name. For an initial assignment, the winner's name as it appears on the prize claim form;

(b) The assignee's name and address;

(c) The citizenship or resident alien number of the assignee (if a natural person).

(2) The certified copy of the order must be served on the director at least ((~~twenty~~)) 20 working days prior to the annual payment date to allow for a change in the payee. The director shall not be liable for failure to pay an annual payment to an assignee if service of

the order and presentation of the required information for tax withholding purposes described in subsection (3) of this section is not timely made.

Lifetime cash winners may assign nonguaranteed payments provided that the original winner has properly verified they are still eligible to receive their prize ((~~pursuant to WAC 315-36-110(5)~~)). The lottery's obligation to issue assigned payments shall terminate upon the death of the original winner.

(3) Payment shall be made payable to the name and address of the assignee designated in the judicial order and to no other name or address. Federal income tax withholding shall be deducted from each payment and reported to the Internal Revenue Service. The assignee shall provide its Social Security number, if a natural person, or tax identification number, if a legal entity, to the director at the time the judicial order is served for the purpose of reporting tax withholding to the Internal Revenue Service and for the purpose of applying the debt collection process as described in subsection (5) of this section.

(4) RCW 67.70.100 authorizes the director to charge actual costs for each assignment and deduct such costs from the initial annuity payment made to the assignee. In determining actual costs the director has considered the staff time required to determine the sufficiency of the judicial order or amended order and to process the initial payment; telegraphic and long distance telephone communications, photocopying, postage, and private delivery service; and legal services directly related to determining the sufficiency of the judicial order and processing of the initial payment, including legal services and costs associated with any legal proceeding in which the agency is represented by the office of the attorney general. The director has determined the following costs shall be deducted from the initial annuity payment made to each assignee, unless paid pursuant to subsection (e):

(a) Assignment of whole annuity payments (one or more years) resulting in payment only to the assignee during each year of the assignment: $250; or

(b) Assignment of a portion/percentage of annuity payments resulting in annual payments to one or more assignees and/or the original prize winner: $300 for the first year of the assignment, plus $75 for each year thereafter;

(c) Assignment pursuant to an amended order of assignment, resulting in annual payments to the same number of assignees as in the original order: $250;

(d) Assignment pursuant to an amended order of assignment, resulting in annual payments to one or more assignees in addition to the assignees in the original order of assignment: $300 for the first year of the amended order of assignment, plus $75 for each year thereafter;

(e) If payment of the total fees due for costs for processing an order or amended order is received by the lottery together with and at the same time as the required certified copy of the order or amended order, the fees will not be deducted from annual payments;

(f) The director shall review these costs at least biennially from December 1, 1997, and shall recommend adjustments, if necessary, for commission consideration and approval.

(5) The debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be applied to all payments made to any person pursuant to a voluntary assignment. ((~~The term person shall have the same meaning as the definition set forth in WAC 315-02-180.~~))

(6) The term "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-06-125 Debts owed the state. (1) The terms used in RCW 67.70.255 and these regulations are defined as follows:

(a) Creditor - Any state agency or political subdivision of this state that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect.

(b) Debt - A judgment rendered by a court of competent jurisdiction or obligations established pursuant to RCW 50.20.190, 51.32.240, 51.48.140, 74.04.300, 74.20A.040, 74.20A.055 and 82.32.210 or administrative orders as defined in RCW 50.24.110, 51.32.240, 51.48.150, and 74.20A.020(6).

(c) State - The state of Washington.

(d) Two working days - Two days not to include Saturdays, Sundays, and holidays as defined in RCW 1.16.050 commencing the day following the date the claim was validated by the lottery.

(e) Verification - A facsimile or photo copy of a judgment or final order received by the lottery during the requisite two working day period.

(f) Individual - A natural person.

(2) Any creditor may submit, to the lottery, in a format specified by the director, debt information required by the *Revised Code of Washington*. Debt information medium which do not contain the required information or are not in the proper format will be returned to the creditor. The creditor submitting debt information shall provide replacement debt information medium on a regular basis at intervals not to exceed one month or less than one week. The creditor shall be solely responsible for the accuracy of the information contained therein.

(3) Creditors submitting debt information medium in the proper format to the lottery shall also submit the name or names of designated contact persons.

(4) The lottery shall include the debt information submitted by the creditor in its validation and prize payment process. The lottery shall delay payment of a prize, exceeding ((~~six hundred dollars~~)) $600, for a period not to exceed two working days, to any individual prize winner or to any other prize winner which has an individual holding a direct or indirect interest in the prize winner, and who owes a debt to a creditor pursuant to the information submitted in subsection (2) of this section. The lottery shall make a reasonable attempt to contact the creditor's designated contact person(s) by phone, followed by written correspondence, including email, to verify the debt. Three phone calls, excluding busy signals, shall constitute a reasonable attempt. The prize shall be paid to the prize winner if the debt is not verified by the submitting creditor within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (9) of this section.

(5) It shall be the obligation of the prize winner to provide the lottery with the names, Social Security numbers, and percentage interests of the individuals who collectively hold one hundred percent of the interest in the prize.

(6) Where an individual holds an interest in a prize claimed by another individual, the lottery must be informed of that interest, its percentage and the Social Security number (SSN) of the nonclaimant individual who holds the interest, prior to the validation and prize payment process described herein; otherwise, the Social Security number of the claimant individual and the full net amount of the prize will be used in completing the processing required under this section.

(7) Where the right to payment to an individual who holds an interest in a prize winner is discretionary with a third party or is contingent, the tax ID number of the prize winner shall be used in completing the processing required under this section, rather than the Social Security number of said individual.

(8) A creditor shall verify the debt by submitting to the lottery at lottery headquarters in Olympia, Washington within the requisite two working day period, a facsimile or photocopy of a judgment or final order which is the basis for the debt.

(9) Prior to disbursement, any verified debts owed to a creditor by the individual winner of any lottery prize exceeding ((~~six hundred dollars~~)) $600 or by an individual holding more than a ((~~six hundred dollar~~)) $600 interest in a prize winner shall be set off against the prize owing to the individual or against the proportionate interest of the individual in the prize winner. In the event a prize winner or an individual holding more than a ((~~six hundred dollar~~)) $600 interest in a prize winner owes debts to more than one creditor, and the total prize to that winner or individual is insufficient to pay all debts, the set off shall be paid to the creditors on a pro rata basis based on the amount of debt owed to each creditor unless priority is established by statute.

(10) No prize shall be paid to any person who claims a prize on behalf of, or at the request of, another person with the intent to avoid a debt under RCW 67.70.255 or this section.

AMENDATORY SECTION (Amending WSR 94-03-020, filed 1/7/94, effective 2/9/94)

WAC 315-06-190 Erroneous or mutilated tickets. (1) Tickets erroneously ((~~made out~~)) printed or in any way mutilated when received by a lottery retailer ((~~are to~~)) must be returned by the lottery retailer immediately to the director. Credit may be allowed for said tickets but only if the authenticity of the tickets can be reasonably determined by the director. Credit will not be allowed if said tickets were previously validated or a validation attempt was made.

(2) Unless the director is satisfied that a mutilated ticket is authentic, no credit or prize will be issued to the holder of said ticket.

AMENDATORY SECTION (Amending WSR 21-11-063, filed 5/14/21, effective 6/14/21)

WAC 315-06-220 Voluntary self-exclusion. (1) The voluntary self-exclusion program is established for the purpose of allowing persons to exclude themselves from lottery play and related activities. Each person who enrolls in the voluntary self-exclusion program ac-

knowledges that it is their responsibility to refrain from engaging in lottery play and other related activities.

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

(a) "Director" means the director of the Washington state lottery commission.

(b) "Excluded prize" means: (i) Any monetary, promotional, or merchandise prize valued at more than $600; and (ii) any monetary, promotional, or merchandise second chance drawing prize regardless of value.

(c) "Lottery" means the Washington state lottery commission, otherwise known as Washington's lottery.

(d) "Lottery play" means purchase, play, or redemption of lottery tickets or games.

(e) "Lottery related activities" or "related activities" include, but are not limited to: Promotions, second chance promotions or drawings, events, and participation in the lottery's loyalty program.

(f) "Merchandise prize" means a prize offered by the lottery that is a product, experience, or service other than a monetary prize. Merchandise prizes include gift cards.

(g) "Monetary prize" means a prize offered by the lottery that is payable as a check, bank transfer, or annuity.

(h) "Participant" means a person who has enrolled in the program.

(i) "Prize" means any award, financial or otherwise, awarded by the director. Prizes may include any monetary amount, merchandise item, or experience offered by the lottery.

(j) "Promotion" means a time-limited opportunity for a player to receive a prize or other benefit not typically offered by the lottery, the purpose of which is to promote a certain lottery product, activity, partnership, or event.

(k) "Second chance lottery promotion" or "second chance drawing" means a drawing or promotion wherein a player must submit a nonwinning lottery ticket in order to be eligible to win a prize.

(l) "Voluntary self-exclusion program" or "program" means the voluntary self-exclusion program authorized under RCW 67.70.040, and does not apply to any form of gambling other than the lottery.

(3) Enrollment. A person may enroll in the program in person or by mail.

(a) In person at a lottery office by:

(i) Submitting a completed application on a form provided by the lottery;

(ii) Providing proof of identity. Acceptable forms of identification are: A valid driver's license from any state; a government-issued identification card containing the person's name, photograph, signature, and date of birth; or a valid United States or Canadian passport; and

(iii) Any other documentation required by the director.

(b) Through the mail by:

(i) Submitting a completed application on a form provided by the lottery. The form must be notarized;

(ii) Providing proof of identity. Acceptable forms of identification are a copy of: A valid driver's license from any state; a government-issued identification card containing the person's name, photograph, signature, and date of birth; or a valid United States or Canadian passport; and

(iii) Any other documentation required by the director.

(4) Period of enrollment.

(a) At the time of enrollment, the participant shall select a one-, three-, or five-year period of voluntary self-exclusion.

(b) At the time of enrollment, the participant may select the effective date of participation. If no date is selected, the effective date shall be the next business day after enrollment.

(c) Once enrolled, the participant shall not change the effective date or term of enrollment, except to extend the period of enrollment pursuant to subsection (5) of this section.

(d) Once enrolled, the participant shall not exit the program prior to termination of the selected period of voluntary self-exclusion.

(5) Termination, extension, and renewal of enrollment. Upon expiration of the selected period of enrollment, the participant will be removed from the program. The participant may extend their current enrollment by submitting a new application as required in subsection (3) of this section at least ((~~thirty~~)) 30 days prior to expiration of the current enrollment period. A participant may reenroll in the program at any time following expiration of the current enrollment period by submitting a new application as required in subsection (3) of this section.

(6) Voluntary self-exclusion.

(a) During the period of enrollment, the participant acknowledges and agrees:

(i) The participant will not participate in lottery play or related activities;

(ii) The participant will not claim, redeem, or collect any excluded prize;

(iii) The participant will not create or maintain a lottery loyalty program account; and

(iv) Points or benefits accrued in the participant's existing loyalty program account, if any, will expire based on established expiry date(s) and no refund or replacement shall be provided by the lottery.

(b) Participants shall not be entitled to claim, redeem, or collect any excluded prize. In the event a participant attempts to claim, redeem, or collect an excluded prize during the period of enrollment, monetary prizes will be forfeited to the problem gambling account created in RCW 41.05.751 after payments of any debt under RCW 67.70.255. Taxes will be withheld and reported to the Internal Revenue Service for any portion of an excluded prize used to satisfy a debt. Merchandise prizes will be retained by the lottery.

(c) The lottery will take all reasonable steps to remove the participant from existing promotional mailing lists, electronic distribution lists, or other promotional listings.

(d) The program is intended to assist participants in controlling their gambling habits and promote responsible gambling. The lottery, its licensees, retailers, vendors, agents, contractors, and employees are not liable for damages in any civil action by any person based on:

(i) Compliance or noncompliance with this chapter;

(ii) An action or failure to act under this chapter;

(iii) Failure to withhold lottery privileges from an individual;

(iv) Permitting a participant to engage in lottery play or related activities; or

(v) Payment of a winning lottery prize to a participant.

(e) Information submitted by a participant related to the program is exempt from public inspection and copying pursuant to RCW 42.56.230. De-identified information may be released for statistical

or research purposes. For purposes of this section, "de-identified" means captured personal information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular individual.

RDS-6653.1

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-08-010 Expenditure and transfer limits—State lottery account. (1) At the outset of ((~~fiscal year 1991, and at the outset of~~)) each biennium ((~~after fiscal year 1991~~)), the commission shall determine by resolution the following:

(a) The total amount of moneys which may be transferred from the state lottery account to the state's general fund and to the lottery administrative account, pursuant to legislative appropriation; and

(b) The total amount of moneys which may be expended from the state lottery account for each of the following purposes:

(i) Payment of retailer compensation;

(ii) Payment of prizes (which shall not be less than ((~~forty-five~~)) 45 percent of gross annual revenue of the lottery);

(iii) Online vendor payments;

(iv) Online telecommunications payments;

(v) Instant game vendor payments;

(vi) Promotion/advertising; and

(vii) Any other purposes required by law.

(2) The commission may amend by resolution the amounts determined under this section based on changes in the revenue stream and/or program requirements.

(3) The director may exceed approved totals when necessary for sales volume-related expenses provided that such expenditures are reported in the next regularly scheduled financial report to the commission.

AMENDATORY SECTION (Amending WSR 90-11-040, filed 5/10/90, effective 6/10/90)

WAC 315-08-030 State lottery account—Director's responsibilities. The director may transfer and expend moneys as ((~~he/she~~)) the director deems appropriate within the totals determined pursuant to WAC 315-08-010 and shall perform all functions necessary for the administration and operation of the state lottery account.

RDS-6654.1

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-10-010 Instant games—Authorized—Director's authority. The director shall:

(1) Select, operate, and contract relating to and for the operation of instant games meeting the criteria set forth in this chapter.

(2) Establish final instant game specifications, including the determination of winning tickets, in executed working papers or software requirement specifications((~~,~~)) and keep the portions of these documents that are subject to public disclosure available for ((~~one hundred eighty~~)) 180 days after the end of each game for public review during normal business hours.

(3) Inform commission members of instant game development.

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

WAC 315-10-020 Definitions. (1) Ticket. The ticket purchased for participation in an instant game and any ticket used in media promotions and retailer incentive programs authorized by the director for an instant game.

(2) Instant game. A game in which a ticket is purchased and the ticket bearer determines ((~~his or her~~)) the winnings, if any.

(3) Ticket bearer. The person who has signed the ticket or has possession of the unsigned ticket.

(4) Play symbols. The numbers or symbols appearing in the designated areas on the front and or the back of the ticket. Play symbols were formerly called play numbers. Both terms shall have the same meaning.

(5) Your(s). The ticket bearer's play area or areas (for example, "your hand(s)," "your card(s)," or "your roll(s)").

(6) Their(s). The opponent's play area or areas (for example, "their card(s)," or "their roll(s)").

(7) Validation number. The multidigit number found on the ticket and on any ticket stub. There must be a validation number on the ticket or any stub.

(8) Working papers or software requirement specifications. The documents providing production and winning ticket specifications for each instant ticket game.

(9) Scratch game. An instant game in which a ticket is purchased and, upon removal of a scratch-off coating on the front and or the back of the ticket, the ticket bearer determines his or her winning, if any.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-10-022 Essential elements of instant game tickets. The director shall establish in executed working papers or software requirement specifications for each instant game the specific form and

location in which the following essential elements shall appear on each instant game ticket:

(1) **Play field** is generally the area that may contain play symbols, play symbol captions, prize symbols, prize symbol captions, and validation numbers;

(2) **Play spots** are the specific areas where play symbols are located;

(3) **Play symbols** are symbols, letters, or numbers appearing in each play spot of a ticket;

(4) **Play symbol captions** are small printed characters generally associated with each play symbol which may appear on the play field and correspond with and verify that play symbol. These captions spell out, in full or abbreviated form, the play symbol. There is only one play symbol caption for each play symbol, and each play symbol caption is associated with the three-digit ticket number;

(5) **Prize symbols** may be numeric or symbolic representations, printed either in a display printed prize legend or on the play field, which indicate the amount of money a player may win;

(6) **Prize symbol captions** may be small printed characters generally associated with each prize symbol appearing on the play field which correspond to and verify that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol;

(7) **Validation number** is a unique multidigit number on the ticket;

(8) **Pack-ticket number** is a number that may include the game, pack and ticket identifier;

(9) **Retailer verification code** is the code on the ticket that the lottery retailer uses to verify instant winners; and

(10) **Odds of winning** any prize shall always appear on the back of the ticket.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-10-024 Methods of selecting winning tickets. (1) Methods for selecting winning tickets may be as set forth on the instant game ticket and in the executed working papers or software requirement specifications. Methods for selecting winning tickets may include:

(a) Higher number. Your (the player's) number is greater than their (the opponent's) number.

(b) Match one or more. Match your play symbols to the winning play symbol(s).

(c) Bonus play. Find a bonus symbol to win a bonus prize instantly.

(d) Match two or more consecutive. Match two or more consecutive "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the ticket.

(e) Match two or more. Match two or more "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the legend on the ticket.

(f) Three like cards. Get three like cards with one hand to win the corresponding amount shown on the ticket.

(g) Grand prize drawing. Find a bonus symbol that qualifies you to enter a grand prize drawing or submit one or more nonwinning tickets to enter a grand prize drawing.

(h) Match symbols. Match a specified number of identical play symbols on a play area.

(i) Add up "yours." Add up the play symbols designated as "yours" and the total is greater than, less than or equal to the symbol or symbols designated as "theirs."

(j) Add up. Add up the play symbols and the amount is greater than or equal to the designated symbols on the ticket.

(k) Tic tac toe. Match three identical play symbols, in a row, column, or diagonal, on a grid in the play area.

(l) Sequence. Find the designated play symbols in the specified sequential order.

(m) Spellout. Find the play symbols to form the designated word or words.

(n) In between. Find the play symbol or symbols designated as "yours" with a value less than the play symbol or symbols designated as "their high value" and greater than the play symbol or symbols designated as "their low value."

(2) Each of the methods described in subsection (1) of this section may include a special variant such as "automatic win feature," "doubler," "wild card," or "free space" that provides added or alternative methods of winning.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-10-035 Winning an instant game ticket. (1) Each instant ticket shall be printed with instructions clearly indicating what constitutes a winning ticket. In addition, written descriptions of winning play and prize symbol combinations shall be included in the executed working papers or software requirement specifications for the production of each game. The ticket bearer must submit the winning ticket to the lottery as specified by the director. The winning ticket must be validated by the lottery through use of the validation number or any other means as specified in WAC 315-10-070 or by the director.

(2) The status of a winning or nonwinning ticket is determined as indicated in the executed working papers or software requirement specifications. No action or inaction of a player when scratching the ticket influences whether the ticket is a winner or nonwinner.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-10-055 Redemption time. (1) A player may submit a winning ticket for prize payment up to ((~~one hundred eighty~~)) 180 days after the official end of game or ((~~one hundred eighty~~)) 180 days from date of purchase of a computer generated ticket.

(2) In order to participate in a grand prize drawing in which the entry is the submittal of one or more winning or nonwinning tickets, a player must redeem and submit such a ticket or tickets or ticket information within the time limits set forth in chapter 315-06 WAC gov-

erning the conduct of that specific game or within the time limits set forth by the director in the game rules or instructions.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-070 Ticket validation requirements. (1) To be a valid Washington state lottery instant game ticket, a ticket must meet all of the following validation requirements.

(a) The ticket must have been issued by the director in an authorized manner.

(b) The ticket must not be sold or transferred in an unauthorized manner.

(c) The ticket must not be altered, unreadable, or tampered with in any manner.

((~~(c)~~)) (d) The ticket must not be counterfeit in whole or in part.

((~~(d)~~)) (e) The ticket must not be stolen nor appear on any list of omitted tickets on file with the lottery.

((~~(e)~~)) (f) The ticket must be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

((~~(f)~~)) (g) If play symbol and play symbol captions are present in the playfield, the ticket must have at least one play symbol and at least one play symbol caption under each play spot. Play symbols must be present in their entirety, legible, right-side up, and not reversed in any manner.

((~~(g)~~)) (h) The ticket must have at least one pack-ticket number or serial number, exactly one retailer verification code, and exactly one validation number. These elements must be present in their entirety, legible, and not reversed in any manner.

((~~(h)~~)) (i) The validation number of an apparent winning ticket shall appear on the lottery's official list of validation numbers of winning tickets; and a ticket with that validation number shall not have been previously paid.

((~~(i)~~)) (j) The ticket must pass all additional confidential validation requirements, if any, established by the director.

(2) The director may authorize reconstruction of an alleged winning ticket which was not received and/or cannot be located by the lottery; provided, that the person requesting reconstruction submits to the lottery sufficient evidence to enable reconstruction and that they have submitted a claim for the prize, if any, for that ticket. If the reconstructed ticket is a winning ticket and meets the validation requirements contained in subsection (1) of this section and the specific validation requirements contained in the rules for its specific game, the director may authorize payment of the prize; provided, that the ticket shall not be validated nor the prize paid prior to one hundred eighty days following the official end of that instant game. A ticket(s) validated pursuant to this subsection shall not entitle the claimant entry into the grand prize drawing, if any, for that or any subsequent instant game.

(3) Any ticket not passing all the validation requirements in subsection (1) of this section and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize.

(4) The director may replace any invalid ticket with an unplayed ticket of equivalent sales price from any current instant game. In the event a defective ticket is purchased, the only responsibility or liability of the lottery shall be the replacement of the defective ticket with an unplayed ticket of equivalent sales price from any current instant game, or issue a refund of the sales price. However, if the ticket is partially mutilated or if the ticket is not intact but it still can be validated by other validation tests, the director may pay the prize for that ticket.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-10-075 Claiming an instant game prize. Procedures for claiming instant game prizes are as follows:

(1) To claim an instant game prize of $600((~~.00~~)) or less the claimant may either present the apparent winning ticket to any lottery retailer regardless of where the ticket was purchased, or may present the apparent winning ticket to the lottery by mail or in person, or as otherwise authorized by the director. When a retailer is presented with a claim under this section, the retailer shall verify the claim and, if acceptable, make payment of the amount due the claimant. The prizes shall be paid during all normal business hours of that retailer provided that claims can be validated on the lottery's terminal. A retailer may pay prizes in cash or by business check, certified check, money order, or other payment method authorized by the director and acceptable to the claimant. The retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the retailer's account.

(2) In the event the retailer cannot verify the claim, the claimant shall present a claim to the lottery by mail ((~~or~~)), in person, or as otherwise authorized by the director. If the claim is validated by the lottery, funds shall be forwarded to the claimant in payment of the amount due. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(3) To claim an instant prize of more than $600((~~.00~~)), the claimant shall complete a claim form, as provided in WAC 315-06-120, which is obtained from the lottery retailer or the lottery and mail or present in person, or as otherwise authorized by the director, the completed form together with the apparent winning ticket to the lottery. Upon validation by the director, funds shall be forwarded or presented to the claimant in payment of the amount due, less any applicable federal income tax withholding and deductions pursuant to RCW 67.70.255 and WAC 315-06-125. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(4) To claim an instant prize pursuant to WAC 315-10-070(2), the claimant shall notify the lottery of the claim and request reconstruction of the ticket not later than ((~~one hundred eighty~~)) 180 days after the official end of that instant game or ((~~one hundred eighty~~)) 180 days from purchase of a computer generated ticket. If the director authorizes reconstruction, the ticket shall not be validated nor the prize paid prior to ((~~one hundred eighty~~)) 180 days following the official end of that instant game or ((~~one hundred eighty~~)) 180 days

from purchase of a computer generated ticket. A ticket(s) validated pursuant to WAC 315-10-070(2) shall not entitle the claimant entry into the grand prize drawing, if any, for that or any subsequent instant game.

(5) Any ticket not passing all the validation checks specified by the director is invalid and ineligible for any prize and shall not be paid. However, the director may, solely at ((~~his or her~~)) the director's option, replace an invalid ticket with an unplayed ticket (or tickets of equivalent sales price from any other current game). In the event a defective ticket is purchased, the only responsibility or liability of the director shall be the replacement of the defective ticket with another unplayed ticket (or tickets of equivalent sale price from any other current game).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 315-10-065	Return of instant game tickets by state liquor control board outlets.

RDS-6655.1

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-12-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state lottery commission and the office of the director, Washington state lottery, with the provisions of ((~~RCW 42.56.040 - 42.56.550, dealing with public records~~)) the Public Records Act, chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 10-16-025, filed 7/23/10, effective 8/23/10)

WAC 315-12-030 Description of central and field organization of the commission and the director. The administrative office of the commission and director is located at 814 - 4th Avenue, Olympia, WA 98506. Regional offices of the director located in other cities are as follows:

CITY	SERVICES
EVERETT REGION 11419 19th Avenue S.E. Suite A106 Everett, WA 98208	(a) Sales Representative (b) Payout Center (c) Ticket Sales
OLYMPIA ((~~REGION~~)) HEADQUARTERS 814 - 4th Avenue Olympia, WA 98506	(a) Sales Representative (b) Payout Center (c) Ticket Warehousing (d) Ticket Sales

CITY	SERVICES
FEDERAL WAY REGION 33701 9th Avenue S Federal Way, WA 98003-6762	(a) Sales Representative (b) Payout Center (c) Ticket Sales
SPOKANE REGION ((~~East 10517 Sprague Avenue~~)) NorthTown Mall 4750 N. Division St. Ste. 1009 Spokane, WA 99206-3631	(a) Sales Representative (b) Payout Center (c) Ticket Sales
VANCOUVER REGION ((~~El Camino Fountain Shopping Mall Suite 4~~)) 1503 N.E. 78th Street Vancouver, WA 98665	(a) Sales Representative (b) Payout Center (c) Ticket Sales
((~~YAKIMA~~)) TRI-CITIES REGION ((~~9 South 5th Yakima, WA 98901~~)) 8551 W. Gage Blvd. Ste. K Kennewick, WA 99336	(a) Sales Representative (b) Payout Center (c) Ticket Sales

All records of the commission and director are maintained in the administrative office in Olympia.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-12-050 Public records available. All public records of the lottery, its commission and director are available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.56.070, 42.56.210, 42.56.540, ((~~WAC 315-12-100,~~)) and other applicable laws.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-12-060 Public records officers. The ((~~lottery, its commission and director~~)) lottery's public records shall be in the charge of the public records officer(s) as designated by the director. The person(s) so designated shall be located in the administrative office of the director. The public records officer(s) shall be responsible for the following: The implementation of the commission's rules regarding release of public records, coordinating the staff of the director in this regard, maintaining, keeping current, and publishing an index of all agency records as required by RCW 42.56.070 and WAC 315-12-140((~~,~~)); and generally ensuring compliance by the staff with the public records disclosure requirements of chapter 42.56 RCW.

NEW SECTION

WAC 315-12-085 Player information (1) All personal and financial information concerning a player that is received or maintained by the lottery or any contracted lottery vendor except the player's name and city or town of residence is exempt from public inspection and copying. Additional information may be released only in accordance with prior written permission from the player.

(2) Requests for lists of individuals will be denied if the request is or appears to be made for commercial purposes.

AMENDATORY SECTION (Amending WSR 97-07-063, filed 3/19/97, effective 4/19/97)

WAC 315-12-090 Copying. (1) There is no fee for the inspection of public records.

(2) The director will charge a fee of ((~~fifteen~~)) 15 cents per page for providing copies of public records and for use of the director's copy equipment. This charge is to reimburse the director for costs incident to such copying. The charge for providing other public records will be at actual cost as determined by the public records officer. Postal charges will be added when applicable. No copies of records will be provided to the requestor until all such charges have been paid.

(3) Nothing contained in this section shall preclude the director from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the agency.

(4) The director or ((~~his or her designee~~)) public records officer is authorized to waive any of the foregoing copying costs or other costs related to public records.

AMENDATORY SECTION (Amending WSR 83-13-080, filed 6/17/83)

WAC 315-12-110 Denial of request. Each denial of a request for a public record shall be accompanied by a written statement to the requestor clearly specifying the reasons for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. Such statement shall be sufficiently clear and complete to permit the director or ((~~his or her~~)) the director's designee to review the denial in accordance with WAC 315-12-120.

AMENDATORY SECTION (Amending WSR 83-13-080, filed 6/17/83)

WAC 315-12-120 Request for review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may request the public records officer for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) After receiving a written request for review of a decision denying a public record, if the public records officer determines to affirm the denial, the public records officer shall immediately refer the written request and the pertinent documents to the director. The director or the director's designee shall promptly consider the matter and either affirm or reverse such denial. The written decision of the

director or the director's designee shall constitute final agency action for purposes of judicial review.

AMENDATORY SECTION (Amending WSR 83-13-080, filed 6/17/83)

WAC 315-12-130 Protection of public records. Public records shall be disclosed only in the presence of a public records officer or ((~~his/her~~)) their designee, who shall withdraw the record(s) if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the agency. This section shall not be construed to prevent the director from accommodating a requestor by use of the mails in the disclosure process or by providing disclosure at a time which will not interfere with the agency's essential functions.

AMENDATORY SECTION (Amending WSR 91-03-036, filed 1/9/91, effective 2/9/91)

WAC 315-12-145 Records index. (1) The agency has established and implemented a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final adjudicative orders and declaratory orders issued after June 30, 1990, that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Interpretive and policy statements that were entered after June 30, 1990.

(2) Final and declaratory orders shall be evaluated by the director or director's designee and those orders which have substantial importance shall be selected for inclusion in the index.

(3) Selected orders shall be indexed by a phrase describing the issue or holding and by a citation to the law involved. Interpretive and policy statements shall be indexed by subject matter, topic, calendar year or a combination of these, as appropriate.

(4) The index is available for public access during business hours at the agency's ((~~management services division~~)) administrative office, 814 - 4th Avenue, Olympia, Washington 98504.

(5) The indexes shall be kept current and updated annually.

AMENDATORY SECTION (Amending WSR 10-16-025, filed 7/23/10, effective 8/23/10)

WAC 315-12-150 Communications. All written communications with the commission or director pertaining to the administration or enforcement of chapter 42.56 RCW and these rules shall be addressed as follows: Washington State Lottery, P.O. Box 43026, Olympia, WA 98504-3026, Attn: Public Records Officer. ((~~You may contact us through our~~)) Communication may also be made through the lottery's website at www.walottery.com.

RDS-6656.1

AMENDATORY SECTION (Amending WSR 83-13-081, filed 6/17/83)

WAC 315-20-020 Appearance and practice before the director—Who may appear. (1) No person may appear in a representative capacity before the commission or the director ((~~of his or her~~)), or the director's designated administrative law judge or presiding officer, other than the following:

(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(b) Attorneys at law qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by Washington state law.

(c) A bona fide officer, authorized manager, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership or corporation.

(d) Such other persons as may be permitted by the commission or director upon a showing by a party to the hearing of such a necessity or such a hardship as would make it unduly burdensome upon him to have a representative as set forth under subsections (a), (b), and (c) above.

(2) Nothing herein shall preclude an individual from appearing on ((~~his~~)) their own behalf, pro se.

AMENDATORY SECTION (Amending WSR 83-13-081, filed 6/17/83)

WAC 315-20-050 Appearance by former employee of commission or former member of attorney general's staff. Former director(s), commissioners, employees of the director, and the assistant attorney general assigned to the director and/or the commission shall not appear in a representative capacity on behalf of any party in a formal proceeding before the director, ((~~his or her~~)) the director's designated administrative law judge or presiding officer, or the commission unless:

(1) The appearance is more than two years after ((~~he or she~~)) the person severed ((~~his or her~~)) their relationship or employment; and

(2) ((~~He or she~~)) The person did not take an active part on behalf of the director or commission in the matter being decided.

AMENDATORY SECTION (Amending WSR 86-01-060, filed 12/16/85)

WAC 315-20-060 Waiver of hearing. In any case involving violations of the lottery laws, rules or regulations, where the director deems it appropriate, the director may afford the lottery retailer an opportunity to waive a formal hearing ((~~which he~~)) that has been timely requested. If the lottery retailer so elects to waive formal hearing, ((~~he or she~~)) the retailer may then state in writing any matter

in explanation or mitigation of the violations ((~~which he or she~~)) that the retailer desires the director to consider in making ((~~his or her~~)) a decision. At the time the lottery retailer ((~~at the time he or she~~)) submits the waiver, the retailer may also request to be present when the director meets to consider ((~~his or her~~)) a decision in the matter. In the event the lottery retailer elects to waive formal hearing ((~~he or she~~)), the retailer shall thereafter be bound by such election and may not thereafter request formal hearing.

AMENDATORY SECTION (Amending WSR 93-15-019, filed 7/9/93, effective 8/9/93)

WAC 315-20-075 Adjudicative proceedings—Subpoenas—Discovery. (1) The designated administrative law judge or presiding officer may issue subpoenas to persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and ((~~the presiding officer~~)) may issue protective orders all as a part of an adjudicative proceeding. The agency or its legal representative may issue subpoenas as may the attorney of the party against whom action is taken. All subpoenas must be filed with the designated administrative law judge or presiding officer, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The designated administrative law judge or presiding officer, upon motion or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

AMENDATORY SECTION (Amending WSR 93-15-019, filed 7/9/93, effective 8/9/93)

WAC 315-20-085 Adjudicative proceedings—Depositions and interrogatories—Right to take. Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding. The deposition of a commissioner, the director, or the deputy director, may be taken only upon application to the designated administrative law judge or presiding officer, for good cause shown and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of subpoena. Deposi-

tions shall be taken only in accordance with this rule and the rules on subpoenas.

AMENDATORY SECTION (Amending WSR 93-15-019, filed 7/9/93, effective 8/9/93)

WAC 315-20-105 Depositions and interrogatories in adjudicative proceedings—Protection of parties and deponents. (1) After notice is served for taking a deposition, upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the designated administrative law judge or presiding officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that the designated administrative law judge or presiding officer may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(2) At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the ((~~hearing~~)) designated administrative law judge or presiding officer may order the party conducting the examination to cease forthwith from taking the deposition as above provided.

(3) If the order made terminates the examination, it shall be resumed only upon the order of the designated administrative law judge or presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

AMENDATORY SECTION (Amending WSR 93-15-019, filed 7/9/93, effective 8/9/93)

WAC 315-20-115 Production of documents and use at an adjudicative proceeding. (1) Upon request by any party to the adjudicative proceeding, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When exhibits of a documentary character are to be offered into evidence at the hearing, the party offering the exhibit shall provide a minimum of two copies, one for the designated administrative law judge or opposing party and one for the presiding officer.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the hearing for the purpose of exchanging copies of exhibits to be introduced.

RDS-6657.1

AMENDATORY SECTION (Amending WSR 13-24-071, filed 11/27/13, effective 12/28/13)

WAC 315-30-010 Draw games—Authorized—Director's authority. The commission hereby authorizes the director to operate draw games ((~~which~~)) that meet the criteria set forth in this chapter. New draw games shall not be made available for sale without approval of the commission.

(1) The director may contract for the development and operation of draw games, and may operate said games subject to the approval of the commission.

(2) Before approving the final draw game specifications, the director shall provide the commission with a description of the proposal, and obtain approval of the proposed game concept by the commission.

(3) The director shall establish and approve the final draw game specifications, as executed in working papers or software requirement specifications, including the determination of winning tickets, after presentation and approval of any new draw game proposal to the commission for a vote of the commission.

(4) All draw game procedures and play criteria shall be made available to the public on the agency internet website and upon request.

(5) Mega Millions draw game shall be conducted consistent with chapter 67.70 RCW and Title 315 WAC and pursuant to the requirements of the multistate agreement, Mega Millions official game rules, Mega Millions finance and operations procedures, and Mega Millions line drawing procedures in effect at the time of this rule amendment, all of which are incorporated by this rule. A copy of the multistate agreement, Mega Millions official game rules, Mega Millions finance and operations procedures, and Mega Millions line drawing procedures can be obtained from the Lottery Commission, P.O. Box 43000, Olympia, WA 98504-3000.

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

WAC 315-30-020 Definitions. (1) Draw game. A lottery game in which a player pays a fee to a lottery retailer or directly to the lottery and selects a combination of digits, numbers, or symbols; type and amount of play; and drawing date and receives a computer generated ticket with those selections printed on it; or pays for a ticket with predetermined numbers, symbols or characters selected by the lottery terminal; or pays for a raffle ticket. The lottery will conduct a drawing to determine the winning ticket or the winning combination(s) in accordance with the specific draw game procedures and play criteria. Each ticket bearer whose valid ticket includes a winning combination, or is the winning ticket, shall be entitled to a prize if claim is submitted within the specified time period. Draw games may also be referred to as "online" games.

(2) Draw game retailer. A lottery retailer authorized by the lottery to sell draw game tickets. All draw game retailers may also sell other lottery game tickets offered by the lottery and approved by the commission.

(3) Draw game ticket. A computer-generated ticket issued by a lottery retailer to a player as a receipt for the combination(s) a player has selected, or as a receipt of the predetermined numbers, symbols or characters selected by the lottery terminal, or a raffle ticket. That ticket shall be the only acceptable evidence of the combination(s) of digits, numbers, or symbols selected. Draw game tickets may be purchased only from a lottery retailer authorized to sell draw game tickets or directly from the lottery. Internet sales and lottery courier services are not authorized in Washington state.

(4) Lottery terminal. The computer hardware through which tickets are generated and validated.

(5) Drawing. The procedure determined by the director by which the lottery selects the winning combination in accordance with the rules of the game.

(6) Certified drawing. A drawing about which the lottery and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred; or the random selection of a winning ticket occurred.

(7) Winning combination. One or more digits, numbers, or symbols randomly selected by the lottery in a drawing ((~~which~~)) that has been certified.

(8) Validation. The process of determining whether a ticket presented for payment is a winning ticket.

(9) Validation number. A unique number printed on each ticket, which is used to determine whether the ticket is a winning ticket.

(10) Ticket bearer. The person who has signed the ticket or who has possession of an unsigned ticket.

(11) Raffle. A draw game variation in which the player receives a computer generated ticket with the numbers, symbols, or characters predetermined on it. The lottery will conduct a drawing to determine the winning combination(s) in accordance with the specific raffle game procedures and criteria. All raffle draw game tickets issued during a specific raffle draw game shall be entered into the drawing for that game. Each ticket bearer whose valid raffle draw game ticket includes a winning combination shall be entitled to a prize if the claim is submitted within the specified time period.

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

WAC 315-30-030 Draw games criteria. (1) The base price of a play shall not be less than $.50 and not more than $20.00.

(2) On the average the total of all prizes available to be won in a draw game shall not be less than ((~~forty-five~~)) 45 percent of the game's projected revenue.

(3) The manner and frequency of drawings may vary with the type of game, except that no draw game shall have a drawing more than once in a ((~~twenty-four~~)) 24 hour period.

(4) The times, locations, and drawing procedures shall be determined by the director.

(5) A ticket bearer claiming a prize shall submit the apparent winning ticket as specified by the director. The ticket must be validated pursuant to WAC 315-30-050 by the lottery or a lottery retailer through use of the validation number and any other means as specified by the director.

(6) Procedures for claiming prizes are as follows:

(a) To claim a game prize of $600.00 or less, the claimant shall present the winning ticket to any lottery retailer authorized to sell draw game tickets or to the lottery.

(i) If the ticket is presented to a lottery retailer authorized to sell draw game tickets, the retailer shall validate the ticket and, if determined to be a winning ticket, may make payment of the amount due the claimant. If the retailer cannot validate the ticket, the claimant may submit the disputed ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall pay the prize. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified in the most timely and efficient method available as determined by the director.

(ii) If the ticket is presented to the lottery, the claimant shall submit the ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall pay the prize. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified in the most timely and efficient method available as determined by the director.

(b) To claim a prize of more than $600.00, the claimant shall obtain and complete a claim form or otherwise provide necessary information, as provided in WAC 315-06-120, and submit it with the ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall pay the prize. Prizes greater than $600.00 are subject to federal income tax withholding requirements according to the Internal Revenue Service publications for state lotteries. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified in the most timely and efficient method available as determined by the director.

(c) The lottery is not responsible for tickets or claims lost or delayed in the mail.

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

WAC 315-30-040 Drawings and end of sales prior to drawings. (1) Drawings shall be conducted in a location and at days and times designated by the director. Each drawing script shall contain the statement, "Digits/numbers/symbols drawn are not official until validated."

(2) The director shall announce for each type of game the time for the end of sales prior to the drawings. Lottery terminals will not process orders for tickets for that drawing after the time established by the director.

(3) The director shall designate the type of equipment to be used and shall establish procedures to randomly select the winning combination for each type of game.

(4) The equipment used to determine the winning combination shall not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The equipment shall be tested prior to and after each drawing to ((~~assure~~)) ensure proper operation and lack of tampering or fraud. Drawings shall not be certified until all checks are completed. No prizes shall be paid until after the drawing is certified.

(5) The director shall establish procedures governing the conduct of drawings for each type of game. The procedures shall include provisions for deviations which include, but are not limited to:

(a) Drawing equipment malfunction before validation of the winning combination;

(b) Video and/or audio malfunction during the drawing;

(c) Fouled drawing;

(d) Delayed drawing; and

(e) Other equipment, facility, and/or personnel difficulties.

(6) In the event a deviation occurs, the drawing will be completed under lottery supervision. If the drawing was to be broadcast, the drawing shall be video taped for later broadcast, if broadcast time is available. The drawing shall be certified and the deviation documented on the certification form. The winning combination will be provided to the television network for dissemination to the public.

(7) If during any live-broadcasted drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all digits, numbers, or symbols, a "foul" shall be called by the lottery drawing official. Any digit/number/symbol drawn prior to a "foul" being called will stand and be deemed official after passing lottery validation tests.

(8) The director shall delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has occurred. Payment shall be made after an investigation is completed and the drawing certified. If the drawing is not certified, another drawing will be conducted to determine the actual winner.

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

WAC 315-30-050 Validation requirements. (1) To be a valid winning ((~~online~~)) draw game ticket, all of the following conditions must be met:

(a) All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket.

(b) The ticket shall be intact.

(c) The ticket shall not be mutilated, altered, or tampered with in any manner.

(d) The ticket shall not be counterfeit or an exact duplicate of another winning ticket.

(e) The ticket must have been issued by an authorized ((~~online retailer~~)) lottery retailer or the lottery in an authorized manner.

(f) The ticket must not have been stolen.

(g) The ticket must not have been canceled or previously paid.

(h) The ticket shall pass all other confidential security checks of the lottery.

(i) The ticket must not have been purchased or obtained over the internet or from a lottery courier service.

(2) Any ticket failing any validation requirement listed in WAC 315-30-050(1) is invalid and ineligible for a prize. Provided, if a court of competent jurisdiction determines that a claim based on a ticket ((~~which~~)) that has failed to validate solely because of subsection (1)(g) of this section is valid, the claim shall be paid as a prize pursuant to WAC 315-06-120, 315-30-030, and the rules for that specific type of game. The agent that canceled or paid such ticket shall indemnify the lottery for payment of the prize and from any other claim, suit, or action based on that ticket.

(3) The director may replace an invalid ticket with a ticket for a future drawing of the same game. The director may pay the prize for a ticket that is partially mutilated or is not intact if the ticket can still be validated by the other validation requirements.

(4) In the event a ticket is issued in error or a defective ticket is purchased, the only responsibility or liability of the lottery, its vendors, or the lottery retailer shall be the replacement of the erroneous or defective ticket with another ticket for a future drawing of the same game.

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

WAC 315-30-060 Payment of prizes by lottery retailers. (1) A lottery retailer authorized to sell draw games may pay to the ticket bearer prizes of $600.00 or less for any validated claims presented to that lottery retailer regardless of where the ticket was purchased. These prizes may be paid during all normal business hours of that lottery retailer, provided, the draw game system is operational and claims can be validated. The lottery retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the lottery retailer's account.

(2) A lottery retailer may pay prizes in cash or by business check, certified check, ((~~or~~)) money order, or other method authorized by the director. A lottery retailer that pays a prize with a check ((~~which~~)) that is dishonored may be subject to suspension or revocation of its license, pursuant to WAC 315-04-200.

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

WAC 315-30-075 Lottery retailer ((~~agreement~~)) contract. Each lottery retailer shall enter into ((~~an agreement~~)) a contract with the lottery containing such terms and conditions as the director may require ((~~pursuant to WAC 315-30-080~~)). Failure to enter into such ((~~an agreement~~)) a contract may result in denial of a lottery terminal((~~,~~)), immediate discontinuance of a lottery terminal operation, or removal of a lottery terminal from ((~~an online~~)) the location.

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

WAC 315-30-080 Retailer selection criteria. (1) The selection and distribution of draw game retailers throughout the state will be based on:

(a) The number of licensed retailers in each of the regions identified in WAC 315-12-030, and then;

(b) The potential for revenue generation, demographics, and public accessibility within that region.

(2) Only a person who possesses a valid provisional or general license may be authorized by the director to sell draw game tickets.

(3) In addition, the director may consider the following factors in the selection of lottery retailers authorized to sell draw games.

(a) Business and security considerations ((~~which~~)) that include, but are not limited to:

(i) Instant game accounts receivable record((~~,~~));

(ii) Criminal history of owners and officers((~~,~~));

(iii) History of criminal activity at the business establishment((~~,~~));

(iv) Past security problems((~~,~~));

(v) Credit rating as defined in WAC 315-04-095((~~,~~));

(vi) Licensing requirements((~~,~~)); and

(vii) History of administrative or regulatory actions.

(b) Marketing considerations ((~~which~~)) that include, but are not limited to:

(i) Instant ticket sales history((~~,~~));

(ii) Outside vehicle traffic((~~,~~));

(iii) Retail customer count((~~,~~));

(iv) Access to location((~~,~~)); and

(v) Management attitude and willingness to promote lottery products.

(4) The director shall determine the total number of lottery terminals to be installed throughout the state and shall establish procedures for draw game site selection. In determining the order in which ((~~TDMs~~)) terminals will be installed within a given geographic area, ((~~an online~~)) a site selection survey will be completed in which((~~,~~)) the factors considered will include, but not be limited to:

(a) General information;

(b) Description of proposed site;

(c) Proposed lottery terminal location;

(d) Products sold;

(e) Services available;

(f) Store's hours;

(g) Estimated draw game sales;

(h) Instant sales per week;

(i) Nearest four draw game lottery retailer sales per week;

(j) District sales representative's assessment; and

(k) Regional sales manager's assessment.

(5) The director may, after a lottery terminal has been in operation for six months, order the removal of a lottery terminal from a low producing retailer location after considering marketing factors ((~~which~~)) that include, but are not limited to:

(a) Sales volume not increasing at statewide average;

(b) Weekly sales volume below that of similar businesses with similar market potential;

(c) Sales volume below $5,000 per week in metropolitan areas;

(d) Public is adequately served by other draw game retailer locations; and

(e) Failure to generate sufficient sales volume to cover the lottery's administrative costs.

(6) The director may immediately discontinue a lottery retailer operation, order removal of a lottery terminal from a draw game lottery retailer location, or take any other action authorized under WAC 315-04-200 in the event that the lottery retailer authorized to sell draw game tickets:

(a) Fails to comply with chapter 67.70 RCW, any rule established by the commission, the contract signed by the retailer, or any instruction issued by the director;

(b) Tampers with or attempts to tamper with the lottery terminal;

(c) Fails to make payment of a prize without valid justification, as determined by the director;

(d) Makes payment with a business check and the check is dishonored for any reason; or

(e) Fails to enter into or abide by the ((~~uniform agreement~~)) contract with the lottery as required in WAC 315-30-075.

RDS-6658.1

AMENDATORY SECTION (Amending WSR 20-11-017, filed 5/12/20, effective 6/12/20)

WAC 315-31-020 Price of Pick 3 online ticket. The base price of a Pick 3 ((~~online~~)) draw ticket shall be $.50 or $1.00((~~, except six-way straight box and three-way straight box tickets, which cost $1.00 each~~)).

AMENDATORY SECTION (Amending WSR 20-11-017, filed 5/12/20, effective 6/12/20)

WAC 315-31-030 Types of play for Pick 3. (1) The following play options may be selected by the player for Pick 3:

(a) Straight. A play in which winning is achieved only when the three digits selected by the player match in exact order the winning digits drawn for the day selected. For example, if the winning digits are "123," only straight plays of "123" in that exact order will be winners.

(b) ((~~Six-way~~)) Box. A play in which winning is achieved only when the three digits selected by the player contains three unique digits and those three digits are contained in any combination of the winning digits drawn for the day selected. For example, if the winning digits are "123," only box plays of "123," "132," "213," "231," "312," and "321" will be winners.

(c) Three-way box. A play in which winning is achieved only when the three digits selected by the player contains two identical digits and one unique digit and those three digits are contained in the winning digits drawn for the day selected. For example, if the winning

digits are "122," only box plays of "122," "212," and "221" will be winners.

(d) Front-pair. A play in which winning is achieved only when the player selects two digits and those two digits match in exact order the first two winning digits drawn for the day selected. For example, if the player selects a front-pair play of "12*," the player will win only if the winning digits are "120," "121," "122," "123," "124," "125," "126," "127," "128," or "129."

(e) Back-pair. A play in which winning is achieved only when the player selects two digits and those two digits match in exact order the last two winning digits drawn for the day selected. For example, if the player selects a back-pair play of "*12," the player will win only if the winning digits are "012," "112," "212," "312," "412," "512," "612," "712," "812," or "912."

(f) ((~~Six-way~~)) Straight/box. A play in which the player selects three digits with three unique digits and plays $.50 on a straight play and $.50 on a box play for a particular day. For example, if the player selects a "123" ((~~six-way~~)) straight/box play:

(i) The player will win both the straight and box players if the winning digits are "123" for the day selected.

(ii) The player will win the box play only if the winning digits are "132," "213," "231," "312," or "321" for the day selected.

(g) Three-way straight/box. A play in which the player selects three digits with two identical digits and one unique digit and plays $.50 on a straight play and $.50 on a box play for a particular day. For example, if the player selects a "122" three-way straight/box play:

(i) The player will win both the straight and box plays if the winning digits are "122" for the day selected.

(ii) The player will win the box play only if the winning digits are "212" or "221" for the day selected.

(h) ((~~Super six-way box~~)) Superbox. A play in which winning is achieved only when the three digits selected by the player contain three unique digits and those three digits are contained in the winning digits drawn for the day selected. This play is the equivalent of six straight plays on a single online ticket. The cost of this type of play is 6 times the base price. For example, if the player selects a "123" ((~~super six-way box~~)) superbox play, the player will win one straight play if the winning digits are "123," "132," "213," "231," "312," or "321."

(i) ((~~Super three-way box~~)) 3-way superbox. A play in which winning is achieved only when the three digits selected by the player contain two identical digits and one unique digit and those three digits are contained in the winning digits drawn for the day selected. This play is the equivalent of three straight plays on a single online ticket. The cost of this type of play is three times the base price. For example, if the player selects a "122" ((~~super three-way box~~)) 3-way superbox play, the player will win one straight play if the winning digits are "122," "212," or "221."

(2) Method of play: The player may use play slips to make number selections. The ((~~TDM~~)) terminal will read the play slip and issue ticket(s) with corresponding plays. If a play slip is not available, the online retailer may enter the selected numbers via the keyboard. A player may leave all play selections to a random number generator operated by the computer, commonly referred to as "quick play."

AMENDATORY SECTION (Amending WSR 20-11-017, filed 5/12/20, effective 6/12/20)

WAC 315-31-040 Prizes for Pick 3. (1) The prize amounts for winning $.50 plays are:

(a)	Straight	$ 250.00
(b)	((~~Six-way~~)) Box	$ 40.00
(c)	Three-way box	$ 80.00
(d)	Front-pair or back-pair	$ 25.00

(2) The prize amounts for winning $1.00 plays are:

(a)	Straight	$ 500.00
(b)	((~~Six-way box~~)) Straight/box	$ 80.00
(c)	Three-way box	$ 160.00
(d)	Front-pair or back-pair	$ 50.00
(e)	((~~Six-way~~)) Straight/box	
	Straight play win	$ 290.00
	Box play only win	$ 40.00
(f)	Three-way straight/box	
	Straight play win	$ 330.00
	Box play only win	$ 80.00

(3) The prize amounts for winning ((~~super six-way~~)) superbox plays are:

(a)	Base price $.50, cost $3.00	$ 250.00
(b)	Base price $1.00, cost $6.00	$ 500.00

(4) The prize amounts for winning ((~~super three-way~~)) 3-way superbox plays are:

(a)	Base price $.50, cost $1.50	$ 250.00
(b)	Base price $1.00, cost $3.00	$ 500.00

AMENDATORY SECTION (Amending WSR 20-11-017, filed 5/12/20, effective 6/12/20)

WAC 315-31-050 Ticket purchases. (1) Pick 3 tickets may be purchased or redeemed no less than ((~~seventeen~~)) 17 hours each day in accordance with a schedule to be determined by the director, provided ((~~online~~)) lottery retailers shall only sell and redeem tickets during their normal business hours.

(2) Pick 3 tickets may be purchased only from a lottery retailer authorized by the director to sell ((~~online~~)) draw tickets or directly from the lottery. Internet sales and lottery courier services are not authorized in Washington state.

(3) Each Pick 3 ticket shall contain the player's selection of digits, amount, type of play, and drawing date.

RDS-6659.1

AMENDATORY SECTION (Amending WSR 05-12-005, filed 5/18/05, effective 6/18/05)

WAC 315-34-010 Definitions for Lotto. (1) Number: Any play integer from 1 through 49 inclusive.

(2) Game grids: A field of 49 numbers found on the play slip.

(3) Play: One selection of six numbers.

(4) Set: Two plays.

(5) Play slip: A mark-sensitive game card used by players of Lotto to select plays.

(6) Lotto ticket: A computer-generated receipt evidencing payment for two or more plays in the Lotto game. Tickets shall be issued by a licensed lottery retailer or directly from the lottery and shall list the set of six-number plays that belong to the ticket holder.

AMENDATORY SECTION (Amending WSR 05-12-005, filed 5/18/05, effective 6/18/05)

WAC 315-34-050 Ticket purchases. (1) Lotto tickets may be purchased daily in accordance with a schedule to be determined by the director. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Lotto tickets may be purchased only from a licensed lottery retailer or directly from the lottery. Internet sales and lottery courier services are not authorized in Washington state.

(2) Lotto tickets shall, on the front of the ticket, contain the player's selection of numbers, amount, game grids played, drawing date, ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information and signature area, governing statutes and rules, and the ticket stock number.

AMENDATORY SECTION (Amending WSR 18-17-086, filed 8/14/18, effective 9/14/18)

WAC 315-34-057 Lotto prize claim and payment methods. The following sets forth requirements for claims and payment of Lotto prizes:

(1) Claims for prize payment shall be made in accordance with chapters 315-30 and 315-06 WAC.

(2) Prize payments shall be made as follows:

(a) **Cash option:** When a player claims a jackpot prize or a share of a jackpot prize, the player may elect to be paid a one-time single cash payment of ((~~fifty~~)) 50 percent of ((~~his or her~~)) the player's share of the announced jackpot, provided:

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

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

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

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the ((~~sixty~~)) 60-day limit will be paid ((~~his or her prize~~)) in ((~~twenty-five~~)) 25 annual installment payments.

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

RDS-6660.1

AMENDATORY SECTION (Amending WSR 92-19-057, filed 9/11/92, effective 11/8/92)

WAC 315-35-040 Prizes for Daily Keno. (1) The prize amounts to be paid to each Daily Keno player who selects a winning combination of numbers shall be as follows:

MARK 10 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
10	8,911,711.1	$100,000
9	163,381.3	$5,000
8	7,384.4	$500
7	620.6	$50
6	87.1	$5
5	19.4	$2
4	6.7	$0
3	3.7	$0
2	3.3	$0
1	5.5	$0
0	21.8	$3
	9.0	

MARK 9 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
9	1,380,687.6	$25,000
8	30,681.9	$2,500
7	1,690.1	$100
6	174.8	$10
5	30.6	$5
4	8.7	$1
3	4.0	$0
2	3.1	$0
1	4.5	$0
0	15.6	$0
	6.5	

MARK 8 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
8	230,114.6	$10,000
7	6,232.2	$500
6	422.5	$50
5	54.6	$5
4	12.2	$2
3	4.6	$0
2	3.0	$0
1	3.7	$0
0	11.3	$0
	9.7	

MARK 7 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
7	40,979.3	$2,500
6	1,365.9	$100
5	115.7	$10
4	19.1	$2
3	5.7	$1
2	3.0	$0
1	3.1	$0
0	8.2	$0
	4.2	

MARK 6 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
6	7,752.8	$1,000
5	323.0	$40
4	35.0	$4
3	7.7	$1
2	3.2	$0
1	2.7	$0
0	6.0	$0
	6.1	

MARK 5 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
5	1,550.5	$200
4	82.6	$17
3	11.9	$2
2	3.6	$0
1	2.4	$0
0	4.4	$0
	10.3	

MARK 4 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
4	326.4	$24
3	23.1	$5
2	4.7	$1

MARK 4 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
1	2.3	$0
0	3.2	$0
	3.8	

MARK 3 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
3	72.0	$16
2	7.2	$2
1	2.3	$0
0	2.4	$0
	6.5	

MARK 2 SPOTS:

NUMBER MATCHES	ODDS 1:	PRIZE
2	16.6	$8
1	2.6	$0
0	1.7	$0
	16.6	

MARK 1 SPOT:

NUMBER MATCHES	ODDS 1:	PRIZE
1	4.0	$2
0	1.3	$0
	4.0	

(2) The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize won by those numbers.

(3) In the event any player who holds a winning ticket does not claim the prize won within ((~~one hundred eighty~~)) 180 days of the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for further use as prizes, pursuant to RCW 67.70.190.

(4) There shall be no more than $500,000 paid per game to holders of plays with ((~~ten~~)) 10 matching spots. If there are more than five plays ((~~which~~)) that each have ((~~ten~~)) 10 matching spots, $500,000 shall be divided equally among the play holders thereof.

(5) Prize payment will be made in accordance with WAC 315-30-030(6) and chapter 315-06 WAC.

AMENDATORY SECTION (Amending WSR 92-19-057, filed 9/11/92, effective 11/8/92)

WAC 315-35-050 Ticket purchases. (1) Daily Keno tickets may be purchased or redeemed during no less than ((~~seventeen~~)) 17 hours each day in accordance with a schedule to be determined by the director, provided that ((~~online~~)) licensed retailers shall sell and redeem tickets only during their normal business hours.

(2) Daily Keno tickets may be purchased only from a licensed lottery retailer ((~~authorized by the director to sell online tickets~~)) or

directly from the lottery. Internet sales and lottery courier services are not authorized in Washington state.

(3) Daily Keno tickets shall on the front of the ticket contain the player's selection of numbers, amount wagered, drawing date and validation and reference numbers. The back of the ticket shall contain an estimate of the probability of purchasing a winning ticket, player instructions, player information and signature area, and the ticket serial number.

RDS-6661.1

AMENDATORY SECTION (Amending WSR 20-11-016, filed 5/12/20, effective 6/12/20)

WAC 315-39-040 Prizes for Hit 5 Game. (1) The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the first prize category shall vary due to the parimutuel calculation of prizes. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the second prize category shall be $150.00. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the third prize category shall be $15.00. The prize amount to be given to each Hit 5 Game player who holds a winning combination of numbers in the fourth prize category shall be a free play.

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All five winning numbers in one play	First Prize: Cashpot	1:850,668.00
Any four but not five winning numbers in one play	Second Prize: $150.00	1:4,598.21
Any three but not four or five winning numbers in one play	Third Prize: $15.00	1:127.73
Any two, but not three, four or five winning numbers in one play	Fourth Prize: free play	1:10.95

(2) Prize amounts.

(a) First prize (cashpot). All first prizes will be the amount announced by the director as the Hit 5 Game cashpot. The cashpot will be divided equally among all players who selected all five winning numbers in one play (in any sequence).

(b) Second prize. A $150.00 prize is to be paid to each player who holds four of the five winning numbers in one play in any sequence.

(c) Third prize. A $15.00 prize is to be paid to each player who holds three of the five winning numbers in one play in any sequence.

(d) Fourth prize. A free play prize is to be given to each player who holds two of the five winning numbers in one play in any sequence.

(e) The holder of a winning ticket may win only one prize per play.

(f) In the event any player who holds two, three, four or five of the five winning numbers does not claim the prize won within ((~~one hundred eighty~~)) 180 days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for use, pursuant to RCW 67.70.190.

(3) Prize payments will be made in accordance with WAC 315-30-030(6) and chapter 315-06 WAC. Each prize shall be paid in a single payment. Federal income tax shall be withheld from prize payments as required by law.

AMENDATORY SECTION (Amending WSR 07-03-113, filed 1/22/07, effective 2/22/07)

WAC 315-39-050 Ticket purchases. (1) Hit 5 Game tickets may be purchased daily in accordance with a schedule to be determined by the director. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Hit 5 Game tickets may be purchased only from a licensed lottery retailer or directly from the lottery. Internet sales and lottery courier services are not authorized in Washington state.

(2) Hit 5 Game tickets shall, on the front of the ticket, contain the selection of numbers, amount, drawing date, ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information, signature area, governing statutes and rules, and the ticket stock number. The front of the ticket may include the overall odds of winning.

RDS-6662.1

AMENDATORY SECTION (Amending WSR 23-11-116, filed 5/22/23, effective 10/1/23)

WAC 315-42-040 Cash Pop ticket purchases. (1) Cash Pop tickets may be purchased daily in accordance with a schedule to be determined by the director. Cash Pop tickets may be purchased only from a licensed lottery retailer or directly from the lottery. Internet sales and lottery courier services are not authorized in Washington state. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours.

(2) Cash Pop tickets shall contain the selected number(s), wager amount, drawing date, ticket serial number and reference numbers, overall odds of winning any Cash Pop prize, player instructions, player information, signature area, governing statutes and rules, and the ticket stock number.

(3) Cash Pop tickets cannot be canceled.

AMENDATORY SECTION (Amending WSR 23-11-116, filed 5/22/23, effective 10/1/23)

WAC 315-42-050 Drawings. (1) Cash Pop drawings shall be held pursuant to WAC 315-30-040 and chapter 315-06 WAC.

(2) The drawings will be conducted by lottery drawing officials.

(3) Each drawing will randomly select one winning number. The drawing method will be tested before and after each drawing. A drawn

number is not a declared winner until the drawing is certified by the lottery. The certified winning number shall be used in determining all Cash Pop winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine the winning number.

(4) The drawing shall not be invalidated based on the liability of the lottery.

(5) The Cash Pop drawings shall be held on a daily basis, Sunday through Saturday, except that the director may exclude certain holidays from the drawing schedule.

WSR 26-01-114
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 16, 2025, 6:05 p.m., effective January 16, 2026]

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

Purpose: The department of social and health services (department) is adopting amendments to WAC 388-487-0010 What is the sun bucks program?, 388-487-0020 Is my child eligible for sun bucks?, and 388-487-0030 General information about sun bucks benefits. These amendments are necessary for the continued implementation and ongoing management of the sun bucks program. As applicable, these amendments make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations. Once effective, this filing supersedes the emergency rule filed under WSR 25-20-045.

Citation of Rules Affected by this Order: Amending WAC 388-487-0010, 388-487-0020, and 388-487-0030.

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

Other Authority: Consolidated Appropriations Act, 2023 (H.R. 2617).

Adopted under notice filed as WSR 25-22-088 on November 4, 2025.

Changes Other than Editing from Proposed to Adopted Version: The department withdrew the original proposed rule filed as WSR 25-19-037 and refiled as WSR 25-22-088 to better align the proposed WAC language with federal program guidelines and the approved state plan.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, 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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 16, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5089.4

AMENDATORY SECTION (Amending WSR 24-23-099, filed 11/20/24, effective 12/21/24)

WAC 388-487-0010 What is the sun bucks program? The sun bucks program is the summer electronic benefits transfer ((~~(summer EBT)~~))

program that provides a one-time food benefit to eligible children during designated summer periods following ((~~the~~)) an academic school year. Sun bucks is administered by the department of social and health services and is not bound by the same state or federal rules, regulations, or procedures governing basic food as described in WAC 388-400-0040.

The following definitions apply to this program:

((~~(1) "Compulsory age" means the age children are required by law to attend school; in Washington this is between the ages of eight and 18.~~

~~(2) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:~~

~~(a) Receiving a benefit from a federal means tested assistance program, including supplemental nutrition assistance program, temporary assistance for needy families, food distribution program on Indian reservations, some medicaid programs; or~~

~~(b) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program.~~))

(1) "Categorically eligible" means a school age child, as defined in this section, who automatically qualifies for sun bucks because they are:

(a) A member of a household receiving the supplemental nutrition assistance program (SNAP) or temporary assistance for needy families (TANF); or

(b) A foster child, homeless child, migrant child, head start child, or runaway child; as defined in the Richard B. Russell act.

(2) "CEP or provision 2 school" means a community eligibility provision or provision 2 school that provides free or reduced-price meals to all children regardless of meeting income eligibility guidelines.

(3) "CNEEB" means a child nutrition eligibility and education benefit application for free and reduced-price meals, including sun bucks, submitted by a household for a child or children enrolled at a school that participates in NSLP/SBP.

(4) "Department" means the department of social and health services.

(5) "Direct certification" means automatic eligibility for free or reduced-price meals based on documentation provided by the department that a child is categorically eligible as defined in this section.

(6) "Direct verification" means the process of verifying household income or categorical eligibility by matching against data sources or other records without the need to contact the household for documentation.

(7) "Dual participation" means a child simultaneously receiving sun bucks benefits from more than one state or simultaneously receiving multiple allotments from the same state.

((~~(3) "Expungement"~~)) (8) "Expungement" means removal of unused benefits ((~~due to nonuse~~)) after 122 days from the date sun bucks benefits were deposited into the EBT account.

((~~(4)~~)) (9) "Free or reduced-price meals" means meals provided to students qualified as eligible by the Richard B. Russell ((~~National School Lunch Act~~)) national school lunch act.

(10) "Household" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit as defined in the US department of agriculture food and nutrition service eligibility manual for school meals.

((~~(5)~~)) (11) "Income eligibility guidelines" means income limits to determine eligibility for free and reduced-price meals adjusted annually by the US department of agriculture food and nutrition service as required by the national school lunch act.

(12) "Instructional year" means the period from July 1 of the prior year through one day prior to the summer operational period.

(13) "NSLP/SBP" means the national school lunch program established under the Richard B. Russell national school lunch act and the school breakfast program established under the child nutrition act.

(14) "Period of eligibility" means the period of time from the first day of the instructional year immediately preceding the summer operational period, through the last day of the summer operational period.

(15) "School-aged" means the age children are required to attend school as defined by state law; in Washington state this is age eight to 18 years old.

(16) "Streamline certified" means automatically enrolling an eligible child for sun bucks without need for further application or confirmation of school enrollment.

(17) "Summer operational period" means the period between the end of the current school year and the start of the next school year, as determined by the state.

((~~(6)~~)) (18) "Sun bucks application" means an application available to households with potentially eligible children who do not automatically meet streamline certification criteria.

((~~(7)~~)) (19) "Sun bucks card" means the unique EBT card that accesses sun bucks food benefits issued to individual eligible children.

(20) "Verification" means the confirmation of eligibility for a sun bucks application. Verification includes the confirmation of income eligibility and other information as requested by the department.

((~~(8) "Streamline certified" means a child automatically approved for sun bucks because they meet the following criteria:~~

~~(a) A child, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program and school breakfast program during the school year, who:~~

~~(i) Is determined by the school to be eligible for free or reduced-priced school meals; or~~

~~(ii) Attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program and identified as eligible for free or reduced-price school meals using direct certification or a free or reduced-price school meals application.~~

~~(b) A child who meets compulsory age requirements and resides in a household receiving one of the following public assistance benefits:~~

~~(i) Temporary assistance for needy families as described in WAC 388-400-0005;~~

~~(ii) State funded assistance as described in WAC 388-400-0010;~~

~~(iii) Basic food as described in WAC 388-400-0040; or~~

~~(iv) The state funded food assistance program as described in WAC 388-400-0050.~~

~~(10) "Summer operational period" means the period between the end of the current school year and the start of the next school year, as determined by the state.~~))

AMENDATORY SECTION (Amending WSR 24-23-099, filed 11/20/24, effective 12/21/24)

WAC 388-487-0020 Is my child eligible for sun bucks? (1) To be streamline certified for sun bucks benefits, a child must be:

(a) School-aged and categorically eligible;

((~~Attend~~)) (b) Enrolled in a school that participates in the ((~~national school lunch program or school breakfast program~~)) NSLP/SBP; and

(i) ((~~Is determined~~)) Attends a school that does not operate the CEP or provision 2 program and determined by the school to be individually eligible for free or reduced-price ((~~school~~)) meals; or

(ii) ((~~Who attends~~)) Attends a school that operates the ((~~community eligibility provision~~)) CEP or provision 2 ((~~lunch and breakfast~~)) program and ((~~identified as eligible~~)) eligible for free or reduced-price meals using ((~~direct certification or a free or reduced-price school meals application~~)) direct certification.

((~~(b) Meet compulsory age requirements and reside in a household receiving one of the following public assistance benefits:~~

~~(i) Temporary assistance for needy families as described in WAC 388-400-0005;~~

~~(ii) State funded assistance as described in WAC 388-400-0010;~~

~~(iii) Basic food as described in WAC 388-400-0040; or~~

~~(iv) The state funded food assistance program as described in WAC 388-400-0050.~~))

(2) ((~~Children~~)) For children who are not streamline certified, an adult household member must submit either a sun bucks application to the department or a CNEEB application to the child's school during the ((~~summer operational~~)) period of eligibility and the child must ((~~meet the following criteria~~)) be:

(a) ((~~Attend~~)) Enrolled at a school that participates in the ((~~national school lunch program or school breakfast program~~)) NSLP/SBP; and

(b) ((~~Meet~~)) A member of a household that meets income eligibility guidelines for free or reduced-price school meals.

(i) Income eligibility guidelines change annually on July 1.

(ii) The income eligibility guidelines in effect on the date of application are used to determine eligibility.

(3) Applications received after the end of the summer operational period will be considered for sun bucks in the following year.

(4) Applications for sun bucks will be selected at random for additional verification prior to approval.

(a) The department will attempt direct verification prior to contacting a household.

(b) If direct verification cannot be obtained, households will be notified in writing and required to provide the requested verification within 30 days from the date of request.

(c) Verification must indicate eligibility for sun bucks at any time during the period of eligibility.

(d) Failure to provide requested verification will result in a denial of a household's sun bucks application. If denied, households will be notified in writing and may reapply during the period of eligibility.

((~~(4)~~)) (5) If information on an application is questionable, verification may be requested and must be provided within 30 days of the date of application.

((~~(5)~~)) (6) Children approved for sun bucks receive a notice of approval describing their eligibility and other information related to the program.

AMENDATORY SECTION (Amending WSR 24-23-099, filed 11/20/24, effective 12/21/24)

WAC 388-487-0030 General information about sun bucks benefits. (1) The amount of sun bucks each eligible child will receive is $120 for the summer of ((~~2024~~)) 2025 and ((~~will~~)) may be adjusted annually for inflation.

(2) Sun bucks benefits are deposited into an account accessible with a designated sun bucks card. Each sun bucks card is:

(a) Linked to a sun bucks account for each eligible child; and

(b) Mailed to the last known address as reported by the parent or caregiver to ((~~either~~)):

(i) The child's school if ((~~directly~~)) streamline certified via individual eligibility for free or reduced-price meals at an NSLP/SBP school; ((~~or~~))

(ii) The department ((~~for the eligible child's cash or food assistance household.~~)) if streamline certified via categorical eligibility; or

(iii) The address reported by a parent or caregiver via a sun bucks application, CNEEB, or an address update to the department.

(c) It is the parent's or caregiver's responsibility to accurately and timely report any address changes to the child's school and to the department. The department or school is not responsible for the expungement of benefits due to unreceived sun bucks notices or cards sent through the mail.

(3) To use a sun bucks account:

(a) The sun bucks EBT card can be used by the eligible child or responsible household member, such as a parent or caregiver on behalf of the eligible child, to purchase eligible food items.

(b) A personal identification number (PIN) must be created to use the sun bucks card. Families are responsible for keeping the sun bucks card and PIN of an eligible child in a safe and secure place.

(c) Sun bucks benefits are only accessed from the sun bucks card and cannot be transferred to a bank account or issued as a check.

(4) The purpose of sun bucks benefits is to help low-income families have a more nutritious diet by providing food benefits to eligible children during the summer months between academic school years.

(a) Any remaining sun bucks benefits not used within 122 days from the date of deposit into each eligible child's account are expunged.

(b) Sun bucks benefits cannot be replaced ((~~, redeemed,~~)) if they are expunged, lost, or stolen due to fraudulent activity or use.

(c) Sun bucks benefits ((~~are~~)) may be used to buy food items under WAC 388-412-0046 (2)(c) for an eligible child from a food retailer authorized to accept supplemental nutrition assistance program benefits.

(d) Intentional misuse of sun bucks benefits may be subject to fines or legal action including criminal prosecution.

(5) ((~~The household~~)) Households must request a hearing within 90 days of the end of the summer operational period when disagreeing with a decision ((~~explained in the notice~~)) made by the department.

(6) ((~~Children cannot receive sun bucks from more than one state at a time for the same summer operational period~~))

The department will restore lost benefits if the loss was caused by an administrative error, no more than 12 months prior to either:

(i) The date the department receives a request for restoration from the household; or

(ii) The date the department is notified or discovers the loss.

(7) Households may be subject to overpayments if dual participation is identified.

(8) Continuance of the program is contingent upon annual approval of federal and state funds specifically for the sun bucks program. The department may discontinue the program when funding is no longer available.

WSR 26-01-119
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed December 17, 2025, 11:27 a.m., effective January 17, 2026]

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

Purpose: The department of licensing is updating language to be more inclusive and fixing grammar issues in response to a rule-making petition.

Citation of Rules Affected by this Order: Amending chapter 36-12 WAC, Professional boxing; chapter 36-14 WAC, Professional and amateur martial arts; and WAC 36-13-110 Miscellaneous provisions for promoters and/or theatrical wrestling schools.

Statutory Authority for Adoption: RCW 18.235.030 Disciplinary authority—Powers, and 67.08.017 Director—Powers.

Other Authority: Chapter 67.08 RCW, Boxing, martial arts, and wrestling.

Adopted under notice filed as WSR 25-20-112 on October 1, 2025.

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 14, 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: December 17, 2025.

Kelsey Stone
Legislative Policy Analyst

RDS-6243.1

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-011 Definitions. The following definitions will be used throughout this WAC:

(1) "Purse" is defined as the sum of money or other compensation by way of guarantee, percentage or otherwise, paid to a boxer.

(2) "Knockdown" is defined as when a boxer is knocked to the ring canvas by fair blows, hangs helplessly on the ropes, or the ropes prevent ((~~his/her~~)) their fall, or any part of the body other than the soles of the feet touches the ring canvas.

(3) The "outcome of a contest" occurs when the contest has concluded, a determination has been made described in WAC 36-12-130, and the report to the boxing registry required by the federal Boxing Safety Act of 1996 has been submitted.

(4) "Neutral corner" is defined as one of the two corners of a ring that are not assigned to a boxer for a contest.

(5) A "count" is the audible measure of time signaled by the referee to a boxer who has been knocked down.

(6) "Scorecard" is defined as the document used by judges to score a contest.

(7) "Ten-point-must system" of scoring is defined as the scoring system used by judges giving ((~~ten~~)) 10 points to the boxer winning a round and a lesser number of points to the boxer losing a round.

(8) "Foul" is defined as an action by a boxer, identified by the referee that does not meet the definition of "boxing" as described in RCW 67.08.002. Fouls may include, but are not limited to, the following types of contact or acts:

(a) Hitting, a low blow, below the navel or behind the ear;

(b) Hitting an opponent who is knocked down;

(c) Holding an opponent with one hand and hitting with the other;

(d) Holding or deliberately maintaining a clinch;

(e) Wrestling, kicking or roughing;

(f) Pushing an opponent about the ring or into the ropes;

(g) Butting with the head, shoulder, knee, elbow;

(h) Hitting with the open glove, the butt or inside of the hand, or back of the hand, the elbow or the wrist;

(i) Purposely falling down onto the canvas of the ring without being hit or for the purpose of avoiding a blow;

(j) Striking deliberately at that part of the body over the kidneys;

(k) Using the pivot blow (pivoting while throwing a punch) or the rabbit punch (punches thrown to the back of the head and neck areas);

(l) Jabbing the eyes with the thumb of the glove;

(m) Use of abusive language;

(n) Unsportsmanlike conduct causing injury to an opponent that does not meet the definition of "boxing" in RCW 67.08.002;

(o) Hitting on the break;

(p) Intentionally spitting out the mouthpiece;

(q) Hitting on or out of the ropes;

(r) Holding rope and hitting;

(s) Biting/spitting;

(t) Not following referee's instructions;

(u) Stepping on opponent;

(v) Crouching below opponent's belt;

(w) Leaving neutral corner; and

(x) Corner second shouting.

(9) "Fair blow" is defined as a blow delivered with the padded knuckle part of the glove to the front or sides of the head and body above the navel.

(10) "Event official" is defined as an official licensed under RCW 67.08.100 as a judge, referee, timekeeper, event physician, inspector, or other officials deemed necessary, and appointed by the department to provide services at a boxing event.

(11) "Manager" is defined as a person licensed under RCW 67.08.100 who contracts with a boxer to receive compensation for service as an agent or representative.

(12) "Second" is defined as a person licensed under RCW 67.08.100 who assists a boxer during a contest.

(13) "Matchmaker" is defined as a person licensed under RCW 67.08.100 who works for a promoter to propose, select or arrange for boxers to participate in a boxing contest.

(14) "Announcer" is defined as a person licensed under RCW 67.08.100 who works for a promoter announcing information to the audience at a boxing event.

(15) "Referee" is defined as an event official and is the chief official supervising a boxing contest.

(16) "Timekeeper" is defined as an event official who keeps the official timing of a contest.

(17) "Judge" is defined as an event official who scores a boxing contest.

(18) "Inspector" is defined as the event official who reports directly to the department and provides overall management of a boxing event.

(19) "Advance notice" is defined as a list of matches for an event submitted by the promoter to the department for approval that includes the names of proposed boxers for a contest, ((~~his/her~~)) their manager or managers and other information that may be required by the department.

(20) "Boxing registry" is defined as the entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers and required under the federal "Professional Boxing Safety Act of 1996."

(21) "Contest" is defined as a fight scheduled between boxers appearing at an event.

(22) "Round" is defined as a two- or three-minute time period during which boxers compete in a boxing contest.

(23) "Net gate proceeds" is defined as the total dollar amount received from the face value of all tickets sold with complimentary tickets excluded.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-110 Referee's responsibilities/authority. (1) The referee's primary responsibility shall be to maintain the safety and welfare of the boxers at all times.

(2) Before starting a contest, the referee shall determine the name of the chief seconds for each boxer. The chief second shall be responsible for the conduct of the boxer's other seconds during the contest.

(3) The referee shall call boxers and their chief seconds into the ring at the beginning of each contest for instructions.

(4) The referee shall not allow any person other than the boxers and the event physician to enter the ring during a round.

(5) The referee shall inspect the boxers' bodies and gloves to make sure no substances have been applied to the detriment of an opponent.

(6) Referees who are event officials shall pass a physical examination by the event physician within ((~~twenty-four~~)) 24 hours prior to an event for the purpose of determining their physical ability to referee the contest. If such examination indicates the referee is physically unable to referee the contest, such inability shall be noted on the prefight physical form and immediately be reported to the inspector or department representative.

(7) The referee shall have the authority to stop a contest any time ((~~he/she~~)) they think((~~s~~)) it is too one-sided, or if either box-

er is in such condition that to continue might subject them to serious injury.

(8) The referee shall not make a disqualification decision based on one unintentional, low-blow foul. However, if two previous warnings for such fouls have resulted in point deductions, the third foul may be grounds for disqualification.

(9) The referee has authority to decide any matters that arise during a contest and are not covered by these rules.

(10) If a boxer receives an injury that the referee thinks shall incapacitate the boxer, the referee shall ask the event physician to examine the boxer. The event physician shall provide the referee with an opinion as to the seriousness of the injury and either the event physician or the referee shall stop the contest if the injury is serious. When a referee calls the event physician into the ring, the referee shall direct the timekeeper to cease keeping time while the event physician examines the boxer.

(11) The referee may penalize a boxer who fouls an opponent during a contest, by charging such boxer with the loss of points. The referee shall immediately notify the judges of the number of points to be deducted.

(12) The referee shall stop the contest if the boxer's chief second determines that a contest should be stopped, and immediately signals the referee by stepping onto the ring apron.

(13) When a boxer resumes boxing after having been knocked down or fallen or slipped to the floor, the referee shall wipe all foreign material from the boxer's gloves.

(14) The referee shall give a boxer injured by a low-blow foul up to five minutes to recover. Should the boxer be unable to continue at the end of the recovery period, the referee shall declare that the boxer has signaled ((~~his/her~~)) their desire to stop boxing as described in WAC 36-12-130 (1)(b)(iv).

(15) Prior to an event, each referee shall disclose to the department all considerations, including reimbursement for expenses that will be received from any source for participation in the event. The disclosure shall be made on a form supplied by the department.

(16) A decision rendered at the termination of any contest may be changed by the department if the department determines that one of the following occurred:

(a) There was collusion affecting the result of any contest;

(b) The compilation of the scorecard of the judges shows an error which would mean that the decision was given to the wrong contestant; or

(c) There was a violation of the laws or rules governing contests, which affected the result of any contest.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-130 Outcome of contests. (1) If a referee stops a contest, ((~~he~~)) they shall render a decision regarding the outcome of the contest as follows:

(a) Win by knockout if:

(i) Boxer has been knocked down by fair blows and cannot arise before completion of the referee's count; or

(ii) Boxer has been knocked down and the referee waves off the count because of urgency to have the event physician examine the boxer.

(b) Win by technical knockout if:

(i) In the referee's judgment, boxer is outclassed or is unable to continue due to punishment received;

(ii) Boxer does not resume boxing by the end of a referee's count (excluding knockouts);

(iii) Corner man signals referee to terminate the bout; or

(iv) Boxer, after putting forth good effort, signals referee ((~~his/her~~)) their desire to stop boxing.

(c) Win by technical decision if:

A bout is stopped after the completion of three rounds in bouts scheduled for four rounds and after four rounds in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately. At least two of the judges must have the same boxer ahead on points.

(d) No decision if:

A bout is stopped before the completion of three rounds in bouts scheduled for four rounds and before four rounds in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately; or

(e) Technical draw if:

A bout is stopped after the completion of three rounds in bouts scheduled for four rounds and after four rounds in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately and the judges are split (one voting for boxer A, one voting for boxer B, and the third judge with an even score); or

(f) No contest if:

(i) The bout is unable to continue due to events other than boxing (fire, riot, ring collapse, etc.); or

(ii) In the referee's judgment, there appears to be collusion affecting the outcome of the contest.

(g) Disqualification:

(i) If points have been deducted from a boxer's scorecard for three separate incidents as described in WAC 36-12-110(11);

(ii) If a boxer, in the referee's judgment, flagrantly fouls an opponent;

(iii) If a boxer quits after putting forth no effort, thereby fostering a sham on the public;

(iv) Second enters the ring during the progress of the bout; or

(v) Following a contest, a boxer tests positive for controlled substances per WAC 36-12-240.

(2) If a contest ends when the scheduled rounds are completed, the outcome of the contest may be as follows:

(a) Winner by unanimous decision if all three judges agree on the same winner;

(b) Winner by split decision if two judges agree on winner and the third judge votes for the other boxer;

(c) Winner by majority decision if two judges agree on winner and the third judge has the score even between the boxers;

(d) A draw if all three judges have the score even between the boxers or are split (one voting for boxer A, one voting for boxer B, and the third judge with an even score); or

(e) A majority draw if two of the judges agree that the score is even between the boxers.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-140 Method of counting over a boxer who is down. (1) The referee shall give an injured boxer a count of eight when a knockdown occurs. The referee does not have to continue to count if in the referee's opinion a boxer is unable to continue to box. The referee shall resume a count where it was left off if a boxer attempts to rise after being knocked down and goes down again immediately.

(2) When the referee determines a boxer has been knocked down, the referee shall require the boxers to cease boxing during the count. If the boxer rises prior to, or when the count is completed, the referee shall determine whether the boxer's reflexes and condition render it appropriate to continue the contest.

(3) If a boxer does not rise when the count of eight is completed, the referee shall continue the count to ((~~ten~~)) 10 seconds.

(4) If the boxer being given a count by the referee is down on the canvas of the ring when the referee completes counting to ((~~ten~~)) 10 seconds, the referee shall wave both arms to indicate that the boxer has been knocked out and shall stop the contest. The referee may raise the hand of the opponent indicating that the opponent has won by a knockout.

(5) The referee's counting of seconds is the official count. However, when a boxer is knocked down, the timekeeper shall assist with starting and maintaining an accurate count by striking the edge of the ring platform once each second with a hammer or other equipment or signaling method.

(6) When a boxer is knocked down, the referee shall direct the opponent to move to the farthest neutral corner of the ring. If the opponent leaves the neutral corner, the referee shall interrupt the count and will not resume the count until the opponent returns to the neutral corner.

(7) If a boxer is knocked down and the referee is still counting when three minutes of a round has elapsed, the bell shall not be sounded until the knocked down boxer rises and the referee indicates that the contest will continue. A boxer cannot be saved by the bell at the end of any round.

(8) If both boxers score simultaneous knockdowns (double knockdown), the referee shall begin a count as in any knockdown. If one contestant does not rise before the count of ((~~ten~~)) 10, ((~~his~~)) their opponent shall be declared the winner. If both contestants rise before completion of the count, the bout may continue at the discretion of the referee. If both contestants rise but neither can continue as determined by the referee and/or event physician, the winner will be determined by the scorecards. If both boxers remain down until the count of ((~~ten~~)) 10, the bout must be stopped and the decision is a technical draw.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-150 When boxer falls from or leaves the ring during a round. (1) A boxer who has been knocked through the ropes and over the edge of the ring platform shall be subject to a count of ((~~twenty~~)) 20. The boxer must return to a standing and ready position unassisted by anyone before the count elapses. If assisted by anyone and the action does not cause an unfair advantage over the opponent, the boxer shall receive a mandatory count of ((~~eighteen~~)) 18. If the action causes an unfair advantage over the opponent, the boxer shall lose by disqualification. The referee is the sole authority in deciding if the boxer received assistance and whether or not there was an unfair advantage.

(2) A boxer who leaves the ring due to other than fair blows shall be subject to a count of ((~~ten~~)) 10 only if ((~~he/she refuses~~)) they refuse to reenter the ring.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-250 Managers. (1) Boxers are not required to have a manager.

(2) Managers may serve as seconds for their contracted boxers without holding a second's license.

(3) When a boxer has a manager, there shall be a contract for services as an agent or representative. Contracts need not be filed with the department, but shall be provided upon request.

(4) A manager shall not be a promoter at an event where ((~~he/she has~~)) they have a direct or indirect financial interest in a boxer who is scheduled for ((~~ten~~)) 10 rounds or more of boxing.

(5) All contracts between boxers and managers shall be in accordance with the "Professional Boxing Safety Act of 1996" and amended by the "Muhammad Ali Boxing Reform Act."

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-320 Suspensions. (1) A boxer whose manager has been suspended under chapter 67.08 RCW may continue boxing during the term of such suspension, signing ((~~his/her~~)) their own boxer/promoter contract.

(2) Boxers scheduled for a contest shall sign a letter of agreement with the department accepting temporary suspension of their license if they receive an injury during the contest. The schedule for suspensions is:

(a) Thirty days for a technical knockout;

(b) Sixty days for a knockout;

(c) A period of time different than (a) and (b) of this subsection if serious injury or condition is detected by the event physician during the post fight physical; and

(d) A period of time or an indefinite period of time if serious injury or condition is detected by the event physician. If the suspen-

sion is for an indefinite period of time, the boxer may not box again without an examination completed by a physician who has provided written certification to the department that the medical condition no longer exists.

(3) If at any time a boxer's ability to perform is questionable, whether for reasons of health, mental condition, or no longer possessing the ability to compete or for any other reason, the department may recommend that the boxer be retired from further competition.

(4) Boxers who have been recommended for retirement have a right to a hearing under chapter 34.05 RCW, the Administrative Procedure Act.

RDS-6244.1

AMENDATORY SECTION (Amending WSR 17-21-118, filed 10/18/17, effective 11/21/17)

WAC 36-13-110 Miscellaneous provisions for promoters and/or theatrical wrestling schools. (1) Dangerous conduct; punishment. The referee shall not permit physically dangerous conduct or tactics by any participant. Any participant who fails to discontinue such tactics, after being warned by the referee or a department official shall be disqualified and subject to disciplinary action.

(2) Participants or other licensees shall not engage in the practice known as "juicing." "Juicing" is the practice of using a razor blade or similar contrivance, or any other means to draw blood from oneself, one's opponent, or from any other participant of the wrestling exhibition or show. The referee shall immediately terminate any match in which blood from a participant appears from "juicing," and the participants shall cease the wrestling match and return to the dressing room. Should an accidental cut to a participant occur, the match may continue but should be concluded as soon as possible at the discretion of the referee.

(3) Duties of licensees. It shall be the duty of the promoter and/or theatrical wrestling school, ((~~his/her~~)) their agents, employees, and the participants in any wrestling show or exhibition to maintain peace and order in the conduct of any show or exhibition. There shall be no abuse of a department official at any time.

(4) The promoter and/or theatrical wrestling school:

(a) Shall be directly responsible to the department for the conduct of its employees and any violation of the laws, rules, or regulations of the department by any employee of a promoter and/or theatrical wrestling school shall be deemed to be a violation by the promoter and/or theatrical wrestling school.

(b) Are responsible for any violations of the law or department rules by their participants.

(c) Shall provide an ambulance or paramedical unit with transport and resuscitation capabilities, with a minimum of two attendants, to be present at the event location at all times during the event. A theatrical wrestling school may satisfy this requirement by having an emergency medical technician, as required under RCW 67.08.330, at the event location at all times during the event.

(5) Discrimination. Discrimination against any participant in regard to sex, race, color, creed, or national origin shall be referred to the human rights commission.

(6) Appeals.

(a) Licensees may appeal any suspension or revocation to the department in the manner provided in chapter 34.05 RCW.

(b) Such appeals must be received in the department office within ((~~twenty~~)) 20 days from the date of the notice sent by the department.

(7) Theatrical wrestling schools:

(a) Must notify the department in writing ((~~fourteen~~)) 14 days prior to holding an off-site event. The notice must include the location, date, and time of the event.

(b) Must maintain a list all participants' names who performed in each event for a minimum of three years and be available at the request of the department.

RDS-6245.1

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-14-010 Definitions. The following definition(s) will be used throughout this WAC:

"Advance notice" is defined as a list of matches for an event submitted by the promoter to the department for approval that includes the names of proposed participants for a contest, ((~~his/her~~)) their manager or managers and other information that may be required by the department.

"Announcer" is defined as a person licensed under RCW 67.08.100 who works for a promoter announcing information to the audience at an event.

"Contest" is defined as a fight scheduled between participants appearing at an event.

"Event official" is defined as an official licensed under RCW 67.08.100 as a judge, referee, timekeeper, event physician, inspector, or other officials deemed necessary, and appointed by the department to provide services at an event.

"Inspector" is defined as the event official who reports directly to the department and provides overall management of an event.

"Judge" is defined as an event official who scores a contest.

"Manager" is defined as a person licensed under RCW 67.08.100 who contracts with a participant to receive compensation for service as an agent or representative.

"Matchmaker" is defined as a person licensed under RCW 67.08.100 who works for a promoter to propose, select or arrange for participants to participate in an event.

"Mixed martial arts" in addition to RCW 67.08.002(20), mixed martial arts does not include muay thai and kickboxing.

"Net gate proceeds" is defined as the total dollar amount received from the face value of all tickets sold with complementary tickets excluded.

"Neutral corner" is defined as one of the corners that are not assigned to a martial arts participant for a contest.

"Outcome of a contest" occurs when the contest has concluded, a determination has been made described in WAC 36-14-355, and the report to the martial arts registry has been submitted.

"Purse" is defined as the sum of money or other compensation by way of guarantee, percentage or otherwise, paid to a participant.

"Referee" is defined as an event official and is the chief official supervising a contest.

"Round" is defined as a three- or five-minute time period during which participants compete in a contest.

"Scorecard" is defined as the document used by judges to score a contest.

"Second" is defined as a person licensed under RCW 67.08.100 who assists a participant during a contest.

"Ten-point-must system" of scoring is defined as the scoring system used by judges giving ((~~ten~~)) 10 points to the participant winning a round and a lesser number of points to the participant losing a round.

"Timekeeper" is defined as an event official who keeps the official timing of a contest.

"Training facility" is a location licensed and defined under chapter 67.08 RCW to hold amateur mixed martial arts exhibitions in that location.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-14-310 Hand-wraps. (1) All participants shall be required to gauze and tape their hands prior to all contests. In all weight classes, the bandages on each contestant's hand shall be restricted to soft gauze cloth not more than ((~~fifteen~~)) 15 yards in length and two inches in width, held in place by not more than ((~~ten~~)) 10 feet of surgeon's tape, one inch in width, for each hand. Surgeon's adhesive tape shall be placed directly on each hand for protection near the wrist. However, as opposed to boxing wraps, the tape may cross the back of the hand twice and extend to cover and protect the knuckles, but not over the knuckles, when the hand is clenched to make a fist. The bandages shall be evenly distributed across the hand. Bandages and tape shall be placed on the contestant's hands in the dressing room in the presence of the referee, inspector, or department representative and, if warranted, in the presence of the manager or chief second of ((~~his/her~~)) their opponent.

(2) Under no circumstances are gloves to be placed on the hands of a participant until the approval of the referee, inspector, or department representative is received.

(3) Substances other than tape and gauze shall not be utilized. For example, prewraps shall not be used.

(4) Liquids or other materials shall not be used on the tape or gauze.

(5) The referee, inspector, or department representative shall inspect and sign the hand-wraps.

(6) The referee, inspector, or department representative shall inspect and sign off on the gloves after wraps.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-14-335 Referee's responsibilities/authority. (1) The referee's primary responsibility shall be to maintain the safety and welfare of the participants at all times.

(2) Before starting a contest, the referee shall determine the name of the chief seconds for each participant. The chief second shall be responsible for the conduct of the participant's other seconds during the contest.

(3) The referee shall not allow any person other than the participant and the event physician to enter the ring during a round.

(4) The referee shall inspect the participants' bodies and gloves to make sure no substances have been applied to the detriment of an opponent.

(5) Referees who are event officials shall pass a physical examination by the event physician within ((~~twenty-four~~)) 24 hours prior to an event for the purpose of determining their physical ability to referee the contest. If such examination indicates the referee is physically unable to referee the contest, such inability shall be noted on the prefight physical form and immediately be reported to the inspector or department representative.

(6) The referee shall have the authority to stop a contest any time ((~~he/she thinks~~)) they think it is too one-sided, or if either participant is in such condition that to continue might subject them to serious injury.

(7) The referee shall not make a disqualification decision based on one unintentional, low-blow foul. However, if two previous warnings for such fouls have resulted in point deductions, the third foul may be grounds for disqualification.

(8) The referee has authority to decide any matters that arise during a contest and are not covered by these rules.

(9) If a participant receives an injury that the referee thinks shall incapacitate the participant, the referee shall ask the event physician to examine the participant. The event physician shall provide the referee with an opinion as to the seriousness of the injury and either the event physician or the referee shall stop the contest if the injury is serious. When a referee calls the event physician into the ring, the referee shall direct the timekeeper to cease keeping time while the event physician examines the participant.

(10) The referee may penalize a participant who fouls an opponent during a contest, by charging such participant with the loss of points. The referee shall immediately notify the judges of the number of points to be deducted.

(11) The referee shall stop the contest if the participant's chief second determines that a contest should be stopped, and immediately signals the referee by stepping onto the ring apron, or top step of the cage.

(12) Prior to an event, each referee shall disclose to the department all considerations, including reimbursement for expenses that will be received from any source for participation in the event. The disclosure shall be made on a form supplied by the department.

(13) A decision rendered at the termination of any contest may be changed by the department if the department determines that one of the following occurred:

(a) There was collusion affecting the result of any contest;

(b) The compilation of the scorecard of the judges shows an error which would mean that the decision was given to the wrong contestant; or

(c) There was a violation of the laws or rules governing contests, which affected the result of any contest.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-14-350 Time considerations for fouls. (1) A participant who has been struck with a low blow is allowed up to five minutes to recover from the foul as long as in the ringside doctor's opinion the participant may continue in the contest. If the participant states they can continue on before the five minutes of time have expired, the referee shall as soon as practical restart the fight. If the participant goes over the five minute time allotment, the fight cannot be restarted and the contest must come to an end with the outcome determined by the round and time in which the fight was stopped.

(2) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the participant who has been fouled can continue or not. If the participant's chance of winning has not been seriously jeopardized as a result of the foul and if the foul did not involve a concussive impact to the head of the participant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five minutes. Immediately after separating the participants, the referee shall inform the department's representative of ((~~his/her~~)) their determination that the foul was accidental.

(3) If a participant is fouled by a blow the referee deems illegal the referee should stop the action and call for time. The referee may take the injured participant to the ringside physician and have the ringside physician examine the participant as to their ability to continue on in the contest. The ringside physician has up to five minutes to make their determination. If the ringside physician determines that the participant can continue in the contest, the referee shall as soon as practical restart the fight. However, unlike the low blow foul rule, the participant does not have up to five minutes of time to use at their discretion.

(4) For a foul other than a low blow, the fouled participant is not guaranteed five minutes of recovery time. If deemed not fit to continue by the referee or ringside physician, the referee must immediately call a halt to the bout. If the participant is deemed not fit to continue by the referee or ringside physician but some of the five minute foul time is still remaining, the participant cannot avail ((~~himself~~)) themselves of the remaining time.

(5) If the referee stops the contest and employs the use of the ringside physician, the ringside physician's examination shall not exceed five minutes. If five minutes is exceeded, the fight cannot be restarted and the contest must end.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-14-355 Outcome of contest. (1) Submission by:

(a) Tap out: When a contestant physically uses ((~~his/her~~)) their hand to indicate that ((~~he or she~~)) they no longer ((~~wishes~~)) wish to continue; or

(b) Verbal tap out: When a contestant verbally announces to the referee that ((~~he or she does~~)) they do not wish to continue or makes audible sounds such as screams indicating pain or discomfort.

(2) Technical knockout if:

(a) Referee stops bout;

(b) Ringside physician stops bout;

(c) An injury as a result of a legal maneuver is severe enough to terminate a bout;

(d) Cornerman signals referee to terminate the bout; or

(e) Participant, after putting forth good effort, signals referee ((~~his/her~~)) their desire to stop fighting.

(3) Knockout by: Failure to rise from the canvas;

(4) Decision via score cards:

(a) Unanimous decision: When all three judges score the bout for the same contestant;

(b) Split decision: When two judges score the bout for one contestant and one judge scores for the opponent; or

(c) Majority decision: When two judges score the bout for the same contestant and one judge scores a draw;

(d) Draws:

(i) Unanimous draw - When all three judges score the bout a draw;

(ii) Majority draw - When two judges score the bout a draw; or

(iii) Split draw - When all three judges score differently and the score total results in a draw.

(5) Disqualification if:

(a) An injury sustained during competition as a result of an intentional foul is severe enough to terminate the contest;

(b) A participant quits after putting forth no effort, thereby fostering a sham on the public;

(c) Following a contest, a participant tests positive for controlled substances per WAC 36-12-240.

(6) Technical decision if: A bout is stopped after the completion of two rounds in bouts scheduled for three rounds and after three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately. At least two of the judges must have the same contestant ahead on points;

(7) Technical draw if: A bout is stopped after the completion of two rounds in bouts scheduled for three rounds and after three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately and the judges are split (one voting for participant A, one voting for participant B, and the third judge with an even score);

(8) No decision if: A bout is stopped before the completion of two rounds in bouts scheduled for three rounds and before three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately;

(9) No contest if:

(a) The bout is unable to continue due to events other than fighting (fire, riot, ring collapse, etc.); or

(b) In the referee's judgment, there appears to be collusion affecting the outcome of the contest.

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-14-360 Suspensions. (1) A participant whose manager has been suspended under chapter 67.08 RCW may continue participating during the term of such suspension, signing ((~~his/her~~)) their own participant/promoter contract.

(2) Participants scheduled for a contest shall sign a letter of agreement with the department accepting temporary suspension of their license if they receive an injury during the contest. The schedule for suspensions is:

(a) Thirty days for a technical knockout;

(b) Sixty days for a knockout;

(c) A period of time different than (a) and (b) of this subsection if serious injury or condition is detected by the event physician during the postfight physical; and

(d) A period of time or an indefinite period of time if serious injury or condition is detected by the event physician. If the suspension is for an indefinite period of time, the participant may not compete again without an examination completed by a physician who has provided written certification to the department that the medical condition no longer exists.

(3) If at any time a participant's ability to perform is questionable, whether for reasons of health, mental condition, or no longer possessing the ability to compete or for any other reason, the department may recommend that the participant be retired from further competition.

(4) Participants who have been recommended for retirement have a right to a hearing under chapter 34.05 RCW, Administrative Procedure Act.

WSR 26-01-125
PERMANENT RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed December 18, 2025, 7:43 a.m., effective January 18, 2026]

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

Purpose: Licensure requirements for expanded function dental auxiliaries (EFDAs). The dental quality assurance commission is adopting amendments to WAC 246-817-195 to allow the EFDA training for amalgam restorations on actual clinical patients to be optional. The amended rule allows amalgam restoration training on typodonts (plastic models) or on clinical patients, rather than requiring both.

Citation of Rules Affected by this Order: Amending WAC 246-817-195.

Statutory Authority for Adoption: RCW 18.32.002 and 18.260.120.

Adopted under notice filed as WSR 25-17-018 on August 11, 2025.

A final cost-benefit analysis is available by contacting Debbie Gardner, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, TTY 711, email dental@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 1, Repealed 0.

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

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

Date Adopted: October 24, 2025.

Bryan Swanson, DDS, Chair
Dental Quality Assurance Commission

RDS-6364.1

AMENDATORY SECTION (Amending WSR 21-01-215, filed 12/23/20, effective 1/23/21)

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

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

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

(3) Provide evidence of:

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

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

(i) A minimum of ((~~three thousand five hundred~~)) 3,500 hours of experience as a dental assistant within a continuous ((~~twenty-four through forty-eight~~)) 24 through 48-month period;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) In providing patient oral health instructions; and

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

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

(i) Tooth morphology and anatomy;

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

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

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

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

(vi) Current practices in infection control;

(vii) Health history alerts;

(viii) Final impression;

(ix) Matrix and wedge;

(x) Rubber dam;

(xi) Acid etch and bonding;

(xii) Occlusion and bite registration;

(xiii) Temporary restorations;

(xiv) Dental emergencies;

(xv) Risk management and charting;

(xvi) Intra-oral anatomy;

(xvii) Pharmacology; and

(xviii) Bases, cements, liners and sealers.

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

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

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

(6) Provide any other information determined by the secretary.

WSR 26-01-133
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed December 18, 2025, 10:46 a.m., effective January 1, 2026]

Effective Date of Rule: January 1, 2026.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule making implements HB [ESHB] 1493 (impaired driving), which takes effect January 1, 2026. Implementation of this rule by January 1st satisfies RCW 34.05.380 (3)(a) and (c), as the effective date is outlined in statute and there is a potential risk to public safety if not implemented by the effective date.

Purpose: This rule making will implement provisions of HB [ESHB] 1493, concerning impaired driving, around the employee exemption for obtaining an ignition interlock device and removes the self-employed exemption. Rule making will also make various technical and nonsubstantive corrections to the WAC chapter as part of a broader cleanup.

Citation of Rules Affected by this Order: New WAC 308-107-100 Ignition interlock device—Employer exemption; and amending WAC 308-107-040 Functioning device—Evidence that device is no longer installed or functioning, and 308-107-090 Ignition interlock device—Medical exemption.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Other Authority: HB [ESHB] 1493, passed during the 2024 legislative session.

Adopted under notice filed as WSR 25-19-098 on September 17, 2025.

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 2, 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 3, Repealed 0.

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

Date Adopted: December 18, 2025.

Kelsey Stone
Legislative Policy Analyst

RDS-6644.2

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08, effective 1/1/09)

WAC 308-107-040 Functioning device—Evidence that device is no longer installed or functioning. (1) For purposes of RCW 46.20.311, 46.20.385, and 46.20.740, the department may determine that a device is no longer installed or functioning in the vehicle(s) driven by a person based on:

(a) An ignition interlock status verification form submitted by a manufacturer, or by an authorized service provider associated with such manufacturer, indicating that a device is no longer installed or functioning;

(b) Notice from the commission that a report received under WAC 308-107-080 indicates that a device is no longer installed or functioning or that the driver has failed to appear for scheduled maintenance;

(c) The termination or expiration without renewal of an agreement entered into between the department and the manufacturer of the device(s) installed in the vehicle(s) driven by the person; or

(d) ((~~A statement from a law enforcement officer made under RCW 9A.72.085 indicating that a device has been disabled or removed from a motor vehicle operated by the person; or~~

~~(e)~~)) A conviction under RCW 46.20.740(2) for operating a motor vehicle that is not equipped with a functioning device.

(2) Before making a determination under this section, the department may consider evidence from the person indicating that:

(a) The person is no longer operating the vehicle in which a device is no longer installed or functioning and that another vehicle driven by the person is so equipped; or

(b) The device has been replaced with a functioning device installed by another manufacturer or authorized service provider.

(3) Once the department has determined under this section that a device is no longer installed or functioning, the person must re-establish that a functioning device has been installed before a license may be reinstated or reissued during the remainder of an applicable period of restriction.

AMENDATORY SECTION (Amending WSR 17-22-049, filed 10/25/17, effective 11/25/17)

WAC 308-107-090 Ignition interlock device—Medical exemption. (1) A person applying for an ignition interlock device tolling medical exemption under RCW 46.20.720 (3)(e) must obtain and submit a statement on a department prescribed form certifying the person's condition and have the form signed by a licensed physician or other proper authority designated by the department.

(2) The department may approve or deny the exemption based on the department's evaluation.

(3) The medical exemption decision is for the confidential use of the director, the chief of the Washington state patrol, and any other public officials designated by law. It is exempt from public inspection and copying notwithstanding chapter 42.56 RCW.

(4) The medical exemption shall only be effective during an ignition interlock device period of restriction under RCW 46.20.720 (1)(c) and (d).

(5) Exemptions shall not waive the ignition interlock device duration of restriction.

(6) A person with a medical exemption shall not be eligible to drive, apply for an ignition interlock license, or receive day-for-day credit.

(7) The medical exemption shall be valid for not more than ((~~three hundred sixty-six~~)) 366 days. For renewal of the medical exemption, a person must submit a new form as outlined in subsection (1) of this section.

(8) The department may invalidate a medical exemption if a person has an ignition interlock device installed.

(9) The department may develop procedures to certify that a person with an ignition interlock device tolling medical exemption meets the removal requirements as outlined in RCW ((~~46.20.710(4)~~)) 46.20.720(4).

(10) The department may invalidate the medical exemption and require an application for a new medical exemption if the person's license is subsequently suspended, revoked or canceled for a different violation.

NEW SECTION

WAC 308-107-100 Ignition interlock device—Employer exemption. (1) A person applying for an ignition interlock device employer exemption under RCW 46.20.720 (6)(b) must submit a declaration pursuant to chapter 5.50 RCW from their employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours on the form provided by the department.

(2) The department may approve or deny the exemption based on the department's evaluation.

(3) The employer exemption decision is for the confidential use of the director, the chief of the Washington state patrol, and any other public officials designated by law. It is exempt from public inspection and copying notwithstanding chapter 42.56 RCW.

(4) The employer exemption shall only be effective during an ignition interlock device period of restriction under RCW 46.20.720 (1)(c) and (d).

(5) Exemptions shall not waive the ignition interlock device duration of restriction.

(6) A person with an employer exemption shall only operate vehicles owned by their employer during work hours and have an ignition interlock device installed in their personal vehicle.

(7) The employer exemption shall be valid for not more than 366 days. For renewal of the employer exemption, a person must submit a new form as outlined in subsection (1) of this section.

(8) The department may invalidate an employer exemption if a person no longer has an ignition interlock device installed in their personal vehicle.

(9) The employer exemption does not apply to a person who is self-employed unless the person's vehicle is used exclusively for the person's employment.

(10) The department may invalidate the employer exemption and require an application for a new employer exemption if the person's license is subsequently suspended, revoked, or canceled for a different violation.

WSR 26-01-148
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2025-12—Filed December 19, 2025, 7:35 a.m., effective January 19, 2026]

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

Purpose: This rule is necessary to update existing rules to align with changes in state and federal law and insurance-related legislation. The rule ensures that affected entities understand their rights and obligations under the new legislation. The rule updates the essential health benefit plan coverage requirements. The rule also provides greater clarity around reporting responsibilities for ground ambulance locally set rates.

The rule updates include chapter 284-43 WAC, Subchapter D, Prior authorization and utilization review; chapter 284-43 WAC, Subchapter H, Health plan benefits; chapter 284-43 WAC, Subchapter L, Reproductive health care and contraception; and WAC 284-43-7010 and 284-43B-029.

Citation of Rules Affected by this Order: New WAC 284-43-2070, 284-43-5604, 284-43-5624, 284-43-5644, 284-43-5704, 284-43-5784, and 284-43-5939; repealing WAC 284-43-5600, 284-43-5620, 284-43-5640, 284-43-5700, and 284-43-5780; and amending WAC 284-43-2050, 284-43-5151, 284-43-5410, 284-43-5602, 284-43-5622, 284-43-5642, 284-43-5702, 284-43-5782, 284-43-5937, 284-43-7010, 284-43-7210, and 284-43B-029.

Statutory Authority for Adoption: RCW 48.02.060 and 48.49.110.

Other Authority: Chapter 366, Laws of 2024; chapter 25, Laws of 2025; and chapter 171, Laws of 2025.

Adopted under notice filed as WSR 25-22-100 on November 5, 2025.

A final cost-benefit analysis is available by contacting Rules Coordinator, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7000, email rulescoordinator@oic.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 7, Amended 9, Repealed 5.

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 19, 2025.

Patty Kuderer
Insurance Commissioner

RDS-6760.2

AMENDATORY SECTION (Amending WSR 25-02-084, filed 12/27/24, effective 1/27/25)

WAC 284-43-2050 Prior authorization processes. (1) This section applies to health benefit plans as defined in RCW 48.43.005, contracts for limited health care services as defined in RCW 48.44.035, and stand-alone dental and stand-alone vision plans. This section applies to plans issued or renewed on or after January 1, 2018. Unless stated otherwise, this section does not apply to prescription drug services. For health plans as defined in RCW 48.43.005, carriers must meet the requirements of RCW 48.43.830 in addition to the requirements in this section.

(2) A carrier or its designated or contracted representative must maintain a documented prior authorization program description and use evidence-based clinical review criteria. A carrier or its designated or contracted representative must make determinations in accordance with the carrier's current clinical review criteria and use the medical necessity definition stated in the enrollee's plan. The prior authorization program must include a method for reviewing and updating clinical review criteria. A carrier is obligated to ensure compliance with prior authorization requirements, even if they use a third-party contractor. A carrier is not exempt from these requirements because it relied upon a third-party vendor or subcontracting arrangement for its prior authorization program. A carrier or its designated or contracted representative is not required to use medical evidence or standards in its prior authorization of religious nonmedical treatment or religious nonmedical nursing care.

(3) A prior authorization program must meet standards set forth by a national accreditation organization including, but not limited to, National Committee for Quality Assurance (NCQA), URAC, Joint Commission, and Accreditation Association for Ambulatory Health Care in addition to the requirements of this chapter. A prior authorization program must have staff who are properly qualified, trained, supervised, and supported by explicit written, current clinical review criteria and review procedures.

(4) Effective November 1, 2019, a carrier or its designated or contracted representative must have a current and accurate online prior authorization process. All parts of the process that utilize personally identifiable information must be accessed through a secure online process. The online process must be accessible to a participating provider and facility so that, prior to delivering a service, a provider and facility will have enough information to determine if a service is a benefit under the enrollee's plan and the information necessary to submit a complete prior authorization request. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system. The online process must provide the information required for a provider or facility to determine for an enrollee's plan for a specific service:

(a) If a service is a benefit;

(b) If a prior authorization request is necessary;

(c) What, if any preservice requirements apply; and

(d) If a prior authorization request is necessary, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(5) Effective November 1, 2019, in addition to other methods to process prior authorization requests, a carrier or its designated or contracted representative that requires prior authorization for services must have a secure online process for a participating provider or facility to complete a prior authorization request and upload documentation if necessary. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system.

(6) Except for an integrated delivery system, a carrier or its designated or contracted representative must have a method that allows an out-of-network provider or facility to:

(a) Have access to any preservice requirements; and

(b) Request a prior authorization if prior authorization is required for an out-of-network provider or facility.

(7) A carrier or its designated or contracted representative that requires prior authorization for any service must allow a provider or facility to submit a request for a prior authorization at all times, including outside normal business hours.

(8) A carrier or its designated or contracted representative is responsible for maintaining a system of documenting information and supporting evidence submitted by a provider or facility while requesting prior authorization. This information must be kept until the claim has been paid or the appeals process has been exhausted.

(a) Upon request of the provider or facility, a carrier or its designated or contracted representative must remit to the provider or facility written acknowledgment of receipt of each document submitted by a provider or facility during the processing of a prior authorization request.

(b) When information is transmitted telephonically, a carrier or its designated or contracted representative must provide written acknowledgment of the information communicated by the provider or facility.

(9) A carrier or its designated or contracted representative must have written policies and procedures to assure that prior authorization determinations for a participating provider or facility are made within the appropriate time frames.

(a) Time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the prior authorization request.

(b) If the request from the participating provider or facility is not accompanied by all necessary information, the carrier or its designated or contracted representative must inform the provider or facility what additional information is needed and the deadline for its submission as set forth in this section.

(10) For health plans as defined in RCW 48.43.005, the prior authorization time frames for health care services and prescription drugs in RCW 48.43.830 apply.

(a) For purposes of the prior authorization time frames in RCW 48.43.830 and this subsection, the following definitions apply:

(i) "Electronic prior authorization request" means a prior authorization request that is delivered through a two-way communication system that meets the requirements of a secure online prior authorization process or an interoperable electronic process or prior authorization application programming interface.

(ii) "Nonelectronic prior authorization request" means a prior authorization request other than an electronic prior authorization re-

quest including, but not limited to, requests delivered through email, a phone call, a text message, a fax, or U.S. mail.

(b) If insufficient information has been provided to the carrier to make a prior authorization determination and the carrier requests additional information from the provider or facility under RCW 48.43.830, the initial prior authorization request time frames in RCW 48.43.830 apply once the carrier has the necessary information to make a determination. Those time frames are as follows:

(i) For electronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within three calendar days, excluding holidays, of receiving the necessary information needed to make the determination.

(ii) For electronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within one calendar day of receiving the necessary information needed to make the determination.

(iii) For nonelectronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within five calendar days of receiving the necessary information needed to make the determination.

(iv) For nonelectronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within two calendar days of receiving the necessary information needed to make the determination.

(11) For purposes of compliance with RCW 48.43.830 effective January 21, 2027, health plans must:

(a) Establish and maintain a prior authorization application programming interface that is consistent with final rules issued by the federal Centers for Medicare and Medicaid Services and published in the federal register, and that indicates that a prior authorization denial or authorization of a service less intensive than that included in the original request is an adverse benefit determination and is subject to the carrier's grievance and appeal process under RCW 48.43.535; and

(b) For prior authorization of prescription drugs, a health plan must utilize the fast health care interoperability resources application programming interface for prescription drugs covered under a health plan's medical benefit; and

(c) A carrier may adopt an interoperable electronic process that complies with standards developed by the National Council for Prescription Drug Programs as an alternative to use of the fast health care interoperability resources application programming interface for prior authorization of drugs covered under a health plan's prescription drug benefit.

(12) For limited health care services contracts as defined in RCW 48.44.035, stand-alone dental plans, and stand-alone vision plans, the time frames for carrier prior authorization determination and notification to a participating provider or facility are as follows:

(a) For standard prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within five calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has five calen-

dar days to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility five calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within four calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(b) For expedited prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within two calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has one calendar day to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility two calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within two calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(iii) If the time frames for the approval of an expedited prior authorization are insufficient for a provider or facility to receive approval prior to the preferred delivery of the service, the prior authorization should be considered an extenuating circumstance as defined in WAC 284-43-2060.

((~~(12)~~)) (13) A carrier or its designated or contracted representative when conducting prior authorization must:

(a) Accept any evidence-based information from a provider or facility that will assist in the authorization process;

(b) Collect only the information necessary to authorize the service and maintain a process for the provider or facility to submit such records;

(c) If medical records are requested, require only the section(s) of the medical record necessary in that specific case to determine medical necessity or appropriateness of the service to be delivered, to include admission or extension of stay, frequency or duration of service; and

(d) Base review determinations on the medical information in the enrollee's records and obtained by the carrier up to the time of the review determination.

((~~(13)~~)) (14) When a provider or facility makes a request for the prior authorization, the response from the carrier or its designated or contracted representative must state if it is approved or denied. If the request is denied, the response must give the specific reason for the denial in clear and simple language. If the reason for the denial is based on clinical review criteria, the criteria must be provided. Written notice of the decision must be communicated to the provider or facility, and the enrollee. A decision may be provided orally, but subsequent written notice must also be provided. A denial must include the department and credentials of the individual who has the

authorizing authority to approve or deny the request. A denial must also include a phone number to contact the authorizing authority and a notice regarding the enrollee's appeal rights and process.

Whenever the prior authorization relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

((~~(14)~~)) (15) A prior authorization approval notification for all services must inform the requesting provider or facility, and the enrollee, whether the prior authorization is for a specific provider or facility. The notification must also state if the authorized service may be delivered by an out-of-network provider or facility and if so, disclose to the enrollee the financial implications for receiving services from an out-of-network provider or facility.

Whenever the notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

((~~(15)~~)) (16) A provider or facility may appeal a prior authorization denial to the carrier or its designated or contracted representative.

((~~(16)~~)) (17) Prior authorization determinations shall expire no sooner than 45 days from date of approval. This requirement does not supersede RCW 48.43.039.

((~~(17)~~)) (18) In limited circumstances when an enrollee has to change plans due to a carrier's market withdrawal as defined in RCW 48.43.035 (4)(d) and 48.43.038 (3)(d), the subsequent carrier or its designated or contracted representative must recognize the prior authorization of the previous carrier until the new carrier's prior authorization process has been completed and its authorized treatment plan has been initiated. The subsequent carrier or its designated or contracted representative must ensure that the enrollee receives the previously authorized initial service as an in-network service. Enrollees must present proof of the prior authorization.

(a) For medical services, a carrier or its designated or contracted representative must recognize a prior authorization for at least 30 days or the expiration date of the original prior authorization, whichever is shorter.

(b) For pharmacy services, a carrier or its designated or contracted representative must recognize a prior authorization for the initial fill, or until the prior authorization process of the new carrier or its designated or contracted representative has been completed.

((~~(18)~~)) (19) Prior authorization for a facility-to-facility transport that requires prior authorization can be performed after the service is delivered. Authorization can only be based on information available to the carrier or its designated or contracted representative at the time of the prior authorization request.

((~~(19)~~)) (20) A carrier or its designated or contracted representative must have a prior authorization process that allows specialists the ability to request a prior authorization for a diagnostic or laboratory service based upon a review of medical records in advance of seeing the enrollee.

((~~(20)~~)) (21) A carrier or its designated or contracted representative must have a method that allows an enrollee, provider or facility to make a predetermination request when provided for by the plan.

((~~(21)~~)) (22) Predetermination notices must clearly disclose to the enrollee and requesting provider or facility, that the determination is not a prior authorization and does not guarantee services will

be covered. The notice must state "A predetermination notice is not a prior authorization and does not guarantee services will be covered." Predetermination notices must be delivered within five calendar days of receipt of the request. Predetermination notices will disclose to a provider or facility for an enrollee's plan:

(a) If a service is a benefit;

(b) If a prior authorization request is necessary;

(c) If any preservice requirements apply;

(d) If a prior authorization request is necessary or if a medical necessity review will be performed after the service has been delivered, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(e) Whenever a predetermination notice relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

NEW SECTION

WAC 284-43-2070 Forms for authorization of inpatient or residential substance use disorder treatment. A carrier must accept the universal format for authorization and reauthorization of inpatient or residential substance use disorder treatment services developed pursuant to section 9, chapter 366, Laws of 2024. The form will be posted on the insurance commissioner's website. Any new or updated forms will be posted on the insurance commissioner's website at least 30 days prior to their effective date.

RDS-6761.2

AMENDATORY SECTION (Amending WSR 21-24-072, filed 11/30/21, effective 1/1/22)

WAC 284-43-5151 Unfair practice relating to gender affirming treatment and services. When a treatment or service is gender affirming treatment, as defined in RCW 48.43.0128, it is an unfair practice for any health carrier to:

(1) Deny or limit coverage, issue automatic denials of coverage, impose additional cost sharing or other limitations or restrictions on coverage, or deny or limit coverage of a claim, if gender affirming treatment is:

(a) Prescribed to an individual because of, related to, or consistent with a person's gender expression or identity, as defined in RCW 49.60.040;

(b) Medically necessary. A carrier or its designated or contracted representative must make medically necessary determinations in accordance with the carrier's current clinical review criteria based on reasonable medical evidence and use the medical necessity definition stated in the enrollee's plan; and

(c) Prescribed in accordance with accepted standards of care;

(2) Apply blanket exclusions or categorical exclusions to gender affirming treatment; or

(3) When prescribed as medically necessary, exclude facial gender affirming treatment (such as tracheal shaves), hair removal procedures, and other care (such as mastectomies, breast reductions, breast implants, or any combination of gender affirming procedures, including revisions to prior treatment) as cosmetic services.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-5410 Definitions. The following definitions apply to WAC 284-43-5400 through 284-43-5820 unless the context indicates otherwise.

"Base-benchmark plan" means the small group plan with the largest enrollment, as designated in WAC ((~~284-43-5600(1) or~~)) 284-43-5602(1) ((~~,~~)) until December 31, 2025, or the updated essential health benefits benchmark plan described in WAC 284-43-5604(1), prior to any supplementation or adjustments made pursuant to RCW 48.43.715.

"EHB-benchmark plan" means the set of benefits that an issuer must include in nongrandfathered plans offered in the individual or small group market in Washington state.

"Health benefit," unless defined differently pursuant to federal rules, regulations, or guidance issued pursuant to section 1302(b) of PPACA, means health care items or services for injury, disease, or a health condition, including a behavioral health condition.

"Individual plan" includes any nongrandfathered health benefit plan offered, issued, or renewed by an admitted issuer in the state of Washington for the individual health benefit plan market, unless the certificate of coverage is issued to an individual pursuant to or issued through an organization meeting the definition established pursuant to 29 U.S.C. 1002(5).

"Mandated benefit" or "required benefit" means a health plan benefit for a specific type of service, device or medical equipment, or treatment for a specified condition or conditions that a health plan is required to cover by either state or federal law. Required benefits do not include provider, delivery method, or health status based requirements.

"Meaningful health benefit" means a benefit that must be included in an essential health benefit category, without which the coverage for the category does not reasonably provide medically necessary services for an individual patient's condition on a nondiscriminatory basis.

"Medical necessity determination process" means the process used by a health issuer to make a coverage determination about whether a health benefit is medically necessary for an individual patient.

"PPACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

"Scope or limitation requirement" means a requirement applicable to a benefit that limits its duration, the number of times coverage is available for the benefit, or imposes a legally permitted eligibility or reference-based limitation on a specific benefit.

"Small group plan" includes any nongrandfathered health benefit plan offered, issued, or renewed by an admitted issuer in the state of Washington for the small group health benefit plan market to a small group, as defined in RCW 48.43.005, and 45 C.F.R. 144.102(c), unless the certificate of coverage is issued to a small group pursuant to a master contract held by or issued through an organization meeting the definition established pursuant to 29 U.S.C. 1002(5).

"Stand-alone dental plan" means coverage for a set of benefits limited to oral care including, but not necessarily limited to, pediatric oral care, as referenced in RCW 43.71.065.

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5602 Essential health benefits package benchmark reference plan. A nongrandfathered individual or small group health benefit plan offered, issued, amended, or renewed on or after January 1, 2017, must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered by health care service contractor Regence BlueShield as the *Regence Direct Gold* + small group plan, policy form number WW0114CCONMSD and certificate form number WW0114BPPO1SD, offered during the first quarter of 2014. The SERFF form filing number is RGWA-128968362.

(2) The services and items covered by a health benefit plan that are within the categories defined in RCW 48.43.005 as "essential health benefits" including, but not limited to:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity and newborn care;

(e) Mental health and substance use disorder services, including behavioral health treatment;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive and wellness services and chronic disease management;

(j) Pediatric services, including oral and vision care; and

(k) Other services as supplemented by the commissioner or required by the secretary of the U.S. Department of Health and Human Services.

(3) Mandated benefits pursuant to Title 48 RCW enacted before December 31, 2011.

(4) This section applies to health plans that have an effective date of January 1, 2017, or later.

(5) This section expires on December 31, 2025.

NEW SECTION

WAC 284-43-5604 Essential health benefits package benchmark plan. A nongrandfathered individual or small group health benefit plan offered, issued, amended, or renewed on or after January 1, 2026,

must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered within Appendix B - Washington Essential Health Benefits Benchmark Plan and Appendix C - State EHB Benefits Benchmark Summary of Benefits as approved by the department of health and human services Centers for Medicare and Medicaid Services on October 7, 2024, as posted on the website of the office of the insurance commissioner.

(2) The services and items covered by a health benefit plan that are within the categories defined in RCW 48.43.005 as "essential health benefits" including, but not limited to:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity and newborn care;

(e) Mental health and substance use disorder services, including behavioral health treatment;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive and wellness services and chronic disease management;

(j) Pediatric services, including oral and vision care; and

(k) Other services as supplemented by the commissioner or required by the secretary of the U.S. Department of Health and Human Services.

(3) Mandated benefits pursuant to Title 48 RCW enacted before December 31, 2011.

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5622 Plan design. (1) A nongrandfathered individual or small group health benefit plan offered, issued, or renewed, on or after January 1, 2017, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-5642, 284-43-5702, and 284-43-5782.

(a) For plans offered, issued, or renewed for a plan or policy year beginning on or after January 1, 2017, an issuer must offer the EHB-benchmark plan without substituting benefits for the benefits specifically identified in the EHB-benchmark plan.

(b) "Substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category supports a determination by the commissioner that the benefit is a meaningful health benefit;

(ii) The aggregate actuarial value of the benefits across all essential health benefit categories does not vary more than a de minimis amount from the aggregate actuarial value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimis amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-5642, 284-43-5702, and 284-43-5782 for purposes of determining actuarial value. An issuer

may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan design does not specifically list each covered service, supply or treatment. Coverage for benefits not specifically identified as covered or excluded is determined based on medical necessity. An issuer may use this plan design, provided that each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services that are specifically excluded by the base-benchmark plan. If an issuer elects to cover a benefit excluded in the base-benchmark plan, the issuer must not include the benefit in its essential health benefits package for purposes of determining actuarial value. A health benefit plan must not exclude a benefit that is specifically included in the base-benchmark plan.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted from establishing reasonable requirements for credentialing of and access to providers within its network.

(6) Telemedicine or telehealth services are considered a method of accessing services, and are not a separate benefit for purposes of the essential health benefits package. Issuers must provide essential health benefits consistent with the requirements of RCW 48.43.735.

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not limited to, a chronic condition caused by illness or injury, either acquired or congenital.

(8) Benefits under each category set forth in WAC 284-43-5642, 284-43-5702, or 284-43-5782 must be covered for both pediatric and adult populations unless:

(a) A benefit is specifically limited to a particular age group in the base-benchmark plan and such limitation is consistent with state and federal law; or

(b) The category of essential health benefits is specifically stated to be applicable only to the pediatric population, such as pediatric oral services.

(9) A health benefit plan must not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful health benefit; or

(c) The benefit has a discriminatory effect in practice, outcome or purpose in relation to age, present or predicted disability, and expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation, and gender identity or in the application of Section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008). The commissioner will approve health benefit

plans for offer in Washington state that are, at a minimum, consistent with current state law including, but not limited to, RCW 49.60.040, 49.60.178, 48.30.300, 48.43.0128, 48.43.072, 48.43.073, 48.44.220, and 48.46.370 and with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557 including, but not limited to, those specifically found in 81 Fed. Reg. 31375, et seq. (2016), that were in effect on January 1, 2017.

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted under WAC 284-43-5642, 284-43-5702, and 284-43-5782.

(11) This section applies to health plans that have an effective date of January 1, 2017, or later.

(12) This section expires December 31, 2025.

NEW SECTION

WAC 284-43-5624 Plan design. (1) A nongrandfathered individual or small group health benefit plan offered, issued, or renewed, on or after January 1, 2026, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-5644, 284-43-5704, and 284-43-5784.

(a) For plans offered, issued, or renewed for a plan or policy year beginning on or after January 1, 2026, an issuer must offer the EHB-benchmark plan without substituting benefits for the benefits specifically identified in the EHB-benchmark plan.

(b) "Substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category supports a determination by the commissioner that the benefit is a meaningful health benefit;

(ii) The aggregate actuarial value of the benefits across all essential health benefit categories does not vary more than a de minimis amount from the aggregate actuarial value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimis amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-5644, 284-43-5704, and 284-43-5784 for purposes of determining actuarial value. An issuer may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan design does not specifically list each covered service, supply or treatment. Coverage for benefits not specifically identified as covered or excluded is determined based on medical necessity. An issuer may use this plan design, provided that each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services that are specifically excluded by the base-benchmark plan. If an issuer elects to cover a benefit excluded in the base-benchmark plan, the issuer must not include the benefit in its essential health benefits package for

purposes of determining actuarial value. A health benefit plan must not exclude a benefit that is specifically included in the base-benchmark plan.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of practice as determined by Washington state law for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted from establishing reasonable requirements for credentialing of and access to providers within its network.

(6) Telemedicine or telehealth services are considered a method of accessing services, and are not a separate benefit for purposes of the essential health benefits package. Issuers must provide essential health benefits consistent with the requirements of RCW 48.43.735.

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not limited to, a chronic condition caused by illness or injury, either acquired or congenital.

(8) Benefits under each category set forth in WAC 284-43-5644, 284-43-5704, or 284-43-5784 must be covered for both pediatric and adult populations unless:

(a) A benefit is specifically limited to a particular age group in the base-benchmark plan and such limitation is consistent with state and federal law; or

(b) The category of essential health benefits is specifically stated to be applicable only to the pediatric population, such as pediatric oral services.

(9) A health benefit plan must not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful health benefit; or

(c) The benefit has a discriminatory effect in practice, outcome, or purpose in relation to age, present or predicted disability, and expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation, and gender identity or in the application of section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008). The commissioner may approve health benefit plans for offer in Washington state that are, at a minimum, consistent with current state laws including, but not limited to, RCW 49.60.040, 49.60.178, 48.30.300, 48.43.0128, 48.43.072, 48.43.073, 48.44.220, and 48.46.370 and with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557 including, but not limited to, those specifically found in 81 Fed. Reg. 31375, et seq. (2016), that were in effect on January 1, 2017.

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted under WAC 284-43-5644, 284-43-5704, and 284-43-5784.

AMENDATORY SECTION (Amending WSR 24-24-067, filed 11/27/24, effective 12/28/24)

WAC 284-43-5642 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screening tests that are required under the preven-

tive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than:

(A) Covered nutritional counseling; and

(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility;

(vii) Inpatient hospitalization where mental illness is the primary diagnosis.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(ii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

(iii) Reversal of sterilizations; and

(iv) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017. Health plans may not include the base-benchmark plan limitations listed below and must cover all services consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017, RCW 48.30.300, 48.43.0128, 48.43.072, 48.43.073, 49.60.040 and 49.60.178:

(i) The base-benchmark plan allows a waiting period for transplant services;

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services; and

(iii) The base-benchmark plan excludes coverage for hospitalization where mental illness or a substance use disorder is the primary diagnosis.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy coverage that is substantially equivalent to coverage for maternal care or services, as provided in RCW 48.43.073.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include court-ordered mental health treatment that is not medically necessary as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental

health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to 30 day supplies at a time, other than insulin, which may be offered with more than a 30 day supply. This limitation is a floor, and an issuer may permit supplies greater than 30 days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(iv) Reproductive health-related over-the-counter drugs, devices, and products approved by the federal Food and Drug Administration.

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(iii) An issuer may include over-the-counter medications in its formulary for purposes of establishing quantitative limits and administering the benefit.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to as-

sist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to 30 service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to 25 outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the

number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X-ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X-ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multidisciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force has issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in the relevant recommendation or guideline, federal rules and guidance related to preventive services in effect on January 8, 2024, and in chapter 284-43 WAC, a plan may use reasonable medical management techniques to determine the frequency, method, treatment, or setting for the provision of an item or service described in RCW 48.43.047;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of 19, or covers dependent children age 19 or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for an item or service described in RCW 48.43.047, including providing multiple prevention and screening services at a single visit or across multiple visits. Medical management techniques may not be used that limit enrollee choice in accessing the full range of contraceptive drugs, devices, or other products approved by the federal Food and Drug Administration.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans. Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling. Health plans must cover certain obesity-related services that are listed as A or B recommendations by the U.S. Preventive Services Task Force, consistent with RCW 48.43.047 and 45 C.F.R. 147.130 (a)(1)(i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Sec. 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) Each category of essential health benefits must at a minimum cover services required by current state law and be consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017.

(13) This section applies to health plans that have an effective date of January 1, 2020, or later.

(14) This section expires on December 31, 2025.

NEW SECTION

WAC 284-43-5644 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures;

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices;

(viii) Medically necessary routine foot care;

(ix) Acupuncture as medically necessary; and

(x) Preliminary evaluations and diagnosis to determine if and why a covered member is infertile and artificial insemination procedures.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment,other than preliminary evaluations and diagnosis to determine if and why a covered member is infertile and artificial insemination;

(ii) Reversal of voluntary sterilization and those services referenced in (a)(vii) of this subsection;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Obesity or weight reduction or control other than:

(A) Covered nutritional counseling; and

(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iii) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "emergency medical services" the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room or behavioral health emergency services provider and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment and behavioral health emergency services provider services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition. Detoxification services are an emergency service;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "hospitalization services" the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility;

(vii) Inpatient hospitalization where mental illness is the primary diagnosis.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(ii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly;

(iii) Reversal of sterilizations; and

(iv) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017. Health plans may not include the base-benchmark plan limitations listed below and must cover all services consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017, RCW 48.30.300, 48.43.0128, 48.43.072, 48.43.073, 49.60.040 and 49.60.178.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury, or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "maternity and newborn services" the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Donor human milk for inpatient use when ordered by a licensed health care provider with prescriptive authority or an international board certified lactation consultant certified by the international board of lactation consultant examiners for an infant who is medically or physically unable to receive maternal human milk or participate in chest feeding or whose parent is medically or physically unable to produce maternal human milk in sufficient quantities or caloric density or participate in chest feeding, if the infant meets at least one of the criteria outlined in RCW 48.43.815;

(vii) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(viii) Termination of pregnancy coverage that is substantially equivalent to coverage for maternal care or services, as provided in RCW 48.43.073.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "mental health and substance use disorder services, including behavioral health treatment," the medically necessary care, treatment, and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classi-

fy them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs, or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment; and

(vi) Acupuncture treatment visits as medically necessary.

(b) A health benefit plan may, but is not required to, include court-ordered mental health treatment that is not medically necessary as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2026. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations, and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "prescription drug services" medically necessary prescribed drugs, medication, and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, and insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to 30 day supplies at a time, other than insulin, which may be offered with more than a 30 day supply. This limitation is a floor, and an issuer may permit supplies greater than 30 days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(iv) Reproductive health-related over-the-counter drugs, devices, and products approved by the federal Food and Drug Administration.

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(iii) An issuer may include over-the-counter medications in its formulary for purposes of establishing quantitative limits and administering the benefit.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as "rehabilitative services" the medically necessary services that help a person keep, restore, or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt, or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy, and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align, or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(d) For purposes of determining a plan's actuarial value, an issuer must classify as "habilitative services" the range of medically necessary health care services and health care devices designed to assist a person to keep, learn, or improve skills and functioning for daily living. Examples include services for a child who is not walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services in parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity re-

quirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities, and specialized assistance to adults, chore services to assist with basic needs, vocational, or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to 30 service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy, and speech therapy are limited to 25 outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease, or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as "laboratory services" the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X-ray, MRI, CAT scan and PET scan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X-ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "preventive and wellness services, including chronic disease management," the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multidisciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity, or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii) Screening and tests for which the U.S. Preventive Services Task Force has issued A and B recommendations on or before the applicable plan year.

(iii) Services, tests, and screening contained in the U.S. Health Resources and Services Administration (HRSA) Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening, and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of 19, or covers dependent children age 19 or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically

appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment, or setting for an item or service described in RCW 48.43.047, including providing multiple prevention and screening services at a single visit or across multiple visits. Medical management techniques may not be used that limit enrollee choice in accessing the full range of contraceptive drugs, devices, or other products approved by the federal Food and Drug Administration.

(v) To the extent not specified in the relevant recommendation or guideline, federal rules and guidance related to preventive services and in chapter 284-43 WAC, a plan may use reasonable medical management techniques to determine the frequency, method, treatment, or setting for the provision of an item or service described in RCW 48.43.047;

(vi) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vii) Wellness services.

(c) The base-benchmark plan establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans. Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling and certain obesity-related services that are listed as A or B recommendations by the U.S. Preventive Services Task Force, consistent with RCW 48.43.047 and 45 C.F.R. 147.130 (a)(1)(i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Sec. 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening (RCW 48.43.047);

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services, or maternity and newborn categories.

(11) Issuers must know and apply relevant guidance, clarifications, and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor, and the U.S. Department of the Treasury.

(12) Each category of essential health benefits must, at a minimum, cover services required by current state law and be consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017.

(13) This section applies to health plans that have an effective date of January 1, 2026, or later.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-5702 Essential health benefit category—Pediatric oral services. A health benefit plan must include "pediatric dental benefits" in its essential health benefits package. Pediatric dental benefits means coverage for the oral services listed in subsection (3) of this section, delivered to those under age ((~~nineteen~~)) 19. Plans must provide this coverage for enrollees until at least the end of the month in which the enrollee turns age ((~~nineteen~~)) 19.

(1) For benefit years beginning January 1, 2017, a health benefit plan must include pediatric dental benefits as an embedded set of benefits, or through a combination of a health benefit plan and a stand-alone dental plan that includes pediatric dental benefits certified as a qualified dental plan. For a health benefit plan certified by the health benefit exchange as a qualified health plan, this requirement is met if a stand-alone dental plan meeting the requirements of subsection (4) of this section is offered in the health benefit exchange for that benefit year.

(2) The requirements of WAC 284-43-5642 and 284-43-5782 are not applicable to the stand-alone dental plan.

(3) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes oral implants, and an issuer should not include benefits for oral implants in establishing a plan's actuarial value.

(4) The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-5642 and covers pediatric oral services. The designated base-benchmark plan for pediatric dental benefits consists of the benefits and services covered by health care service contractor Regence BlueShield as the *Regence Direct Gold* small group plan policy form, policy form number WW0114CCONMSD, and certificate form number WW0114BPPO1SD, offered during the first quarter of 2014 (SERFF filing number RGWA-128968362). A health plan issuer must offer coverage for and classify the following pediatric oral services

as pediatric dental benefits in a manner substantially equal to the base-benchmark plan:

(a) Diagnostic services;

(b) Preventive care;

(c) Restorative care;

(d) Oral surgery and reconstruction to the extent not covered under the hospitalization benefit;

(e) Endodontic treatment, not including indirect pulp capping;

(f) Periodontics;

(g) Crown and fixed bridge;

(h) Removable prosthetics; and

(i) Medically necessary orthodontia.

(5) The base-benchmark plan's visit limitations on services in this category are:

(a) Diagnostic exams once every six months, beginning before one year of age, plus limited oral evaluations when necessary to evaluate for a specific dental problem or oral health complaint, dental emergency or referral for other treatment;

(b) Limited visual oral assessments or screenings, limited to two per member per calendar year, not performed in conjunction with other clinical oral evaluation services;

(c) Two sets of bitewing X-rays once a year for a total of four bitewing X-rays per year;

(d) Cephalometric films, limited to once in a two-year period;

(e) Panoramic X-rays once every three years;

(f) Occlusal intraoral X-rays, limited to once in a two-year period;

(g) Periapical X-rays not included in a complete series for diagnosis in conjunction with definitive treatment;

(h) Prophylaxis every six months beginning at age six months;

(i) Fluoride three times in a ((~~twelve~~)) 12-month period for ages six and under; two times in a ((~~twelve~~)) 12-month period for ages seven and older; and three times in a ((~~twelve~~)) 12-month period during orthodontic treatment;

(j) Sealant once every three years for permanent bicuspids and molars only;

(k) Oral hygiene instruction two times in ((~~twelve~~)) 12 months for ages eight and under if not billed on the same day as a prophylaxis treatment;

(l) Restorations (fillings) on the same tooth every two years;

(m) Frenulectomy or frenuloplasty covered for ages six and under without prior authorization;

(n) Root canals on baby primary posterior teeth only;

(o) Root canals on permanent anterior, bicuspid and molar teeth, excluding teeth 1, 16, 17, and 32;

(p) Periodontal scaling and root planing once per quadrant in a two-year period for ages ((~~thirteen~~)) 13 and older;

(q) Periodontal maintenance once per quadrant in a ((~~twelve~~)) 12-month period for ages ((~~thirteen~~)) 13 and older;

(r) Stainless steel crowns for primary anterior teeth once every three years, if age ((~~thirteen~~)) 13 and older;

(s) Stainless steel crowns for permanent posterior teeth once every three years;

(t) Installation of space maintainers (fixed unilateral or fixed bilateral) for members ((~~twelve~~)) 12 years of age or under, including:

(i) Recementation of space maintainers;

(ii) Removal of space maintainers; and

(iii) Replacement space maintainers when dentally appropriate.

(u) One resin-based partial denture, if provided at least three years after the seat date;

(v) One complete denture upper and lower, and one replacement denture per lifetime after at least five years from the seat date;

(w) Rebasing and relining of complete or partial dentures once in a three-year period, if performed at least six months from the seat date.

(6) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(7) This section applies to health plans that have an effective date of January 1, 2017, or later.

(8) This section expires December 31, 2025.

NEW SECTION

WAC 284-43-5704 Essential health benefit category—Pediatric oral services. A health benefit plan must include "pediatric dental benefits" in its essential health benefits package. Pediatric dental benefits means coverage for the oral services listed in subsection (3) of this section, delivered to those under age 19. Plans must provide this coverage for enrollees until at least the end of the month in which the enrollee turns age 19.

(1) For benefit years beginning January 1, 2026, a health benefit plan must include pediatric dental benefits as an embedded set of benefits, or through a combination of a health benefit plan and a stand-alone dental plan that includes pediatric dental benefits certified as a qualified dental plan. For a health benefit plan certified by the health benefit exchange as a qualified health plan, this requirement is met if a stand-alone dental plan meeting the requirements of subsection (4) of this section is offered in the health benefit exchange for that benefit year.

(2) The requirements of WAC 284-43-5644 and 284-43-5784 are not applicable to the stand-alone dental plan.

(3) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes oral implants, and an issuer should not include benefits for oral implants in establishing a plan's actuarial value.

(4) The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-5644 and covers pediatric oral services. The designated base-benchmark plan for pediatric dental benefits consists of the benefits and services covered within Appendix B - Washington Essential Health Benefits Benchmark Plan and Appendix C - State EHB Benchmark Summary of Benefits as approved by the department of health and human services Centers for Medicare and Medicaid Services on October 7, 2024, as available on the commissioner's website.

(a) Pediatric preventive and diagnostic dental services.

(i) Bitewing x-rays;

(ii) Cephalometric films;
(iii) Complete intra-oral mouth x-rays;
(iv) Diagnostic casts when dentally appropriate;
(v) Limited oral evaluations to evaluate the member for a specific dental problem or oral health complaint, dental emergency, or referral for other treatment;
(vi) Limited visual oral assessments or screenings not performed in conjunction with other clinical oral evaluation services;
(vii) Occlusal intraoral x-rays;
(viii) Oral hygiene instruction if not billed on the same day as a cleaning;
(ix) Periapical x-rays that are not included in a completed series for diagnosis in conjunction with definitive treatment;
(x) Photographic images (oral and facial) when dentally appropriate;
(xi) Periodic and comprehensive oral examinations, limited to two per member per calendar year, beginning before one year of age;
(xii) Problem focused oral examinations;
(xiii) Panoramic mouth x-rays;
(xiv) Cleanings, limited to two per member per calendar year;
(xv) Sealants;
(xvi) Space maintainers (fixed unilateral or fixed bilateral), subject to the following limits:
(A) Recementation of space maintainers;
(B) Removal of space maintainers; and
(C) Replacement space maintainers are covered when dentally appropriate.
(xvii) Topical fluoride application when dentally appropriate.
(b) Basic dental services.
(i) Complex oral surgery procedures including:
(A) Surgical extractions of teeth;
(B) Impactions;
(C) Alveoloplasty;
(D) Vestibuloplasty;
(E) Residual root removal;
(F) Frenulectomy;
(G) Frenuloplasty.
(ii) Emergency treatment for pain relief.
(iii) Endodontic services consisting of:
(A) Apexification for apical closures of anterior permanent teeth;
(B) Apicoectomy;
(C) Debridement;
(D) Direct pulp capping;
(E) Pulpal therapy;
(F) Pulp vitality tests;
(G) Pulpotomy; and
(H) Root canal treatment.
(iv) Endodontic benefits will not be provided for indirect pulp capping.
(v) Fillings consisting of composite and amalgam restorations, limited to the following:
(A) A maximum of five surfaces per tooth for permanent posterior teeth, except for upper molars;
(B) A maximum of six surfaces per tooth for teeth one, two, three, 14, 15, and 16;

(C) A maximum of six surfaces per tooth for permanent anterior teeth;

(D) Restorations on the same tooth are limited to once in a two-year period; and

(E) Two occlusal restorations for the upper molars on teeth one, two, three, 14, 15, and 16.

(vi) General dental anesthesia or intravenous sedation administered in connection with the extractions of partially or completely bony impacted teeth. Other services related to general anesthesia or intravenous sedations are covered as follows:

(A) Drugs and/or medications only when used with parenteral conscious sedation, deep sedation, or general anesthesia;

(B) Inhalation of nitrous oxide, once per day; and

(C) Local anesthesia and regional blocks, including office-based oral or parenteral conscious sedation, deep sedation, or general anesthesia.

(vii) Periodontal services consisting of:

(A) Complex periodontal procedures (osseous surgery including flap entry and closure, mucogingivoplastic surgery);

(B) Debridement limited to once per member in a three-year period;

(C) Gingivectomy and gingivoplasty limited to once per member per quadrant in a three-year period;

(D) Periodontal maintenance limited to once per quadrant in a calendar year; and

(E) Scaling and root planning limited to once per member per quadrant in a two-year period.

(viii) Uncomplicated oral surgery procedures including removal of teeth, incision, and drainage.

(c) Major dental services.

(i) Adjustments and repair of dentures and bridges, except that benefits will not be provided for adjustments or repairs done within one year of insertion;

(ii) Behavior management;

(iii) Bridges (fixed partial dentures), except that benefits will not be provided for replacement made fewer than seven years after placement;

(iv) Crowns and crown build-ups, limited to the following:

(A) An indirect crown in a five-year period, per tooth, for permanent anterior teeth for members with fully erupted permanent anterior teeth;

(B) Cast post and core or prefabricated post and core, on permanent teeth when performed in conjunction with a crown;

(C) Core build-ups, including pins, only on permanent teeth when performed in conjunction with a crown;

(D) Recommendations of permanent indirect crowns for members with fully erupted permanent anterior teeth;

(E) Stainless steel crowns for primary posterior teeth once in a three-year period; and

(F) Stainless steel crowns for permanent posterior teeth (excluding teeth one, 16, 17, and 32) once in a three-year period.

(v) Dental implant crown and abutment related procedures, limited to one per member per tooth in a seven-year period;

(vi) Dentures, full and partial, including:

(A) Denture rebase, limited to one per member per arch in a three-year period, if performed at least six months from the seating date;

(B) Denture relines, limited to one per member per arch in a three-year period, if performed at least six months from the seating date;

(C) One complete upper and lower denture, and one replacement denture after at least five years from the seat date; and

(D) One resin-based partial denture, replaced once within a three-year period.

(vii) Home visits, including extended care facility calls, limited to two calls per facility per provider;

(viii) Medically necessary orthodontic services for members with malocclusions associated with:

(A) Cleft lip and palate, cleft palate, and cleft lip with alveolar process involvement; and

(B) Craniofacial anomalies for hemifacial microsomia, cranosynostosis syndromes, anthrogryposis, or Marfan syndrome.

(ix) Occlusal guards;

(x) Post-surgical complications;

(xi) Repair of crowns is limited to one per tooth;

(xii) Repair of implant supported prosthesis or abutment, limited to one per tooth.

(5) An issuer must supply pediatric dental exclusions in a manner substantially equal to the base-benchmark plan.

(6) Pediatric dental plans must categorize covered dental services in a manner consistent with the essential health benefit benchmark plan (i.e., preventative and diagnostic services, basic services, major services, etc.).

(7) Issuers must know and apply relevant guidance, clarifications, and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor, and the U.S. Department of the Treasury.

(8) This section applies to health plans that have an effective date of January 1, 2026, or later.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-5782 Pediatric vision services. A health benefit plan must include "pediatric vision services" in its essential health benefits package. The designated base-benchmark plan for pediatric vision benefits consists of the benefits and services covered by health care service contractor Regence BlueShield as the *Regence Direct Gold* small group plan policy form, policy form number WW0114CCONMSD, and certificate form number WW0114BPPO1SD, offered during the first quarter of 2014 (SERFF filing number RGWA-128968362).

(1) A health benefit plan must cover pediatric vision services as an embedded set of services.

(2) For the purpose of determining a plan's actuarial value, an issuer must classify as pediatric vision services the following vision services delivered to enrollees until at least the end of the month in which enrollees turn age ((~~nineteen~~)) 19:

(a) Routine vision screening;

(b) A comprehensive eye exam for children, including dilation as professionally indicated and with refraction every calendar year;

(c) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating. Lenses may include single vision, conventional lined bifocal or conventional lined trifocal, or lenticular lenses;

(d) One pair of frames every calendar year. An issuer may establish networks or tiers of frames within their plan design as long as there is a base set of frames to choose from available without cost-sharing;

(e) Contact lenses covered once every calendar year in lieu of the lenses and frame benefits. Issuers must apply this limitation based on the manner in which the lenses must be dispensed. If disposable lenses are prescribed, a sufficient number and amount for one calendar year's equivalent must be covered. The benefit includes the evaluation, fitting and follow-up care relating to contact lenses. If determined to be medically necessary, contact lenses must be covered in lieu of eyeglasses at a minimum for the treatment of the following conditions: Keratoconus, pathological myopia, aphakia, anisometropia, aniseikonia, aniridia, corneal disorders, post-traumatic disorders, and irregular astigmatism;

(f) Low vision optical devices including low vision services, training and instruction to maximize remaining usable vision as follows:

(i) One comprehensive low vision evaluation every five years;

(ii) High power spectacles, magnifiers and telescopes as medically necessary, with reasonable limitations permitted; and

(iii) Follow-up care of four visits in any five-year period, with prior approval.

(3) The base-benchmark plan specifically excludes the following benefits. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing the plan's actuarial value for the pediatric vision services category:

(a) Visual therapy, which is otherwise covered under the medical/surgical benefits of the plan; and

(b) Ordering two pairs of glasses in lieu of bifocals.

(4) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(5) This section applies to health plans that have an effective date of January 1, 2017, or later.

(6) This section expires December 31, 2025.

NEW SECTION

WAC 284-43-5784 Pediatric vision services. A health benefit plan must include "pediatric vision services" in its essential health benefits package. The designated base-benchmark plan for pediatric vision benefits consists of the benefits and services covered within Appendix B - Washington Essential Health Benefits Benchmark Plan and Appendix C - State EHB Benchmark Summary of Benefits as approved by the

department of health and human services Centers for Medicare and Medicaid Services on October 7, 2024, as available on the commissioner's website.

(1) A health benefit plan must cover pediatric vision services as an embedded set of services.

(2) For the purpose of determining a plan's actuarial value, an issuer must classify as "pediatric vision services" the following vision services delivered to enrollees until at least the end of the month in which enrollees turn age 19:

(a) Routine vision screening;

(b) A comprehensive eye exam for children, including dilation as professionally indicated and with refraction every calendar year;

(c) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating. Lenses may include single vision, conventional lined bifocal or conventional lined trifocal, or lenticular lenses;

(d) One pair of frames every calendar year. An issuer may establish networks or tiers of frames within their plan design as long as there is a base set of frames to choose from available without cost-sharing;

(e) Contact lenses covered once every calendar year in lieu of the lenses and frame benefits. Issuers must apply this limitation based on the manner in which the lenses must be dispensed. If disposable lenses are prescribed, a sufficient number and amount for one calendar year's equivalent must be covered. The benefit includes the evaluation, fitting, and follow-up care relating to contact lenses. If determined to be medically necessary, contact lenses must be covered in lieu of eyeglasses at a minimum for the treatment of the following conditions: Keratoconus, pathological myopia, aphakia, anisometropia, aniseikonia, aniridia, corneal disorders, post-traumatic disorders, and irregular astigmatism;

(f) Low vision optical devices including low vision services, training, and instruction to maximize remaining usable vision as follows:

(i) One comprehensive low vision evaluation;

(ii) High power spectacles, magnifiers, and telescopes as medically necessary, with reasonable limitations permitted; and

(iii) Follow-up care of four visits.

(3) The base-benchmark plan specifically excludes the following benefits. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing the plan's actuarial value for the pediatric vision services category:

(a) Visual therapy, which is otherwise covered under the medical/surgical benefits of the plan; and

(b) Ordering two pairs of glasses in lieu of bifocals.

(4) Issuers must know and apply relevant guidance, clarifications, and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor, and the U.S. Department of the Treasury.

(5) This section applies to health plans that have an effective date of January 1, 2026, or later.

AMENDATORY SECTION (Amending WSR 23-24-034, filed 11/30/23, effective 1/1/24)

WAC 284-43-5937 Hearing instrument coverage. (1) The purpose of this regulation is to effectuate the provisions of chapter 245, Laws of 2023, by requiring health carriers to include coverage for hearing instruments.

(2) This section applies to health carriers offering nongrandfathered group health plans, other than small group health plans, issued or renewed on or after January 1, 2024.

(3) The hearing instruments and coverage requirements referenced in this section have the same meaning as in RCW 48.43.135.

(4) Health carriers shall provide in network coverage for hearing instruments at no less than $3,000 per ear with hearing loss every 36 months. Any enrollee cost-sharing applied to this coverage must ensure that the amount paid by the health plan will be no less than $3,000 except to the extent required otherwise in RCW 48.43.135(4).

(5) Enrollees can purchase a hearing instrument beyond the cost limitations outlined in this section and coverage must still be provided at no less than $3,000 per ear with hearing loss every 36 months.

(6) The 36-month time period referenced in this section and RCW 48.43.135(3), is specific to the enrollee's current health carrier.

(7) This section expires December 31, 2025.

NEW SECTION

WAC 284-43-5939 Hearing instrument coverage. (1) For purposes of compliance with RCW 48.43.135 and WAC 284-43-5644, which require health plans issued or renewed on or after January 1, 2026, to cover hearing instruments and related services:

(a) "Hearing instrument" has the same meaning as defined in RCW 48.43.135;

(b) "Initial assessment" means the same as "hearing screening" per the American Speech-Language-Hearing Association and basic hearing evaluation tests conducted as found in the current procedural terminology;

(c) "Over-the-counter hearing instrument" has the same meaning as defined in RCW 48.43.135; and

(d) "Annual hearing exam" means the same as hearing evaluation per the American Speech-Language-Hearing Association and comprehensive hearing evaluation tests conducted as found in the current procedural terminology.

(2) A health carrier shall provide in-network coverage for hearing instruments every 36 months per ear with hearing loss and may not establish any lifetime or annual limit on the dollar amount of coverage for services for any individual, whether provided in-network or out-of-network.

(3) In addition to coverage of hearing instruments, health carriers shall provide coverage of an initial assessment, annual hearing exams, fitting, adjustment, auditory training, and ear molds as necessary to ensure optimal fit. Coverage of over-the-counter hearing instruments is not required.

(4) The 36-month time period referenced in subsection (2) of this section and RCW 48.43.135 is specific to the enrollee's current health carrier.

(5) The services and hearing instruments covered under this section are not subject to the enrollee's deductible unless the health plan is offered as a qualifying health plan for a health savings account. For such a qualifying health plan, the carrier may apply a deductible to coverage of the services covered under this section only at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under internal revenue service laws and regulations.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-43-5600	Essential health benefits package benchmark reference plan.
WAC 284-43-5620	Plan design.
WAC 284-43-5640	Essential health benefit categories.
WAC 284-43-5700	Essential health benefit category—Pediatric oral services.
WAC 284-43-5780	Pediatric vision services.

RDS-6762.1

AMENDATORY SECTION (Amending WSR 20-24-040, filed 11/23/20, effective 12/24/20)

WAC 284-43-7010 Definitions. Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a ((~~twelve~~)) 12-month period under a plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Approved treatment program means a discrete program of substance use disorder treatment provided by a treatment program certified by the department of health as meeting standards adopted under chapter 71.24 RCW.

Classification of benefits means a group into which all medical/surgical benefits and mental health or substance use disorder benefits offered by a plan must fall. For the purposes of this rule, the only classifications that may be used are: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs.

Coverage unit means the way in which a plan or issuer groups individuals for purposes of determining benefits, or premiums or contri-

butions. For example, different coverage units include self-only, family, and employee-plus-spouse.

Cumulative financial requirements means financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Cumulative quantitative treatment limitations means treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Emergency condition, for the purpose of this subchapter, means a medical, mental health or substance use disorder condition manifesting itself by acute symptoms of sufficient severity, including severe emotional or physical distress or a combination of severe emotional and physical distress, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical, mental health or substance use disorder treatment attention to result in a condition placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

Essential health benefits (EHBs). EHBs have the same definition as found in WAC ((~~284-43-5600 or~~)) 284-43-5602 or 284-43-5604, as appropriate. The definition of EHBs includes mental health and substance use disorder services, including behavioral health treatment. For EHBs, including mental health and substance use disorder benefits, federal and state law prohibit limitations on age, condition, lifetime and annual dollar amounts.

Financial requirements means cost sharing measures such as deductibles, copayments, coinsurance, and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Health carrier or issuer has the same meaning as RCW 48.43.005((~~(25)~~)).

Health plan has the same meaning as RCW 48.43.005((~~(26)~~)).

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law, but does not include mental health or substance use disorder benefits. Any condition defined by the plan or coverage as being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the *International Classification of Diseases* (ICD) or state guidelines).

Medically necessary or medical necessity:

(a) With regard to substance use disorder is defined by the most recent version of *The ASAM Criteria, Treatment Criteria for Addictive, Substance Related, and Co-Occurring Conditions* as published by the American Society of Addiction Medicine (ASAM).

(b) With regard to mental health services, pharmacy services, and any substance use disorder benefits not governed by ASAM, is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

Mental health benefits means benefits with respect to items or services for mental health and substance use disorder conditions, as

defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Any condition defined by the plan or coverage as being a mental health condition must be defined to be consistent with the most current version of the *Diagnostic and Statistical Manual of Mental Disorders*, as published by the American Psychiatric Association.

Nonquantitative treatment limitations (NQTL) means processes, strategies, or evidentiary standards, or other factors that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment. NQTLs include, but are not limited to:

(a) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(b) Formulary design for prescription drugs;

(c) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(d) Standards for provider admission to participate in a network, including reimbursement rates;

(e) Plan methods for determining usual, customary, and reasonable charges;

(f) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(g) Exclusions based on failure to complete a course of treatment; and

(h) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

Plan means a health plan, a short-term limited duration medical plan or a student-only health plan.

Predominant level: If a type of financial requirement or quantitative treatment limitation applies to substantially all medical surgical benefits in a classification, the predominant level is the level that applies to more than one-half of the medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

Quantitative parity analysis means a mathematical test by which plans and issuers determine what level of a financial requirement or quantitative treatment limitation, if any, is the most restrictive level that could be imposed on mental health or substance use disorder benefits within a classification.

Quantitative treatment limitations means types of objectively quantifiable treatment limitations such as frequency of treatments, number of visits, days of coverage, days in a waiting period or other similar limits on the scope or duration of treatment.

Short-term limited duration medical plan means a plan deemed by the commissioner to have a short-term limited purpose or duration.

Student-only health plan means a health plan that is guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution.

Substance use disorder means a substance-related or addictive disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association.

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with

applicable federal and state law. Substance use disorder benefits must include payment for reasonable charges for medically necessary treatment and supporting service rendered to an enrollee either within an approved treatment program or by a health care professional that meets the requirements ((~~of RCW 18.205.040(2),~~)) as part of the approved treatment plan.

Substantially all: A type of financial requirement or quantitative treatment limitation considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification as determined by WAC 284-43-7040 (2)(a).

Treatment limitations means limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as ((~~fifty~~)) 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this section.

RDS-6763.1

AMENDATORY SECTION (Amending WSR 21-24-032, filed 11/22/21, effective 12/23/21)

WAC 284-43-7210 Definitions. (1) "Contraceptive services" means consultations, examinations, procedures, and other health care services to obtain contraceptive supplies or voluntary sterilization. This includes prescribing, dispensing, inserting, delivering, distributing, administering, or removing contraceptive supplies and voluntary sterilization procedures.

(2) "Contraceptive supplies" means all contraceptive drugs, devices, and other products approved by the Federal Food and Drug Administration. This includes over-the-counter contraceptive drugs, devices, and products approved by the Federal Food and Drug Administration.

(3) "Cost-sharing" means any expenditure required of a covered person for covered services or supplies, including applicable taxes. Cost-sharing includes deductibles, coinsurance, copayments, or similar charges. Cost-sharing does not include premiums, balance billing amounts for nonnetwork providers, or spending for noncovered services or supplies.

(4) "Covered person" or "enrollee" has the same meaning as defined in RCW 48.43.005.

(5) "Gender expression" has the same meaning as defined in RCW 48.43.072.

(6) "Gender identity" has the same meaning as defined in RCW 48.43.072.

(7) "Medical management" or "medical management techniques" has the same meaning as defined in RCW 48.165.010.

(8) "Reproductive health care services" has the same meaning as defined in RCW 48.43.072.

(9) "Reproductive system" has the same meaning as defined in RCW 48.43.072.

(10) "Well-person preventative visits" has the same meaning as defined in RCW 48.43.072.

(11) "Prescription hormone therapy" has the same meaning as defined in RCW 48.43.845.

RDS-6764.1

AMENDATORY SECTION (Amending WSR 24-24-065, filed 11/27/24, effective 12/28/24)

WAC 284-43B-029 Local governmental entity rate reporting to the insurance commissioner. (1) Each local governmental entity that has established rates for ground ambulance services provided in their geographic area must submit the rates to the office of the insurance commissioner in the form and manner prescribed by the commissioner. Rates established for ground ambulance transports include rates for services provided directly by the local governmental entity and contracted rates.

(2) Local governmental entities must include the following rate information in their submission to the commissioner for each locally set rate or contracted rate submitted to the commissioner:

(a) The local governmental entity's full legal name and address;

(b) The national provider identifier(s) (NPI) for any ground ambulance services organization to which the rate applies;

(c) The effective date of the rate and any known expiration date of the rate;

(d) The service area of the local governmental entity, described by listing the geographic zone improvement plan (ZIP) codes established by the United States Postal Service that are included in the entity's service area;

(e) The applicable transport codes to which the rate applies, including any separate mileage code or codes;

(f) If applicable, the locally set rate for services provided to nonresidents of the local governmental entity's service area, if a distinction is made in rates between services provided to residents and those provided to nonresidents.

(3) The information must be submitted electronically through the website of the office of the insurance commissioner.

(4) Local governmental entities must submit their rates to the commissioner on the following schedule:

(a) Updated rates must be submitted by November 1st for an effective date of January 1st of the following year.

(b) A rate may be updated by a local governmental entity outside of the time frame established in (a) of this subsection if the local governmental entity finds that there is an emergent risk to the financial viability of the public ground ambulance services organization if the rate update is delayed to a January 1st effective date. To apply for rate update exception a local governmental entity must:

(i) Follow their local rate setting rules and procedures and be approved in the manner prescribed by their governing entity.

(ii) Allow 60 days from approval of the new rate to its effective date.

(iii) Submit the updated rate and documentation of the local governing entity's approval of new rate to the office of the insurance commissioner at least 30 days prior to its effective date.

(5) For purposes of this section "contracted rates" means rates established in a contract or contracts between a local governmental entity and a private ground ambulance services organization to provide ground ambulance services in their geographic service area.

WSR 26-01-150
PERMANENT RULES
BELLEVUE COLLEGE
[Filed December 19, 2025, 8:02 a.m., effective January 19, 2026]

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

Purpose: Updates to chapter 132H-140 WAC, College property use. The purpose of defining public and nonpublic areas in this policy/WAC will clarify access for individuals seeking entrance to areas of campus in relation to the Keep Washington Working Act. This brings policy 6100 into alignment with policy 6120, Use of college property for expressive activity (chapter 132H-142 WAC).

Citation of Rules Affected by this Order: Amending WAC 132H-140-020, 132H-140-022, 132H-140-065, and 132H-140-120.

Statutory Authority for Adoption: RCW 28B.50.140 and chapter 34.05 RCW.

Adopted under notice filed as WSR 25-13-[0]15 on June 6, 2025.

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 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 19, 2025.

Loreen M. Keller, Director
Policy and Government Relations

RDS-6278.1

AMENDATORY SECTION (Amending WSR 21-22-004, filed 10/20/21, effective 11/20/21)

WAC 132H-140-020 Statement of purpose. The purpose of this chapter is to establish procedures and reasonable controls for the use of and access to college property by all college and noncollege groups. Bellevue College is an educational institution provided and maintained by the people of the state of Washington. The college reserves its property for activities that are related to its broad educational mission. When not being used for those purposes, college property may be made available and accessible to other individuals and organizations.

Consistent with RCW 28B.50.140(7) and 28B.50.140(9), college property should be available for a variety of uses which are of benefit to either the college community or the general public if such uses substantially relate to and do not interfere with the mission of the

college. However, a state agency is under no obligation to make its property available to the general public for private purposes.

When determining whether to authorize a particular use, primary consideration shall be given at all times to activities related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, student programming, or other college-sponsored programs.

AMENDATORY SECTION (Amending WSR 21-22-004, filed 10/20/21, effective 11/20/21)

WAC 132H-140-022 Definitions. For the purposes of this chapter, the following definition shall apply:

"College property" shall include, but not be limited to, all campuses of the college, wherever located, and all college-controlled, owned, rented, leased, occupied, or used land, buildings, ((~~facilities~~)) structures, property, vehicles, equipment, office space, parking lots, and any other property ((~~owned or used by the college, including study abroad, retreat, and conference sites~~)) and/or college hosted online platforms utilized by the college for any education programs and activities.

"Nonpublic areas" include, but are not limited to: Classrooms while classes are in session, offices, meeting rooms, labs, shops, closets, and other workspaces primarily dedicated to college operations, and other areas designated by the college as a restricted access area to prevent disruption of the educational process and business of the institution, and protect safety, security, or confidentiality.

"Public area" refers to spaces on BC property and grounds that are generally open to the public, such as primary public entrance lobbies of buildings, rotundas and adjoining public mezzanines, and exterior plazas and lawns.

AMENDATORY SECTION (Amending WSR 21-22-004, filed 10/20/21, effective 11/20/21)

WAC 132H-140-065 Limitations and denial of use. Bellevue College is a state agency and exists to serve the public. However, the college may deny use of its property to any individual, group or organization if the requested use would:

(1) Interfere or conflict with the college's mission including, but not limited to, instruction, student services, support programs, research, or public service programs;

(2) Interfere with the free flow of pedestrian or vehicular traffic on campus;

(3) Involve illegal activity or fail to comply with college policies, procedures, contracts, or the Washington Administrative Code;

(4) Create a hazard or result in damage to college property; or

(5) Create undue stress on college resources.

Where college space is used for an authorized function, groups must obey or comply with directions of college officials.

Any individual or group granted permission to use college property shall agree in advance to abide by all college rules and regula-

tions. Use of college property by college personnel, students, college organizations and the general public is also subject to local, state, and federal laws.

The college reserves the right to deny use of college property to any individual or group whose past conduct indicates a likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization that used college property in the past and caused damage, left college buildings and grounds in excessive disorder, or failed to cooperate with college officials concerning use of the property.

College property may be used for purposes of political campaigning by or for candidates who have filed for public office, if the campaigning is directed to members of the public, and only when the full fee for the property is paid. Use of state funds to pay for or subsidize a political campaign's use of college property is prohibited.

If at any time actual use of college property by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate; all persons engaged in such use shall immediately vacate the premises and leave the college property upon direction of a designated college official.

Advertising or promotional materials for any event being held on or in college property must comply with college policies and procedures.

Use of audio amplifying equipment is permitted only in locations and at times that will not disrupt, or disturb, or interfere with the normal conduct of college affairs including, but not limited to, the use of classrooms, offices, libraries, and laboratories; and previously scheduled college events or activities.

Use of college property for commercial purposes must be preapproved by the vice president of administrative services and comply with ((~~WAC 132H-133-050~~)) chapter 132H-133 WAC.

Alcoholic beverages will not be served without the approval of the provost or designee. It shall be the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor and cannabis board and adhere to their regulations and those of Bellevue College.

AMENDATORY SECTION (Amending WSR 21-22-004, filed 10/20/21, effective 11/20/21)

WAC 132H-140-120 Trespass. ((~~(1)~~)) Individuals or groups who are not students or members of the faculty or staff and who violate these rules or whose conduct jeopardizes the health or safety of others, or whose conduct unreasonably impedes the college in pursuit of its educational mission will be advised of the specific nature of the violation, and if they persist in the violation, ((~~they~~)) will be requested by the college president or designee to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave. Such person(s) shall be subject to arrest under the criminal trespass provisions of chapter 9A.52 RCW or Bellevue city code. ((~~Individuals requested to leave college property~~))

When the college revokes the license or privilege of any person(s) to be on college property, temporarily or for a stated period

of time, that person(s) may appeal that decision by submitting to the college president by certified mail, return receipt requested, a letter stating the reasons the ((~~persons~~)) person(s) should not be barred from college property. The college president or designee shall respond in writing within ((~~fifteen~~)) 15 calendar days with a final decision of the college. ((~~Persons~~)) Absent exceptional circumstances as determined by the college president or designee, person(s) shall continue to be barred from college property while an appeal is pending.

((~~(2)~~)) Students, faculty, and staff of the college who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with this chapter or with other applicable rules, regulations, or policies.

WSR 26-01-159
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed December 19, 2025, 10:26 a.m., effective February 1, 2026]

Effective Date of Rule: February 1, 2026.

Purpose: Office of environmental health and safety programs fees. The department of health (department) is adopting amendments to fees for the office of environmental health and safety programs to cover operating costs for WAC 246-282-990 for commercial shellfish. This adoption includes making editorial updates, creating new fees, removing obsolete fees, clarifying existing fees, and aligning with the code reviser's 2025 Bill Drafting Guide.

Under notice filed as WSR 25-22-068 on October 31, 2025, the department adopted amendments to fees for the following office of environmental health and safety programs:

- WAC 246-205-990 for decontamination of illegal drug manufacturing or storage sites.
- WAC 246-260-9901 for water recreation facilities.
- WAC 246-262-990 for recreational water contact facilities.
- WAC 246-272-2000 through 246-272-6000 for onsite sewage systems.
- WAC 246-272-3000 for large onsite sewage systems.
- WAC 246-358-990 for temporary worker housing.
- WAC 246-360-990 and 246-360-020 for transient accommodations.
- WAC 246-380-990 for food service.

This filing concludes the rule making for rules proposed under WSR 25-19-023 on September 5, 2025.

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

Statutory Authority for Adoption: RCW 43.70.250 and 69.30.050.

Adopted under notice filed as WSR 25-19-023 on September 5, 2025.

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 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 19, 2025.

Kristin Peterson, JD
Chief of Policy
for Dennis E. Worsham
Secretary of Health

RDS-6499.2

AMENDATORY SECTION (Amending WSR 23-17-073, filed 8/14/23, effective 9/14/23)

WAC 246-282-990 Fees. (1) The department shall collect the following fees:

(a) Annual shellfish operation license ((~~fees are~~)):

((~~**Type of Operation** **Annual Fee**~~

~~Harvester~~	~~$263~~
~~Shellstock Shipper~~	
~~0 - 49 Acres~~	~~$297~~
~~50 or greater Acres~~	~~$476~~
~~Scallop Shellstock Shipper~~	~~$297~~
~~Shucker-Packer~~	
~~Plants with floor space < 2000 sq. ft.~~	~~$542~~
~~Plants with floor space 2000 sq. ft. to 5000 sq. ft.~~	~~$656~~
~~Plants with floor space > 5000 sq. ft.~~	~~$1,210~~

~~(2) The fee for each export certificate is $55.00.~~
~~(3)~~))

Operation	**Acres**	**Harvest Sites**	**Fee effective until June 30, 2026**	**Fee effective starting July 1, 2026**
Harvester		2 or less	$876	$1,489
		3 or more	$916	$1,569
Shellstock Shipper	0-49 Acres	2 or less	$1,954	$3,611
	0-49 Acres	3 or more	$2,100	$3,902
	50 or greater Acres		$2,188	$3,900
	Wholesale Only	Wholesale Only	$1,955	$3,613
	Wholesale Only DNR Tracts	Wholesale Only DNR Tracts	$1,811	$3,322
Shucker Packer	Plants < 2,000 sq. ft.	2 or less	$4,398	$8,252
	Plants < 2,000 sq. ft.	3 or more	$4,816	$9,090
	Plants 2,000-5,000 sq. ft.	2 or less	$5,512	$10,368
	Plants 2,000-5,000 sq. ft.	3 or more	$5,405	$10,154
	Plants > 5,000 sq. ft.	N/A	$5,105	$9,000

(b) $159 for each export certificate.

(c) Annual biotoxin testing ((~~fees~~)) for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) ((~~are as follows~~)):

((~~**Fee Category**~~

~~**Type of Operation**~~	~~**Number of Harvest Sites**~~	~~**Fee**~~
~~Harvester~~	~~≤ 2~~	~~$353~~
~~Harvester~~	~~3 or more~~	~~$535~~
~~Shellstock Shipper~~		~~$198~~
~~Wholesale~~		
~~Company~~		
~~Shellstock Shipper~~	~~≤ 2~~	~~$393~~
~~0 - 49 acres~~		

((~~Fee Category~~

~~Type of Operation~~	~~Number of Harvest Sites~~	~~Fee~~
~~Shellstock Shipper 0 - 49 acres~~	~~3 or more~~	~~$610~~
~~Shellstock Shipper 50 or greater acres~~	~~N/A~~	~~$961~~
~~Shucker-Packer (plants < 2000 ft^2)~~	~~≤ 2~~	~~$752~~
~~Shucker-Packer (plants < 2000 ft^2)~~	~~3 or more~~	~~$1,076~~
~~Shucker-Packer (plants 2000 - 5000 ft^2)~~	~~≤ 2~~	~~$882~~
~~Shucker-Packer (plants 2000 - 5000 ft^2)~~	~~3 or more~~	~~$1,297~~
~~Shucker-Packer (plants > 5000 ft^2)~~	~~N/A~~	~~$2,412~~

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

~~(i) At the time of first licensure; or~~

~~(ii) January 1st of each year for companies licensed as harvesters; or~~

~~(iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.~~

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

~~(4)~~))

Operation	Acres	Harvest Sites	Fee effective until June 30, 2026	Fee effective starting July 1, 2026
Harvester		2 or less	$353	$710
		3 or more	$535	$1,076
Shellstock Shipper	Wholesale	Wholesale	$198	$398
	0-49 Acres	2 or less	$393	$790
	0-49 Acres	3 or more	$610	$1,226
	50 or greater	N/A	$961	$1,933
Shucker Packer	Plants < 2,000 sq. ft.	2 or less	$752	$1,512
	Plants < 2,000 sq. ft.	3 or more	$1,076	$2,164
	Plants 2,000-5,000 sq. ft.	2 or less	$882	$1,773
	Plants 2,000-5,000 sq. ft.	3 or more	$1,297	$2,607
	Plants > 5,000 sq. ft.	N/A	$2,412	$4,848

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

((~~Harvester~~	~~Cert #~~	~~Fee~~
~~Chuckanut Shellfish Inc.~~	~~WA-1350-HA~~	~~$997~~
~~Department of Natural Resources~~	~~NA~~	~~$13,354~~
~~Jamestown S'Klallam Tribe~~	~~WA-0588-SS~~	~~$4,584~~

((

~~Harvester~~	~~Cert #~~	~~Fee~~
~~Lower Elwha Klallam Tribe~~	~~WA-0587-HA~~	~~$2,392~~
~~Lummi Indian Business Council~~	~~WA-0098-SS~~	~~$399~~
~~Nisqually Indian Tribe~~	~~WA-1268-HA~~	~~$199~~
~~Port Gamble S'Klallam Tribe~~	~~WA-0859-HA~~	~~$3,388~~
~~Puyallup Tribe of Indians~~	~~WA-1137-HA~~	~~$5,381~~
~~Rising Tide CE, LLC~~	~~WA-1951-HA~~	~~$199~~
~~Suquamish Tribe~~	~~WA-0694-SS~~	~~$7,175~~
~~Swinomish Indian Tribal Community~~	~~WA-1420-SS~~	~~$997~~
~~Taylor Shellfish Company, Inc.~~	~~WA-0046-SP~~	~~$9,168~~
~~The Tulalip Tribes~~	~~WA-0997-HA~~	~~$9,766~~

~~(5)~~))

Fee effective until June 30, 2026	Fee effective starting July 1, 2026
$188 per test	$297 per test

(e) $64 for a virtual correction inspection.

(f) $291 for an on-site follow up inspection.

(g) $323 for a preoperation inspection for a new or expired license. This is a nonrefundable fee and is in addition to an annual license fee as outlined in subsection (1)(a) of this section.

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

(a) At the time of first licensure;

(b) January 1st of each year for companies licensed as harvesters; or

(c) April 1st of each year for companies licensed as shellstock shippers and shucker packers.

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

((~~(6)~~)) (4) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 26-01-160
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2025-08—Filed December 19, 2025, 10:48 a.m., effective January 19, 2026]

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

Purpose: RCW 48.29.210(2) prohibits title insurers from giving anything of value to any person in a position to refer or influence the referral of title insurance business. Certain exceptions to this prohibition are specified in rule, including conducting or sponsoring educational programs.

Current rules concerning title insurers conducting or sponsoring educational programs are ambiguous and need clarification. The office of the insurance commissioner is amending WAC 284-29-205, 284-29-220, and 284-29-235. The effects of these amendments are to: (1) Create a clear definition of "educational program"; (2) amend the definition of "give" to be more in line with common usage of the term; and (3) align rules concerning title companies sponsoring educational programs for trade associations with rules concerning sponsorship of educational programs for other types of entities.

Citation of Rules Affected by this Order: Amending WAC 284-29-205, 284-29-220, and 284-29-235.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a), 48.29.005, and 48.29.210(2).

Adopted under notice filed as WSR 25-21-136 on October 21, 2025.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-29-235 (1)(a) was amended to raise the dollar limit for refreshments that title insurers may provide at educational programs from $10 to $15 per person.

A final cost-benefit analysis is available by contacting Rules Coordinator, 302 Sid Snyder Avenue, Olympia, WA 98501, phone 360-725-7171, fax 360-586-3109/3535, TTY 360-586-0241, email rulescoordinator@oic.wa.gov, website insurance.wa.gov.

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

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

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

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

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

Date Adopted: December 19, 2025.

Patty Kuderer
Insurance Commissioner

RDS-6663.2

AMENDATORY SECTION (Amending WSR 09-05-077, filed 2/17/09, effective 3/20/09)

WAC 284-29-205 Definitions. For purposes of WAC 284-29-200 through 284-29-265:

(1) "Advertising" or "advertisement" means a representation about any product, service, equipment, facility, or activity or any person who makes, distributes, sells, rents, leases, or otherwise makes available such a product, service, equipment, facility, or activity, when the representation:

(a) Is communicated to a person that, to any extent, by content or context, informs the recipient about such product, service, equipment, facility, or activity;

(b) Recognizes, honors, or otherwise promotes such a product, service, equipment, facility, or activity; or

(c) Invites, advises, recommends, or otherwise solicits a person to participate in, inquire about, purchase, lease, rent, or use such a product, service, equipment, facility, or activity.

(2) "Associates of producers" has the same meaning as set forth in RCW 48.29.010 (3)((~~(f)~~))(c).

(3) "Bona fide employee of a title company" means an individual who devotes substantially all of his or her time to performing services on behalf of a title company and whose compensation for these services is in the form of salary or its equivalent by the title company.

(4) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state, except an interest in real property which is:

(a) Improved with one-single family residential unit or multifamily structure with four or less residential units;

(b) Unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate;

(c) Classified as farm and agricultural land or timber land for assessment purposes under chapter 84.34 RCW; or

(d) Improved with ((~~singe-family~~)) single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis.

(5) "Educational program" means a structured learning event, or a structured and organized plan of learning activities, whether held in-person or virtually, in which information is delivered to an audience, or in which participants engage with an expert or facilitator, on one or more topics, in order to achieve specific educational goals or objectives.

(a) Examples of educational programs include, but are not limited to:

(i) In-person lectures;

(ii) Webinars;

(iii) Podcasts; and

(iv) Educational videos posted online.

(b) Examples of activities or products not considered educational programs include, but are not limited to:

(i) Social media posts;

(ii) Blog posts available to the general public; and

(iii) Brief informational articles posted on company or agency websites and available to the general public.

(6) "Give" means to transfer to another person, or cause another person to receive((~~, retain, use~~)) or otherwise benefit from a thing of value ((~~whether or not the title company receives~~)) without receiving fair-market value compensation in return. It also means the transfer to a third person of anything of value that in any manner benefits a person in a position to refer or influence the referral of title insurance business.

((~~(6)~~)) (7) "Market rate" means the price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the items or services purchased or sold to similar items or services that have been recently purchased by others or sold to others, including others not in the title insurance business.

((~~(7)~~)) (8) "Person" has the meaning set forth in RCW 48.01.070.

((~~(8)~~)) (9) "Producers of title insurance business" or "producer" has the meaning set forth in RCW 48.29.010 (3)((~~(c)~~)) (g); this term includes associates of producers and any person in a position to refer or influence the referral of title business to the title company.

((~~(9)~~)) (10) "Representative of a title company" means any person acting directly or indirectly on behalf of the title company.

((~~(10)~~)) (11) "Restrictive covenants" means private agreements that restrict the use or occupancy of real property generally by specifying lot sizes, building lines, occupancy, architectural styles, and the use to which the property may be put. Restrictive covenants do not include matters such as easements and road maintenance agreements.

((~~(11)~~)) (12) "Self-promotional" means an advertisement or promotional function which is conducted by a single title company solely for the benefit of the title company or a promotional item intended for distribution by a single title company and only on behalf of the title company.

((~~(12)~~)) (13) "Thing of value" means anything that has a monetary value. It includes, but is not limited to, cash or its equivalent, tangible objects, services, use of facilities, monetary advances, extensions of lines of credit, creation of compensating balances, title company employee time, advertisements, discounts, salaries, commissions, services at special prices or rates, sales or rentals at special prices or rates, and any other form of consideration, reward or compensation.

((~~(13)~~)) (14) "Title company" means either a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW or a title insurance agent defined in RCW 48.17.010((~~(15)~~)) (16), or both. The term includes employees, representatives, and agents of title insurance companies and title insurance agents.

((~~(14)~~)) (15) "Trade association" means an association of persons, a majority of whom are producers or persons whose primary activity involves real property. Trade association does not include an association of persons, a majority of whom are title insurance companies and title insurance agents.

AMENDATORY SECTION (Amending WSR 09-05-077, filed 2/17/09, effective 3/20/09)

WAC 284-29-220 Trade associations. (1) A title company may donate the time of its employees to serve on a trade association committee.

(2) A title company may donate to, contribute to or otherwise sponsor a trade association event only if all of the following conditions are met:

(a) The event is a recognized association event that generally benefits all members and affiliated members of the association in an equal manner;

(b) The donation must not benefit a selected producer member of the association unless through a random process; and

(c) Solicitation for the donation must be made of all association members and affiliated members in an equal manner and amount.

(3) A title company may pay for its employees and a single guest of each employee to attend trade association events only if all of the following conditions are met:

(a) The title company pays a fee equal to fees paid by producer members of the association in the events;

(b) The title company employees and their guest(s) actually attend the event (except when attendance is prevented by an emergency); and

(c) The guest of the title company employee is not a producer (except where the guest is related to the title company employee by blood or marriage or their domestic partner).

(4) For purposes of this section, trade association events include, but are not limited to, conventions, award banquets, symposiums, ((~~educational seminars,~~)) breakfasts, lunches, dinners, receptions, cocktail parties, open houses, sporting activities and other similar activities.

(5) A title company may:

(a)(i) Donate to, contribute to, or otherwise sponsor a trade association event under subsection (2) of this section; and

(ii) Advertise in a trade association publication under WAC 284-29-215(1)((~~; and~~

~~(iii) Sponsor a trade association educational seminar under WAC 284-29-235(3);~~)).

(b) Give a thing of value listed under (a) of this subsection to a trade association only if all of the following requirements are met:

(i) The thing of value is limited to ((~~one thousand dollars~~)) $1,000 per event, advertisement, or sponsorship ((~~of an educational seminar~~));

(ii) The title company must not give a thing of value to all trade associations more than three times in a calendar year;

(iii) The title company must not combine any of these permitted expenditures into one expenditure; and

(iv) The title company must not accumulate or carry forward left over or unused expenditures from one of these permitted expenditures to a subsequent expenditure.

(c) Sponsor a trade association educational program, subject to the limitations in WAC 284-29-235;

(6) If a title company owns or leases and maintains a complete set of tract indexes in more than one county:

(a) The limits set forth in subsection (5) of this section apply on a county by county basis for donations, contributions, sponsor-

ships, payments for events, advertisements, or sponsorship of educational ((~~seminars~~)) programs of trade associations a majority of whose members are located in that county;

(b) A donation, contribution, sponsorship, payment for an event, or advertisement((~~, or sponsorship of an educational seminar~~)) to a statewide trade association shall constitute one of its expenditures for each and every county in which the title company is authorized to issue title insurance policies; and

(c) The title company must not combine or accumulate unused expenditures of these permitted expenditures from one county to another county nor to a statewide trade association.

(7) If a title company that is under common ownership makes a donation, contribution, sponsorship, payment for an event, or advertisement((~~, or sponsorship of an educational seminar~~)) to a statewide trade association, the expenditure shall constitute an expenditure as one of the expenditures for each and every one of the title companies that are under common control.

AMENDATORY SECTION (Amending WSR 09-05-077, filed 2/17/09, effective 3/20/09)

WAC 284-29-235 Educational ((~~seminars~~)) programs. (1) A title company may conduct educational programs at no charge only if the content of the program consists solely of education regarding title insurance, title to real property, and escrow topics.

(a) A title company must spend no more than ((~~ten dollars~~)) $15 per person for refreshments at any one educational program.

(b) Any materials that the title company provides to attendees must be directly related to the topic of the ((~~seminar~~)) program or are self-promotional advertising of the title company.

(2) A title company may provide a speaker at no charge for an educational program conducted or presented by other persons, only if the following conditions are met:

(a) The speaker is an employee of the title company;

(b) If a title insurance agent is providing the speaker, the speaker may be an employee of the title insurer for whom the title insurance agent has been properly appointed;

(c) The topic of the presentation by the employee is solely related to title insurance, escrow, or real property law; and

(d) Any materials that the speaker provides to attendees are directly related to the topic of the speaker or are self-promotional advertising of the title company of the employee.

(3) ((~~A title company may sponsor an educational seminar of a trade association subject to the limits in WAC 284-29-220.~~

~~(4)~~)) A title company may sponsor or conduct an educational program on topics other than title insurance, title to real property, and escrow only if:

(a) The educational program is open to all producers; and

(b) The attendees actually pay to attend the program the greater of:

(i) All expenses and costs associated with the delivery of the educational program by the title company; or

(ii) What the attendee would pay to attend a similar ((~~seminar~~)) educational program sponsored by entities other than title companies on the open market.

The calculation by the title company of the expenses and costs associated with the delivery of the ((~~education~~)) educational program must include, but not be limited to, all travel, refreshments, speaker fees or wages of the speaker, facility rental, preparation of materials distributed at the educational program, parking, advertisement, and wages of arranging and planning for the program.

WSR 26-01-181
PERMANENT RULES
DEPARTMENT OF COMMERCE
[Filed December 23, 2025, 9:09 a.m., effective January 23, 2026]

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

Purpose: This rule making is required by law and will guide cities and counties in implementing HB [E2SHB] 1181, requiring new climate elements within their comprehensive plans. Intended outcomes include reducing greenhouse gas (GHG) emissions, enhancing climate resilience, and integrating climate considerations in land use planning.

Citation of Rules Affected by this Order: New WAC 365-196-443; and amending WAC 365-195-900, 365-195-905, 365-195-910, 365-195-915, 365-196-060, 365-196-200, 365-196-210, 365-196-310, 365-196-335, 365-196-400, 365-196-405, 365-196-415, 365-196-420, 365-196-425, 365-196-430, 365-196-440, 365-196-450, 365-196-485, 365-196-580, 365-196-600, 365-196-610, 365-196-620, 365-196-640, 365-196-650, 365-196-660, and 365-196-840 [365-196-840 is not adopted].

Statutory Authority for Adoption: RCW 36.70A.190 (4)(b), 36.70A.096, and 36.70A.190(8), which requires the department of commerce (commerce) to "adopt by rule guidance that creates a model climate change and resiliency element."

Adopted under notice filed as WSR 25-13-090 on June 16, 2025.

Changes Other than Editing from Proposed to Adopted Version: Commerce made a number of grammatical changes to clarify or improve language. Commerce received and implemented minor suggestions for corrections or for clarity. Commerce removed language it had proposed in WAC 365-196-443 (9)(b) based on comments received and further analysis of the statute concerning voluntary GHG emission subelement approval. Specifically, commerce determined not to offer an expedited review process.

In WAC 365-196-405, language was inadvertently left out of the CR-102 version that was included in earlier public review drafts. Specifically, we added subsection (2) introducing requirements for jurisdictions subject to RCW 36.70A.070 based on the applicability requirements outlined in RCW 36.70A.095(3) and WAC 365-196-443(2), Table 1.

In WAC 365-196-443, there is a change in the due date in the applicability chart under land use element for 2029 jurisdictions from 2034 to 2024. This change resulted from the growth management hearings board decision concerning Kitsap County (Case No. 25-3-0005c) that clarified the due date required by RCW 36.70A.130 (5)(a).

In WAC 365-196-840, language was inadvertently left out of the CR-102 (although also included in the earlier public review drafts). Specifically, the concurrency section added language to bring WAC in line with verbatim RCW language, such as expanding applicability to explicitly include "locally or regionally operated" transportation facilities.

Finally, there were changes to the land use element (WAC 365-196-405) and the transportation element (WAC 365-196-430) required as a result of newly adopted changes to sections related to housing.

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 26 [25], 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: December 23, 2025.

Amanda Hathaway
Rules Coordinator

RDS-6435.1

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-195-900 Background and purpose. (1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Periodically, they must take action to review and, if needed, revise their plans and regulations((~~, if needed,~~)) to ensure they comply with the requirements of RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to increase climate resilience, reduce greenhouse gas emissions, and to protect the functions and values of critical areas, and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. ((~~RCW 36.70A.172(1).~~)) The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and ((~~in this periodic review and evaluation and~~)) in demonstrating how they ((~~have~~)) met their statutory obligations under RCW 36.70A.172(1) and 36.70A.070 (9)(e) during this periodic review.

(3) The duty to include best available science is more than a procedural requirement. Best available science is not the sole factor in making decisions related to climate resilience or critical areas; other factors may include nonscientific information such as legal, social, cultural, economic, and political information. Inclusion means that the resulting policies and regulations must substantively reflect the results of a valid weighing of scientific evidence and other factors consistent with the requirements in WAC 365-195-915. Local governments may not ignore the best available science in favor of science it prefers simply because the latter supports the decision it wants to make. The characteristics of a valid scientific process show how local governments should weigh evidence in the process of including best available science, giving the most weight to the evidence that best exhibits the characteristics of good science.

(4) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

((~~(4)~~)) (5) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of commerce (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-195-905 Criteria for determining which information is the "best available science." (1) This section provides assessment criteria to assist counties and cities in determining whether information obtained during development of climate resiliency and critical areas policies and regulations constitutes the "best available science."

(2) Counties and cities may use information that local, state or federal ((~~natural resource~~)) agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will work with state agencies to identify resources that meet the criteria for best available science. Such information should be reviewed for local applicability.

(3) The responsibility for including the best available science in the development and implementation of climate resiliency and critical areas policies or regulations rests with the legislative authority of the county or city. Cities and counties must conduct a best available science review when updating climate resiliency and critical area regulations. The complexity of the review should reflect the scope of the amendment. When feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability ((~~to the relevant critical areas~~)). The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

(4) Whether a person is a qualified scientific expert with expertise appropriate to the relevant climate resiliency or critical area((~~s~~)) topics is determined by a combination of the person's professional credentials and((~~/or~~)) certifications, ((~~any advanced~~)) degrees earned in the ((~~pertinent~~)) relevant scientific discipline from a recognized university, the number of years of experience in the ((~~pertinent~~)) relevant scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field ((~~and/~~)), lived, or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. ((~~No one factor is determinative in deciding whether a person is a qualified scientific expert.~~)) Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

(5) Scientific information can be produced only through a valid scientific process. To ensure that the best available science is being included, a county or city should consider the following:

(a) **Characteristics of a valid scientific process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. In the context of climate resiliency planning, a valid scientific process is one that produces reliable information useful in understanding the consequence of a county's or city's decisions developing climate resiliency-related policies and regulations. To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process. When weighing scientific information contained in the record for inclusion, counties and cities must weigh the scientific information contained in the record based on its scientific validity. The characteristics generally to be expected in a valid scientific process are as follows:

1. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

3. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(b) **Common sources of scientific information.** Some sources of information routinely exhibit all or some of the characteristics listed in (a) of this subsection. Information derived from one of the following sources may be considered scientific information if the source possesses the characteristics in Table 1. A county or city may consider information to be scientifically valid if the source possesses the characteristics listed in (a) of this subsection. The information found in Table 1 provides a general indication of the characteristics

of a valid scientific process typically associated with common sources of scientific information.

Table 1	CHARACTERISTICS					
SOURCES OF SCIENTIFIC INFORMATION	Peer review	Methods	Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
A. Research. Research data collected and analyzed as part of a controlled experiment (or other appropriate methodology) to test a specific hypothesis.	X	X	X	X	X	X
B. Monitoring. Monitoring data collected periodically over time to determine a resource trend or evaluate a management program.		X	X	Y	X	X
C. Inventory. Inventory data collected from an entire population or population segment (e.g., individuals in a plant or animal species) or an entire ecosystem or ecosystem segment (e.g., the species in a particular wetland).		X	X	Y	X	X
D. Survey. Survey data collected from a statistical sample from a population or ecosystem.		X	X	Y	X	X
E. Modeling. Mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that cannot be directly observed.	X	X	X	X	X	X
F. Assessment. Inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.		X	X		X	X
G. Synthesis. A comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.	X	X	X		X	X
H. Expert Opinion. Statement of a qualified scientific expert based on his or her best professional judgment and experience in the pertinent scientific discipline. The opinion may or may not be based on site-specific information.			X		X	X

X = characteristic must be present for information derived to be considered scientifically valid and reliable
Y = presence of characteristic strengthens scientific validity and reliability of information derived, but is not essential to ensure scientific validity and reliability

(c) **Common sources of nonscientific information.** Many sources of information usually do not produce scientific information because they do not exhibit the necessary characteristics for scientific validity and reliability. Information from these sources may provide valuable information to supplement scientific information, but it is not an adequate substitute for scientific information. Nonscientific information should not be used as a substitute for valid and available scientific information. Common sources of nonscientific information include the following:

(i) Anecdotal information. One or more observations which are not part of an organized scientific effort (for example, "I saw a grizzly bear in that area while I was hiking").

(ii) Nonexpert opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are grizzly bears in that area").

(iii) Hearsay. Information repeated from communication with others (for example, "At a lecture last week, Dr. Smith said there were no grizzly bears in that area").

(6) Counties and cities are encouraged to monitor and evaluate their efforts in climate resilience and critical areas protection and incorporate new scientific information, as it becomes available.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-195-910 Criteria for obtaining the best available science. (1) Consultation with state and federal ((~~natural resources~~)) agencies and tribes can provide a quick and cost-effective way to develop scientific information and recommendations. State ((~~natural resource~~)) agencies provide numerous guidance documents and model ordinances that incorporate the agencies' assessments of the best available science. The department can provide technical assistance in obtaining such information from state ((~~natural resources~~)) agencies, developing model GMA-compliant climate resiliency and critical areas policies and development regulations, and related subjects.

(2) A county or city may compile scientific information through its own efforts, with or without the assistance of qualified experts, and through state agency review and the Growth Management Act's required public participation process. The county or city should assess whether the scientific information it compiles constitutes the best available science applicable to ((~~the critical areas to be protected,~~)) relevant climate sectors or critical area policy or regulation using the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. If not, the county or city should identify and assemble additional scientific information to ensure it has included the best available science.

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-915 Criteria for including the best available science in developing policies and development regulations. (1) To demonstrate that the best available science has been included in the development of climate resiliency and critical areas policies and regulations, counties and cities should address each of the following on the record:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

(c) Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for climate resiliency and critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

(i) Identify the information in the record that supports its decision to depart from science-based recommendations;

(ii) Explain its rationale for departing from science-based recommendations; and

(iii) Identify potential risks to climate resiliency, the functions and values of the critical area or areas at issue, and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative var-

iances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

RDS-6436.6

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-060 Goals. The act lists ((~~13~~)) 15 overall goals in RCW 36.70A.020((~~, plus the shoreline goal added in RCW 36.70A.480(1)~~)). Counties and cities should design comprehensive plans and development regulations to meet these goals. The goals, where specified, are also intended to guide development of regional policies, plans, and strategies adopted under RCW 36.70A.210 and chapter 47.80 RCW.

(1) This list of ((~~14~~)) 15 goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the ((~~14~~)) 15 statutory goals.

(2) Balancing the goals in the act.

(a) The act's goals are not listed in order of priority. The ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. Differences in emphasis are expected from jurisdiction to jurisdiction. Although there may be an inherent tension between the act's goals, counties and cities must give some effect to all the goals. Balancing the act's goals must not be interpreted to allow a violation of statutory requirements. Counties and cities should consider developing a written record demonstrating that it considered the planning goals during the development of the comprehensive plan and development regulations.

(b) When there is a conflict between the general planning goals and more specific requirements of the act, the specific requirements control.

(c) In some cases, counties and cities may support activities outside their jurisdictional boundaries ((~~in order~~)) to meet goals of the act.

(d) Development regulations must be consistent with the goals and requirements of the act and the comprehensive plan. In most cases, if a comprehensive plan meets the statutory goals, development regulations consistent with the comprehensive plan will meet the goals.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-200 Statutory definitions. The following definitions are contained in chapters 36.70A and 36.70B RCW and provided un-

der this section for convenience. Where definitions from elsewhere in the Revised Code of Washington are included, the definition will note the citation to the applicable statute. If there is a difference between the statutory definition and the definition in this rule, the statutory definition controls. Most statutory definitions included in this section are located in RCW 36.70A.030 and 36.70B.020.

(1) "Active transportation" means forms of pedestrian mobility including walking or running, the use of a mobility assistive device such as a wheelchair, bicycling and cycling irrespective of the number of wheels, and the use of small personal devices such as foot scooters or skateboards. Active transportation includes both traditional and electric assist bicycles and other devices. Planning for active transportation must consider and address accommodation pursuant to the Americans with Disabilities Act (U.S.C. Title 42, 1990 as amended) and the distinct needs of each form of active transportation.

(2) "Active transportation facilities" means facilities provided for the safety and mobility of active transportation users including, but not limited to, trails, as defined in RCW 47.30.005, sidewalks, bike lanes, shared-use paths, and other facilities in the public right-of-way.

(3) "Administrative design review" means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on objective design and development standards without a public meeting or hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance. A city may utilize public meetings, hearings, or voluntary review boards to consider, recommend, or approve requests for variances from locally established design review standards.

((~~(2)~~)) (4) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

((~~(3)~~)) (5) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed 30 percent of the monthly income of a household whose income is:

(a) For rental housing, 60 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development; or

(b) For owner-occupied housing, 80 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

((~~(4)~~)) (6) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

((~~(5)~~)) (7) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

((~~(6)~~)) (8) "City" means any city or town, including a code city.

((~~(7)~~)) (9) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the

legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

((~~(8)~~)) (10) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

((~~(9)~~)) (11) "Cottage housing" means residential units on a lot with a common open space that either:

(a) Is owned in common; or

(b) Has units owned as condominium units with property owned in common and a minimum of 20 percent of the lot size as open space.

((~~(10)~~)) (12) "Courtyard apartments" means attached dwelling units arranged on two or three sides of a yard or court.

((~~(11)~~)) (13) "Critical areas" include the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

"Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

((~~(12)~~)) (14) "Department" means the department of commerce.

((~~(13)~~)) (15) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

((~~(14)~~)) (16) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

((~~(15)~~)) (17) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

((~~(16)~~)) (18) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with en-

vironmental impacts by prioritizing vulnerable populations and overburdened communities and the equitable distribution of resources and benefits.

(19) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 30 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

((~~(17)~~)) (20) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

((~~(18)~~)) (21) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

((~~(19)~~)) (22) "Green infrastructure" means a wide array of natural assets and built structures within an urban growth area boundary, including parks and other areas with protected tree canopy, and management practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by storing, infiltrating, evapotranspiring, and harvesting and using stormwater.

(23) "Green space" means an area of land, vegetated by natural features such as grass, trees, or shrubs, within an urban context and less than one acre in size that creates public value through one or more of the following attributes:

(a) Is accessible to the public;

(b) Promotes physical and mental health of residents;

(c) Provides relief from the urban heat island effects;

(d) Promotes recreational and aesthetic values;

(e) Protects streams or water supply; or

(f) Preserves visual quality along highway, road, or street corridors.

(24) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

((~~(20)~~)) (25) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

((~~(21)~~)) (26) "Major transit stop" means:

(a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems, including transitways; or

(d) Stops on bus rapid transit routes, including those stops that are under construction.

((~~(22)~~)) (27) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

((~~(23)~~)) (28) "Middle housing" means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.

((~~(24)~~)) (29) "Minerals" include gravel, sand, and valuable metallic substances.

((~~(25)~~)) (30) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 120 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

((~~(26)~~)) (31) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

((~~(27)~~)) (32) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, "highly impacted communities" as defined in RCW 19.405.020.

(33) "Per capita vehicle miles traveled" means the number of miles traveled using cars and light trucks in a calendar year divided by the number of residents. The calculation of this value excludes vehicle miles driven conveying freight.

(34) "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care,

treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

((~~(28)~~)) (35) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action including, but not limited to, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones which do not require a comprehensive plan amendment, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

((~~(29)~~)) (36) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

((~~(30)~~)) (37) "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

((~~(31)~~)) (38) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

((~~(32)~~)) (39) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

((~~(33)~~)) (40) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

((~~(34)~~)) (41) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

((~~(35)~~)) (42) "Single-family zones" means those zones where single-family detached housing is the predominant land use.

((~~(36)~~)) (43) "Stacked flat" means dwelling units in a residential building of no more than three stories on a residential zoned lot in which each floor may be separately rented or owned.

((~~(37)~~)) (44) "Townhouses" means buildings that contain three or more attached single-family dwelling units that extend from foundation to roof and that have a yard or public way on not less than two sides.

((~~(38)~~)) (45) "Transportation system" means all infrastructure and services for all forms of transportation within a geographical area, irrespective of the responsible jurisdiction or transportation provider.

(46) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

((~~(39)~~)) (47) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

((~~(40)~~)) (48) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

((~~(41)~~)) (49) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

((~~(42)~~)) (50)(a) "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to:

(i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and

(ii) Sensitivity factors, such as low birth weight and higher rates of hospitalization.

(b) "Vulnerable populations" includes, but is not limited to:
(i) Racial or ethnic minorities;
(ii) Low-income populations; and
(iii) Populations disproportionately impacted by environmental harms.

(51) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

(52) "Wildland urban interface" means the geographical area where structures and other human development meets or intermingles with wildland vegetative fuels.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-210 Definitions of terms as used in this chapter. The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) ((~~"Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.~~

~~(2)~~)) "Achieved density" means the density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(2) "Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(3) "Adequate provisions" in the context of RCW 36.70A.070 (2)(d) means adopting plans, policies, programs, regulations, and incentives to accommodate and encourage housing affordable to each economic segment of the county or city, and documenting programs and actions needed to overcome barriers and limitations to achieve housing availability.

(4) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

(5) "All economic segments" means, at a minimum, low, very low, extremely low, and moderate-income household segments, and those who occupy emergency housing, emergency shelters, and permanent supportive housing.

(6) "Allowed densities" means the density, expressed in dwelling units per acre, units per lot, or other measure of intensity allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(7) "Assumed densities" means the density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(8) "Carbon wedge analysis" is an analysis that provides a cumulative view of potential greenhouse gas emissions reductions for a jurisdiction. Each wedge depicts potential emissions reductions from climate mitigation strategies by emissions sector such as transportation, built environment, or industry.

(9) "Climate measure" means a goal or policy that can increase resilience to climate change impacts or reduce greenhouse gas emissions or does both.

(10) "Climate resilience" has the same meaning as defined in RCW 70A.65.010. Resiliency and resilience have the same meaning and have been used interchangeably in this chapter.

(11) "Climate sector" means categories of natural resources or community assets (such as physical buildings, infrastructure, and historic places) that can be impacted by or contribute to climate change. The following climate sectors are referred to in this chapter:

(a) Agriculture and food systems includes food production and distribution, including processing in industrial areas and community gardens in urban areas;

(b) Built environment and energy includes power generation and transmission, renewable energy production, and energy and material consumption in buildings and the built environment; this excludes transportation infrastructure;

(c) Cultural resources and practices includes historic sites and cultural resources and practices;

(d) Economic development includes business continuity and opportunities;

(e) Ecosystems includes terrestrial and aquatic species, critical areas, and ecosystem services;

(f) Emergency management includes emergency mitigation, preparedness, response, and recovery;

(g) Health and well-being includes public health and community well-being;

(h) Transportation includes transportation modes and infrastructure (such as vehicles, roads, bridges, sidewalks, bike lanes);

(i) Waste management includes materials recycling and disposal;

(j) Water resources includes water quality and quantity; and

(k) Zoning includes regulations for the land that is designated into areas (or zones), each with specific rules defining what types of development (for example, residential, commercial, and industrial) are permitted within that zone, regulating how each parcel of land can be used and the design of the structures built on each parcel (for example, regulations describing height, bulk, use, and density).

(12) "Concurrency" or "concurrent with development" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above.

((~~(9)~~)) (13) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regula-

tion. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

((~~(10)~~)) (14) "Contiguous development" means development of areas immediately adjacent to one another.

((~~(11)~~)) (15) "Coordination" means consultation and cooperation among counties and cities.

((~~(12)~~)) (16) "Cultural resources" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

((~~(13)~~)) (17) "Demand management strategies" or "transportation demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that:

(a) Shift demand outside of the peak travel time;

(b) Shift demand to other modes of transportation;

(c) Increase the average number of occupants per vehicle;

(d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

((~~(14)~~)) (18) "Displacement" in the context of RCW 36.70A.070 means the process by which a household is forced to move from its community because of conditions beyond its control.

((~~(15)~~)) (19) "Displacement risk" means the likelihood that a household will be forced to move from its community.

((~~(16)~~)) (20) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

((~~(17)~~)) (21) "Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ((~~ground waters~~)) groundwaters, cool summer in-stream water temperatures, and fish and wildlife habitats.

((~~(18)~~)) (22) "Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

((~~(19)~~)) (23) "Essential public facilities" include those facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, opioid treatment programs including both mobile and fixed-site medication units, recovery residences, harm reduction programs excluding safe injection sites, and inpatient facilities including substance use disorder treatment facilities, mental health facilities, group homes, community facilities as defined in RCW 72.05.020, and secure community transition facilities as defined in RCW 71.09.020.

((~~(20)~~)) (24) "Exclusion" means the act or effect of shutting or keeping certain populations out of a specified area, in a manner that may be intentional or unintentional.

((~~(21)~~)) (25) "Family day-care provider" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than 12 children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide

their services in the family living quarters of the day care provider's home.

((~~(22)~~)) (26) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

((~~(23)~~)) (27) "Greenhouse gas" and "greenhouse gases" have the same meaning as defined in RCW 70A.45.010.

(28) "Growth Management Act" - See definition of "act."

((~~(24)~~)) (29) "Historic preservation" or "preservation" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

((~~(25)~~)) (30) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the tangible and material evidence of the human past, aged 50 years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

((~~(26)~~)) (31) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

((~~(27)~~)) (32) "Local government" means a county, city, or town.

((~~(28)~~)) (33) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

((~~(29)~~)) (34) "Mitigation" or "mitigation sequencing" means a prescribed order of steps taken to reduce the impacts of activities on critical areas. As defined in WAC 197-11-768, mitigation means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

((~~(30)~~)) (35) "Multimodal safety benefits" means benefits derived from roadway designs and operations that reduce the potential for serious crash-related injuries or deaths for people using every mode of transportation. Such design and operational approaches explicitly consider and manage the movements, speeds and conflicts between each of those transportation users to reduce the exposure, likelihood, and severity of crashes.

(36) "Multimodal transportation" means systems that facilitate the movement of people and goods through a combination of infrastructure and services for walking, biking, riding public transit and ferries, driving, and making connections to rail and aviation. These sys-

tems should provide safe, well-connected mobility options for all, including those who cannot and do not drive.

(37) "Must," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

((~~(31)~~)) (38) "Net-zero" refers to a state in which a local jurisdiction's greenhouse gases going into the atmosphere are reduced to near-zero, or 95 percent below baseline levels by 2050, and the remaining greenhouse gases that cannot be eliminated are mitigated with carbon dioxide sequestration to bring total net emissions to zero.

(39) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

((~~(32)~~)) (40) "Open space" has the same meaning as "open space land" defined in RCW 84.34.020.

(41) "Planning period" means the 20-year period starting on the relevant due date for the most recent periodic update specified in RCW 36.70A.130(5).

((~~(33)~~)) (42) "Public benefit," as referenced in RCW 39.33.015, means affordable housing, which can be rental housing or permanently affordable homeownership for low, very low, and extremely low-income households, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons.

((~~(34)~~)) (43) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

((~~(35)~~)) (44) "Racially disparate impacts" means disproportionate impacts on one or more racial groups as a result of policies, practices, rules, or other systems.

((~~(36)~~)) (45) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

((~~(37)~~)) (46) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a region containing one or more counties which have common transportation interests.

((~~(38)~~)) (47) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

((~~(39)~~)) (48) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

((~~(40)~~)) (49) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

((~~(41)~~)) (50) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

((~~(42)~~)) (51) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

((~~(43)~~)) (52) "Sufficient land capacity for development" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the countywide planning policies.

((~~(44)~~)) (53) "Surplus public property" means excess real property that is not required for the needs of or the discharge of the responsibilities of the state agency, municipality, or political subdivision. Note that RCW 39.33.015 applies a specific definition for affordable housing in the context of surplus public property.

((~~(45)~~)) (54) "Transitional housing" means a project that provides housing to homeless persons or families for up to two years, or longer, and that has as its purpose facilitating the movement of homeless persons and families into permanent housing.

((~~(46)~~)) (55) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

((~~(47)~~)) (56) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

((~~(48)~~)) (57) "Transportation system management" means the use of low cost solutions to increase the performance of the transportation system. Transportation system management (TSM) strategies include, but are not limited to, signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

((~~(49)~~)) (58) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

((~~(50)~~)) (59) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-310 Urban growth areas. (1) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and the resulting allocations of housing need, and based on a countywide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding 20-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with counties and cities before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The combined urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Counties and cities have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth within urban growth areas as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, according to the time schedule specified in RCW 36.70A.130(5), periodically its designated urban growth areas, the patterns of development, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (see WAC 365-196-610).

(2) General procedure for initial designation of new urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the

act on a regional basis, consistent with the countywide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or countywide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(h) The initial effective date of an action that expands an urban growth area is the latest of the following dates per RCW 36.70A.067:

(i) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided under RCW 36.70A.290(2); or

(ii) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

(3) Urban growth area swaps.

(a) An urban growth area swap refers to the process by which a county may change an urban growth area even if it is determined that an urban growth area expansion is not required to accommodate 20-year growth projections. This may be done during county's periodic update under RCW 36.70A.130 (3)(c), or as an annual amendment under RCW 36.70A.110(8).

(b) If, during the county's periodic update review under RCW 36.70A.130 (3)(c), the county determines expansion of the urban growth area is not required to accommodate the urban growth projected to occur in the county for the succeeding 20-year period, but does determine that patterns of development have created pressure in areas that exceed available, developable lands within the urban growth area, the urban growth area or areas may be revised to accommodate identified patterns of development and likely future development pressure for the succeeding 20-year period if the following requirements are met:

(i) The revised urban growth area may not result in an increase in the total surface areas of the urban growth area or areas;

(ii) The areas added to the urban growth area are not or have not been designated as agricultural, forest, or mineral resource lands of long-term commercial significance;

(iii) Less than 15 percent of the areas added to the urban growth area are critical areas;

(iv) The areas added to the urban growth areas are suitable for urban growth;

(v) The transportation element and capital facility plan element have identified the transportation facilities, and public facilities and services needed to serve the urban growth area and the funding to provide the transportation facilities and public facilities and services;

(vi) The total area of all urban growth areas in the county is not larger than needed to accommodate the growth planned for the succeeding 20-year planning period and a reasonable land market supply factor;

(vii) The areas removed from the urban growth area do not include urban growth or urban densities; and

(viii) The revised urban growth area is contiguous, does not include holes or gaps, and will not increase pressures to urbanize rural or natural resource lands.

(c) If considering an urban growth area swap as an annual amendment under RCW 36.70A.110(8), the following requirements must be met before a revision of the urban growth area is allowed:

(i) The revised urban growth area would not result in a net increase in the total acreage or development capacity of the urban growth area or areas;

(ii) The areas added to the urban growth area are not designated by the county as agricultural, forest, or mineral resource lands of long-term commercial significance;

(iii) If the areas added to the urban growth area have previously been designated as agricultural, forest, or mineral resource lands of long-term commercial significance, either an equivalent amount of agricultural, forest, or mineral resource lands of long-term commercial significance must be added to the area outside of the urban growth area, or the county must wait a minimum of two years before another swap may occur;

(iv) Less than 15 percent of the areas added to the urban growth area are critical areas other than critical aquifer recharge areas. Critical aquifer recharge areas must have been previously designated by the county and be maintained per county development regulations within the expanded urban growth area and the revised urban growth area must not result in a net increase in critical aquifer recharge areas within the urban growth area;

(v) The areas added to the urban growth areas are suitable for urban growth;

(vi) The transportation element and capital facility plan element of the county's comprehensive plan have identified the transportation facilities and public facilities and services needed to serve the urban growth area and the funding to provide the transportation facilities and public facilities and services;

(vii) The areas removed from the urban growth area are not characterized by urban growth or urban densities;

(viii) The revised urban growth area is contiguous, does not include holes or gaps, and will not increase pressures to urbanize rural or natural resource lands;

(ix) The county's proposed urban growth area revision has been reviewed according to the process and procedure in the countywide planning policies adopted and approved according to RCW 36.70A.210; and

(x) The revised urban growth area meets all other requirements of RCW 36.70A.110(8).

(4) Urban growth areas and 100-year floodplains.

(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the 100-year floodplain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of 1,000 or more cubic feet per second as determined by the department of ecology.

(b) Subsection (4)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain;

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; stormwater facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase stormwater runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under this subsection (4), "100-year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(5) Recommendations for meeting requirements.

(a) Selecting and allocating countywide growth forecasts. This process should involve at least the following:

(i) The total countywide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area. Counties and cities should use consistent growth forecasts, allocations, and planning horizons. The planning horizon should start on

the relevant deadline specified in RCW 36.70A.130(5) and encompass 20 years.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low 20-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total countywide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that 20-year growth forecasts and designated urban growth areas be updated at a minimum during the periodic review of comprehensive plans and development regulations (WAC 365-196-610). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the 20-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the 20-year forecasts selected.

(iv) Selection of a countywide employment forecast. Counties, in consultation with cities, should adopt a 20-year countywide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The countywide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land

needs, counties and cities should use a countywide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a countywide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities a county or city seeks to achieve in relation to its growth goals. Inside the urban growth areas, densities must be urban. Outside the urban growth areas, densities must be rural.

(b) Per subsection (1)(h) of this section and RCW 36.70A.130(5), each county that designates urban growth areas must review periodically its designated urban growth areas.

The purpose of the urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding 20-year planning period.

(i) This review should be conducted jointly with the affected cities.

(ii) In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(c) Counties and cities must use the selected population projection identified in subsection (1)(d) of this section to determine the countywide projection of housing need by economic segment provided by the department as prescribed in RCW 36.70A.070 (2)(a). Counties and cities must determine the countywide projected housing need using data and methodology provided by the department. When allocating projected housing needs for each jurisdiction within a county, counties and cities should use the minimum standards described in WAC 365-196-410 (2)(c)(iii).

(d) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the 20-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the 20-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial, and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and utilities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the 20-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area and is consistent with the housing types specified in the analysis of housing need developed pursuant to RCW 36.70A.070(2). In formulating land capacity analyses, counties and cities should consider data on past development, zoning to meet minimum housing requirements, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the 20-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed the current combined capacities of unincorporated county and city lands, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(e) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next 20 years. The urban growth area should be

based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a county or city has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas and wildfires. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. Counties and cities should also consider the potential risk of wildland fires when expanding the urban growth area into areas where structures and other development intermingles with undeveloped wildland or vegetative fuels. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the 100-year ((~~flood plain~~)) floodplain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of 1,000 or more cubic feet per second.

(vii) Consideration of patterns of development within urban growth areas under RCW 36.70A.130 (3)(a) and 36.70A.110(8). Evaluating

patterns of development can help identify growth pressures and the viability of existing and proposed urban growth areas. Local governments may want to consider one or more methods for evaluating patterns of development from the following nonexclusive list:

(A) Based on population, permit data, types of development, and a land capacity analysis, identify growth rates and patterns for the preceding 10 years. Calculate rates separately for the unincorporated urban growth areas, and areas within incorporated cities and towns. Cities and towns may identify subareas within their corporate boundaries for individual analysis. Counties and cities should not rely on an evaluation of averages across the overall urban growth area or city boundary.

(B) Make a determination as to consistency or inconsistency with the growth rates and patterns that were envisioned in adopted countywide planning policies, comprehensive plans and development regulations, and actual development that has occurred.

(C) Make a determination as to consistency or inconsistency with assumed housing densities as established under WAC 365-196-410 (2)(d).

(D) Determine development capacity, building types, and patterns of development within each identified area. Based on this analysis, determine the availability of land to serve projected growth within each identified area for the 20-year planning period.

(E) Compare the identified areas to determine areas of high development pressure, areas of low development pressure, and areas with inadequate capacity to absorb their projected growth, including projected housing need.

(F) Make determinations on the viability of urban growth areas experiencing low development pressure by considering barriers to growth such as:

(I) Lack of available or planned infrastructure, including transportation facilities, as determined through the capital facilities plan element and the transportation element.

(II) Lack of adequate development regulations to ensure urban standards and levels of service.

(III) Incompatible uses within or adjacent to the urban growth area. Examples include mining sites, industrial sites, wastewater treatment facilities, brownfields, airports, military bases, and other uses that produce high impacts.

(IV) Parcelization and multiple ownerships that may limit redevelopment.

(V) Site constraints including parcel access, steep slopes, floodplains, and other environmental constraints.

(VI) Market conditions that may deter development.

(viii) Consideration of urban growth area swaps under RCW 36.70A.130 (3)(a). During a periodic update counties may consider removal of a portion of the urban growth area and replacement with a new area location if it is consistent with the requirements of RCW 36.70A.130 (3)(c) or 36.70A.110(8), as applicable, and subsection (3) of this section.

(A) Areas removed from the urban growth area must not include existing urban development. Areas with public sewer, or other urban governmental services such as public water, transportation, and stormwater facilities should not be removed from the UGA.

(B) Counties and cities should consider (e)(vii) of this subsection when conducting an urban growth area swap.

(C) Counties and cities should coordinate on revisions to the urban growth area.

(ix) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(f) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding 20-year period. Counties and cities should identify revenue sources and develop a reasonable financial plan to support operation and maintenance of existing facilities and services, and for new or expanded facilities to accommodate projected growth over the 20-year planning period. The plan should ensure consistency between the land use element and the capital facilities plan, and demonstrate that probable funding does not fall short of the projected needs to maintain and operate public facilities, public services, and open space. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(g) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has countywide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with countywide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing countywide planning policies, resolving regional issues, and adjusting growth boundaries.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-335 Identification of open space corridors. (1) Requirements.

(a) Each county or city planning under the act must identify open space corridors within and between urban growth areas. They must include green space and other lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030.

(b) The county or city may seek to acquire by purchase the fee simple or lesser interests in open space corridors using funds authorized by RCW 84.34.230 or other sources.

(2) Recommendations for meeting requirements.

(a) Counties and cities should consider identifying open space corridors when reviewing and updating urban growth areas, critical areas designations, and the land use element of comprehensive plans.

(b) Counties and cities should consider the various purposes and uses of identified corridors((~~,~~)) and should state the preferred uses anticipated for each identified corridor, if known. In some cases, uses preferred for an identified corridor may preclude other incompatible uses.

(c) Counties and cities should consider how identified corridors exist in relationship to designated critical areas and natural resource lands, the extent and trends of public demands for recreational lands and access to public lands for recreation, and specific existing and planned recreational uses that may make use of identified corridors for specific uses, including nonmotorized transportation.

(d) When identifying open space corridors, counties and cities should plan an integrated system that uses identified corridors to link established large areas of parks and recreational lands, resource lands, greenbelts, streams, and wildlife corridors to help protect and enhance fish and wildlife habitat conservation areas.

(e) Counties and cities should also consider the potential to use ((~~vegetated~~)) green spaces as part of an integrated system to absorb and treat stormwater, promote physical and mental health of residents, provide relief from the urban heat island effect, promote recreational and aesthetic value, protect streams or water supply, and preserve visual quality along highway, road, and street corridors.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-400 Mandatory elements. (1) Requirements.

(a) The comprehensive plan must include, at a minimum, a future land use map.

(b) The comprehensive plan must contain descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

(c) The comprehensive plan must be an internally consistent document and all elements shall be consistent with the future land use map.

(d) Each comprehensive plan must include each of the following:

(i) A land use element;

(ii) A housing element;

(iii) A capital facilities plan element;

(iv) A utilities element;

(v) A transportation element;

(vi) A climate change and resiliency element; and

(vii) The goals and policies of the shoreline master program adopted by the county or city as described in RCW 36.70A.480.

(e) ((~~Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130(5). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:~~

~~(i) An economic development element; and~~

~~(ii) A parks and recreation element.~~

~~(f) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.~~

~~(g) Additionally, each county and city comprehensive plan must contain:~~

~~(i) A process for identifying and siting essential public facilities.~~

~~(ii) The goals and policies of the shoreline master program adopted by the county or city, either directly in the comprehensive plan, or through incorporation by reference as described in WAC 173-26-191~~)) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(f) Additionally, each county and city comprehensive plan must contain a process for identifying and siting essential public facilities.

(g) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130(5). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

(i) An economic development element; and

(ii) A parks and recreation element.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the ((~~twenty~~)) 20-year period following the adoption of the comprehensive plan. Counties and cities should use consistent population projections and planning horizons. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5).

(b) The comprehensive plan should include or reference the statutory goals and requirements of the act as guiding the development of the comprehensive plan and should also identify any supplementary goals adopted in the comprehensive plan.

(c) Each county and city comprehensive plan should include, or reference, the countywide planning policies, along with an explanation of how the countywide planning policies have been integrated into the comprehensive plan.

(d) Each comprehensive plan must contain a future land use map showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The comprehensive plan should include a vision for the community at the end of the 20-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

(f) Each county and city should include at the beginning of its comprehensive plan a section which summarizes, with graphics and a minimum amount of text, how the various pieces of the comprehensive plan fit together. A comprehensive plan may include overlay maps and other graphic displays depicting known critical areas, open space corridors, development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) Detailed recommendations for preparing each element of the comprehensive plan are provided in WAC 365-196-405 through 365-196-485.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-405 Land use element. (1) Requirements for counties and cities not subject to the amendments in the land use element of RCW 36.70A.070 set forth in chapter 228, Laws of 2023, based on the applicability requirements in RCW 36.70A.095(3) and WAC 365-196-443(2), Table 1. The land use element ((~~must~~)) shall contain at least the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of groundwater used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and stormwater runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Requirements for counties and cities subject to the amendments in the land use element of RCW 36.70A.070 set forth in chapter 228, Laws of 2023, based on the applicability requirements in RCW 36.70A.095(3) and WAC 365-196-443(2), Table 1. The land use element shall contain at least the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces and green spaces, urban and community forests within the urban growth area, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ((~~ground water~~)) groundwater used for public water supplies.

(d) Special consideration to achieving environmental justice in its goals and policies, including efforts to avoid creating or worsening environmental health disparities.

(e) Wherever possible, consideration of urban planning approaches to promote physical activity and reduce per capita vehicle miles traveled within the jurisdiction, but without increasing greenhouse gas emissions elsewhere in the state.

((~~(e)~~)) (f) Where applicable, a review of drainage, flooding, and stormwater runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

((~~(2)~~)) (g) The land use element must reduce and mitigate the risk to lives and property posed by wildfires by using building codes, land use planning tools, and community agreements, which may include, but are not limited to, zoning regulations or development standards, or adoption of portions or all of the International Wildland-Urban Interface Code developed by the International Code Council or developing building and maintenance standards consistent with the Firewise USA program or similar program designed to reduce wildfire risk, reducing wildfire risks to residential development in high risk areas and the wildland urban interface area, separating human development from wildfire prone landscapes, and protecting existing residential development and infrastructure through community wildfire preparedness and fire adaptation measures.

(h) Counties and cities should integrate the requirements of the Wildland-Urban Interface Code consistent with RCW 36.70A.060 and chapter 90.58 RCW to provide for no net loss of ecosystem functions within critical areas, shorelands, and associated areas.

(3) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element

helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant countywide planning policies and, where applicable, multicounty planning policies, into the local planning process, and ensure local goals and policies are consistent.

(b) Counties and cities should identify the existing general distribution and location of various land uses, the approximate acreage, and general range of density or intensity of existing uses.

(c) Counties and cities should estimate the extent to which existing buildings and housing, together with development or redevelopment of vacant, partially used and underutilized land, can support anticipated growth over the planning period. Redevelopment of fully built properties may also be considered.

(i) Estimation of development or redevelopment capacity may include:

(A) Identification of individual properties or areas likely to convert because of market pressure or because they are built below allowed densities; or

(B) Use of an estimated percentage of area-wide growth during the planning period anticipated to occur through redevelopment, based on likely future trends for the local area or comparable jurisdictions; or

(C) Some combination of (c)(i)(A) and (B) of this subsection.

(ii) Estimates of development or redevelopment capacity should be included in a land capacity analysis as part of a countywide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

(d) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands of long-term commercial significance.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ((~~ground water~~)) groundwater used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence the aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ((~~ground water~~)) groundwater management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter 70A.100 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

(C) Instream flow rules prepared by the department of ecology and limitations and recommendations therein that may inform land use decisions.

(iv) Areas adjacent to general aviation airports where incompatible uses should be discouraged, as required by RCW 36.70A.510 and 36.70.547, with guidance in WAC 365-196-455.

(v) Areas adjacent to military bases where incompatible uses should be discouraged, as required by RCW 36.70A.530 with guidance in WAC 365-196-475.

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

(vii) Where applicable, sites that are particularly well suited for industry. Counties and cities should consult WAC 365-196-310 (3)(c)(iv) for information on industrial land uses. For counties, the process described in WAC 365-196-465 and 365-196-470 may be relevant for industrial areas outside of an urban growth area.

(viii) Other features that may be relevant to this information gathering process may include view corridors, brownfield sites, national scenic areas, historic districts, or other opportunity sites, or other special characteristics which may be useful to inform future land use decisions.

(e) Counties and cities must review drainage, flooding, and stormwater runoff in the area or nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. Water quality information may be integrated from the following sources:

(i) Planning and regulatory requirements of municipal stormwater general permits issued by the department of ecology that apply to the county or city.

(ii) Local waters listed under Washington state's water quality assessment and any water quality concerns associated with those waters.

(iii) Interjurisdictional plans, such as total maximum daily loads.

(f) Counties and cities must obtain 20-year population and housing needs allocations for their planning area as part of a countywide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis and housing needs allocation, identify the amount of land suitable for development at a variety of densities consistent with the number and type of residential units likely to be needed over the planning period. Densities and type of residential units needed should take into account what housing types can serve housing needs at different potential economic segments as described in WAC 365-196-410(2). At a minimum, cities must plan for the population and housing needs allocated to them, but may plan for additional growth within incorporated areas.

(g) Counties and cities should estimate the level of commercial space, and industrial land needed using information from the economic development element, if available, or from other relevant economic development plans.

(h) Counties and cities should identify the general location and estimated quantity of land needed for public purposes such as utility corridors, landfills or solid waste transfer stations, sewage treatment facilities, stormwater management facilities, recreation, schools, and other public uses. Counties and cities should consider corridors needed for transportation including automobile, rail, and trail use in and between planning areas, consistent with the transportation element and coordinate with adjacent jurisdictions for connectivity.

(i) Counties and cities should select land use designations and implement zoning. Select appropriate commercial, industrial, and residential densities and their distribution based on the total analysis

of land features, population and housing needs allocation to be supported, implementation of regional planning strategies, and needed capital facilities.

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this provides capacity for the 20-year allocations of housing need.

(ii) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(j) Wherever possible, counties and cities should consider urban planning approaches that promote physical activity and reduce per capita vehicle miles traveled within the jurisdiction, but without increasing greenhouse gas emissions elsewhere in the state. Urban planning approaches that promote physical activity and reduce per capita vehicle miles traveled may include:

(i) Higher intensity residential or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers. Policies supporting higher intensity development may include, but are not limited to, encouraging compact and infill development, setting minimum housing density, increasing housing diversity and supply, and inclusionary zoning.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service. Such districts should limit parking to encourage transit use.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms ((~~supporting~~)) that support bicycle and pedestrian transportation and improve safety and accessibility.

(v) Policies supporting multimodal approaches ((~~to concurrency~~)), such as including complete streets principles in transportation planning and design, and other policies that promote reduction in per capita vehicle miles traveled to be consistent with other elements of the plan.

(vi) Traditional or main street commercial corridors with street front buildings and limited parking and driveway interruption.

(vii) Opportunities for promoting physical activity ((~~through these and other policies~~)) and reducing per capita vehicle miles traveled should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical activity and reducing per capita vehicle miles traveled for new or existing development should also be removed or lessened where feasible.

(k) Counties and cities may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(l) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element.

WAC 365-196-330 provides additional information regarding development phasing.

(m) Counties and cities should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

(n) Counties and cities should evaluate environmental health risk factors in communities to consider environmental justice in their land use goals and policies. Resources may be available through the department and other public or private entities.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, including green infrastructure, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

The county or city shall identify all public entities that own capital facilities and endeavor in good faith to work with other public entities, such as special districts, to gather and include within its capital facilities element the information required by this subsection. If, after a good faith effort, the county or city is unable to gather the information required by this subsection from the other public entities, the failure to include such information in its capital facilities element cannot be grounds for a finding of noncompliance or invalidity under this act. A good faith effort must, at a minimum, include consulting the public entity's capital facility or system plans and emailing and calling the staff of the public entity.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, stormwater facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the periodic update required by RCW 36.70A.130(1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(v) Counties and cities should consider where infrastructure availability or lack thereof may have resulted in racially disparate impacts, displacement, or exclusion in housing as a result of local policies or regulations. Where the lack of infrastructure limits the ability to achieve infill development, cities required to allow middle housing must plan for adequate infrastructure, such as sewer, to allow new infill development.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(D) Counties and cities should consider improvements to address and begin to undo racially disparate impacts, displacement, or exclusion in housing caused by disinvestment or lack of infrastructure availability as detailed in RCW 36.70A.070 (2)(e) and (f).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance

of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within or among counties or cities in the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising countywide population forecasts within the allowable range, or revising the countywide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, to make adequate provisions for existing and projected needs of all economic segments of the population, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities, intensities, and housing types to accommodate the population and employment that is selected and allocated. The land uses and assumed densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the 20-year life of the compre-

hensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems, and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship between the capital facilities element and the housing element. Capital investments must identify areas that may be of higher risk of displacement per WAC 365-196-410 (1)(g).

(5) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(6) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. ((~~See WAC 365-196-840.~~))

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facilities required to ensure adequate water availability, capital facilities necessary to handle wastewater, and capital facilities necessary to manage stormwater.

(iii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(ii)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section. If applicable, this analysis should be included in the implementation progress report required in RCW 36.70A.130(9).

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-420 Utilities element. (1)(a) Requirements. The utilities element shall contain at least the following features: The general location, proposed location, and capacity of all existing and proposed utilities including, but not limited to, electrical ((~~lines~~)), telecommunication ((~~lines~~)), and natural gas ((~~lines~~)) systems.

(b) The county or city shall identify all public entities that own utility systems and endeavor in good faith to work with other public entities, such as special purpose districts, to gather and include within its utilities element the information required in (a) of this subsection. However, if, after a good faith effort, the county or city is unable to gather the information required in (a) of this subsection from the other public entities, the failure to include such information in the utilities element shall not be grounds for a finding of noncompliance or invalidity under this act. A good faith effort must, at a minimum, include consulting the public entity's capital facility or system plans, and emailing and calling the staff of the public entity.

(2) Recommendations for meeting requirements. Counties and cities should consider the following:

(a) The general location and capacity of existing and proposed utility facilities should be integrated with the land use element. Proposed utilities are those awaiting approval when the comprehensive plan is adopted.

(b) In consultation with serving utilities, counties and cities should prepare an analysis of the capacity needs for various utilities over the planning period, to serve the growth anticipated at the locations and densities proposed within the county's or city's planning area. The capacity needs analysis should include consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The utility element should identify the general location of utility ((~~lines~~)) systems and facilities required to furnish anticipated capacity needs for the planning period. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes.

(d) Counties and cities should evaluate whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate siting process established under the comprehensive plan for such facilities.

(e) Counties and cities should evaluate whether any utility facilities within their planning area are subject to countywide planning policies for siting public facilities of a countywide or statewide nature.

(f) Counties and cities should include local criteria for siting utilities over the planning period, including:

(i) Consideration of whether a siting proposal is consistent with the locations and densities for growth as designated in the land use element.

(ii) Consideration of any public service obligations of the utility involved.

(iii) Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its service area.

(iv) Balancing of local design considerations against articulated needs for system-wide uniformity.

(g) Counties and cities should adopt policies that call for:

(i) Joint use of transportation rights of way and utility corridors, where possible.

(ii) Timely and effective notification of interested utilities about road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.

(iii) Consideration of utility permit applications simultaneously with the project permit application for the project proposal requesting service and, when possible, approval of utility permits when the project permit application for the project to be served is approved.

(iv) Municipal utilities to reduce or waive connection fees for affordable housing. This includes properties owned or developed by, or on behalf of, a nonprofit organization, public development authority, housing authority, or a local agency that provides emergency shelter or emergency housing, transitional housing, permanent supportive housing, or other affordable housing consistent with chapter 35.95 RCW.

(v) Cooperation and collaboration between the county or city and the utility provider to develop vegetation management policies and plans for utility corridors.

(A) Coordination and cooperation between the county or city and the utility provider to educate the public on avoiding preventable utility conflicts through choosing proper vegetation (i.e., "Right Tree, Right Place").

(B) Coordination and cooperation between the county or city and the utility provider to reduce potential critical areas conflicts through the consideration of alternate utility routes, expedited vegetation management permitting, coordinated vegetation management activities, and/or long-term vegetation management plans.

(h) Adjacent counties and cities should coordinate to ensure the consistency of each jurisdiction's utilities element and regional utility plan, and to develop a coordinated process for siting regional utility facilities in a timely manner.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural

character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ((~~ground water~~)) groundwater and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ((~~ground water~~)) groundwater and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should consider the adverse impact of wildfires when establishing rural densities. Counties may reduce rural densities in areas vulnerable to wildland fires as a mitigation strategy to protect natural resource lands, critical areas, water quality, or rural character.

(c) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur along with the urban growth area review required in RCW 36.70A.130 (3)(a) and the implementation progress report required in RCW 36.70A.130(9). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage stormwater and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Coun-

ties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDs may be both allowed and encouraged if it is consistent with local character and if existing providers of public facilities and public services confirm there is sufficient capacity of existing public facilities and public services to serve new or additional demand. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) Allowed commercial development or redevelopment. Any commercial development or redevelopment within a mixed use area must be principally designed to serve the existing and projected rural population and must meet the following requirements:

(I) Any included retail or food service space must not exceed the footprint of previously occupied space or 5,000 square feet, whichever is greater, for the same or similar use; unless the retail space is for an essential rural retail service and the designated limited area is located at least 10 miles from an existing urban growth area, then the retail space must not exceed the footprint of the previously occupied space or 10,000 square feet, whichever is greater; and

(II) Any included retail or food service space must not exceed 2,500 square feet for a new use unless the new retail space is for an essential rural retail service and the designated limited area is located at least 10 miles from an existing urban growth area, then the new retail space must not exceed 10,000 square feet; and

(III) For the purposes of this section, "essential rural retail services" means services including grocery, pharmacy, hardware, automotive parts, and similar uses that sell or provide products necessary for health and safety, such as food, medication, sanitation supplies, and products to maintain habitability and mobility as defined in RCW 36.70A.070.

(C) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(D) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(E) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(F) Counties should not propose or accept applications that would expand or create a new Type-1 LAMIRD. Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments if there was an error in application of the

original criteria. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDs - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) The initial effective date of an action that creates or expands a limited area of more intense development is the latest of the following dates per RCW 36.70A.067:

(i) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided under RCW 36.70A.290(2); or

(ii) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

(e) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-430 Transportation element. ((~~(1) Requirements.~~)) Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. ((~~The transportation element shall contain at least the following subelements:~~))

(1) Requirements for counties and cities not subject to the amendments in the transportation element (RCW 36.70A.070) set forth in chapter 228, Laws of 2023, based on the applicability requirements in RCW 36.70A.095(2) and WAC 365-196-443(2), Table 1. The transportation element shall contain at least the following:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's 10-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the 10-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the 10-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Requirements for counties and cities subject to the amendments in the transportation element (RCW 36.70A.070) set forth in chapter 228, Laws of 2023, based on the applicability requirements in RCW 36.70A.095(2) and WAC 365-196-443(2), Table 1. The transportation element shall contain at least the following:

(a) Land use assumptions used in estimating travel;

(b) Estimated ((~~traffic~~)) multimodal levels of service impacts to state-owned transportation facilities resulting from land use assumptions to assist ((~~the department of transportation~~)) in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments, active transportation facilities, and general aviation airports facilities, to define existing capital facilities and travel levels ((~~as a basis for~~)) to inform future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Multimodal level of service standards for all locally owned arterials ((~~and transit routes~~)), locally and regionally operated transit routes that serve urban growth areas, state-owned or operated transit routes that serve urban areas if the department of transportation has prepared such standards, and active transportation facilities to serve as a gauge to judge performance of the system and success in helping to achieve the goals of this chapter consistent with environmental justice. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, multimodal level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting multimodal level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, active transportation, or transit program and the department of transportation's 10-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance ((~~locally owned~~)) transportation facilities or services that are below an established multimodal level of service standard;

(v) Forecasts of ((~~traffic~~)) multimodal transportation demand and needs within cities and urban growth areas, and forecasts of multimodal transportation demand and needs outside of cities and urban growth areas, for at least 10 years based on the adopted land use plan to ((~~provide information on the location, timing, and capacity needs of future growth~~)) inform the development of a transportation element that balances transportation system safety and convenience to accommodate all users of the transportation system to safely, reliably, and efficiently provide access and mobility to people and goods. Priority must be given to inclusion of transportation facilities and services providing the greatest multimodal safety benefit to each category of roadway users for the context and speed of the facility;

(vi) Identification of state and local system needs to equitably meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW. Local sys-

tem needs should reflect the regional transportation system and local goals, and strive to equitably implement the multimodal network;

(vii) A transition plan for transportation as required in Title II of the Americans with Disabilities Act of 1990 (ADA). As a necessary step to a program access plan to provide accessibility under the ADA, state and local government, public entities, and public agencies are required to perform self-evaluations of their current facilities, relative to accessibility requirements of the ADA. The agencies are then required to develop a program access plan, which can be called a transition plan, to address any deficiencies. The plan is intended to achieve the following:

(A) Identify physical obstacles that limit the accessibility of facilities to individuals with disabilities;

(B) Describe the methods to be used to make the facilities accessible;

(C) Provide a schedule for making the access modifications; and

(D) Identify the public officials responsible for implementation of the transition plan;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the 10-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting the identified needs of the transportation system, including state transportation facilities, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) ((~~Pedestrian and bicycle~~)) Active transportation component to include collaborative efforts to identify and designate planned improvements for ((~~pedestrian and bicycle~~)) active transportation facilities and corridors that address and encourage enhanced community access and promote ((~~healthy lifestyles~~)) public health and well-being;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the 10-year plan required by RCW 47.05.030 for the state, must be consistent.

((~~(2)~~)) (3) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements. Coordination of the land use and transportation elements should address how the implementation of the transportation element supports the desired land uses

and form established in the land use element. Recognizing that there is a direct relationship between land use and how it is accessed.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans, active transportation plans, and recreation and conservation office state trails plan.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in countywide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is consistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW 70A.15.4060. Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW 70A.15.4030.

(b) The transportation element should contain goals and policies to guide the development and implementation of the transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including pedestrians, bicyclists, transit vehicles and riders, and motorists;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and access to transit stations and stops by people walking, bicycling, or transferring from another vehicle;

(iii) Bicycle and pedestrian <u>(or active transportation if subject to RCW 36.70A.095(2))</u> travel including measures of facility quality such as level of traffic stress (an indicator used to quantify the stress experienced by a cyclist or pedestrian on the segments of a road network), route directness, and network completeness;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and stormwater impacts on state-owned transportation facilities and services as development occurs.

(c) Inventory and analysis of transportation facilities and services. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory should include facilities for active transportation such as bicycle and pedestrian travel. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should identify transportation facilities which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties, cities, and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues.

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county or city, and should reference any relevant airport planning documents including airport master plans, airport layout plans or technical assistance materials made available by airport sponsor and in coordination with the Washington state department of transportation, aviation division.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455 and in accordance with the best practices recommended by the Washington state department of transportation, aviation division.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including ownership, and should reference any relevant ferry planning documents. The inventory should identify if a ferry route is subject to concurrency under RCW 36.70A.070 (6)(b). A ferry route is subject to concurrency if it serves counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, high occupancy vehicle lanes, business access and transit lanes, transit queue jumps, other transit priority features, bicycle facilities, sidewalks, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the Washington state department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, functional classification, and whether the highway is a state-designated highway of statewide significance, or state scenic and recreational highway designated under chapter 47.39 RCW. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The map should categorize routes by frequency and span of service. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use. The inventory should identify major transit stops.

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of 1990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC,

and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for all travel modes. Counties and cities may adopt level of service standards for locally owned roads that are not classified as arterials.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for state-owned highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area. Level of service standards should also advance the state's ((~~vehicle miles~~)) per capita vehicle miles traveled reduction goals as identified in RCW 47.01.440.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards for all transportation modes. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major

travel modes (pedestrian, bicycle, public transportation, motor vehicle), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian (or active transportation if subject to RCW 36.70A.095(2)) level of service standards should emphasize the availability of facilities and user stress based on facility attributes, traffic speed, traffic volume, number of lanes, frequency of parking turnover, ease of intersection crossings and others. Utilizing additional level of services standards can help make these modes accessible to a broad share of the population.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a 10-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the 20-year planning period. Counties and cities may include bicycle, pedestrian, ((~~and/~~)) (or active transportation if subject to RCW 36.70A.095(2)) or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency. Counties and cities should use the most current traffic forecasting methodologies that better account for the different traffic generating characteristics of different land use patterns. Traffic forecasts are one piece of information and should be balanced with other data and goals in the formation of the transportation element.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards. Such actions and requirements identified should include improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required 10-year forecasting period. If counties and cities use a 20-year forecasting period, they should also identify needs for the entire 20-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle ((~~and~~)), pedestrian, and active transportation access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state de-

partment of transportation's 10-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of active transportation, pedestrian, bicycle, transit, vehicular facilities; ADA transitions; enhanced or expanded transit services; system management; elimination of fish passage barriers; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(x) State policy goals as outlined in RCW 47.04.280. Growth in travel demand should first be met through improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications. This approach is consistent with statewide goals to reduce per capita vehicle miles traveled and greenhouse gas emissions.

(xi) The transportation element may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070 (6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(A) Multiple modes of transportation with peak and nonpeak hour capacity performance standards for locally owned transportation facilities; and

(B) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(xii) When identifying system needs, counties and cities should consider improvements to address and begin to undo racially disparate impacts, displacement, or exclusion in housing caused by disinvestment or lack of infrastructure availability as detailed in RCW 36.70A.070 (2)(e) and (f).

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the Washington state department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of motor vehicle, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry sys-

tems throughout the planning period. Counties and cities should work with the Washington state department of transportation to understand the limits of state facilities throughout the planning period and should avoid increasing vehicle demand beyond planned capacity of state facilities.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walking, active transportation and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle (or active transportation if subject to RCW 36.70A.095(2)) component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian ((~~and~~)), bicycle, and active transportation facilities and corridors that address and encourage enhanced community access and promote ((~~healthy lifestyles~~)) public health and well-being.

(i) Collaborative efforts may include referencing local, regional, state pedestrian and bicycle planning documents, and ADA transition plans if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian ((~~and~~)), bicycle, and active transportation component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions. This map should also identify the level of traffic stress for each of the facilities. Jurisdictions are encouraged to consider demographic groups that may have special transportation needs, such as older adults, youth, people with low incomes, people with disabilities, and people with limited English proficiency when identifying and designating planned improvements.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian ((~~and~~)), bicycle, and active transportation component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian ((~~and~~)), bicycle, and active transportation component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services. The plan should consider route directness, network completeness, and level of traffic stress.

(v) The pedestrian ((~~and~~)), bicycle, and active transportation component should also plan pedestrian facilities that improve pedestrian and bicycle safety following a safe systems approach and consider existing pedestrian and bicycle collision data, vehicle speeds and volumes, and level of separation of modes.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified multimodal transportation facilities and services and strategies throughout the 20-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the 10-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(I) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the life-cycle cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(l) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3), and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use of transportation system management or transportation demand management strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length by encouraging mixed-use developments to increase the share of people who can walk, bicycle, or take transit to meet daily needs, or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures. Counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of Washington state department of transportation standards or the National Association of City Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce or eliminate vehicle parking minimum requirements, provide vehicle parking maximums and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

(v) Access management ordinances;

(vi) Active transportation funding programs;

(vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;

(viii) Subdivision standards to reflect multimodal goals, including providing complete and connected networks, particularly for bicycle and pedestrian travel; and

(ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

(3) Relationship between the transportation element and the housing element. Capital investments must identify areas that may be of higher risk of displacement per WAC 365-196-410 (1)(g).

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-440 Parks and recreation element. (1) Requirements.

(a) The park and recreation element of the comprehensive plan must contain at least the following features:

(i) Consistency with the capital facilities element as it relates to park and recreation facilities;

(ii) Estimates of park and recreation demand for at least a ((~~ten~~)) 10-year period;

(iii) An evaluation of facilities and service needs; ((~~and~~))

(iv) An evaluation of tree canopy coverage within the urban growth area; and

(v) An evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(b) The requirement to include a parks and recreation element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting requirements.

(a) Consistency and integration with other plan elements. Counties and cities should pay particular attention to consistency with the land use element, approaches to protecting critical areas and conserving natural resource lands, and identification of open space corridors and lands useful for public purposes. Planning policies and implementing regulations in each of these elements should complement each other to achieve adopted community goals.

(b) Visioning process. Counties and cities should start with a visioning process. This process should engage the public, including the participation of vulnerable populations and overburdened communities, in the process of identifying needs, evaluating their satisfaction with existing recreational opportunities, and developing goals to guide the development of the parks and recreation element.

(c) Establishing level of service standards.

(i) The visioning process should be used when establishing levels of service for the parks and recreation element. Select levels of service or planning assumptions that reflect local priorities.

(ii) Methods used to establish levels of service should reflect community goals, and may be adapted from approaches recommended by the Washington state recreation and conservation office or the National Recreation and Parks Association; facilities and services. Level of service standards should reflect local priorities.

(iii) Level of service standards should focus on those aspects that relate most directly to factors influenced by growth and development, to allow for counties and cities to more clearly identify the impact on the demand for park facilities resulting from new development.

(d) Evaluation of facilities and service needs.

(i) Counties and cities should ensure consistency with the land use element when identifying existing and future public facilities and services.

(ii) Counties and cities should prepare an inventory of all existing park, recreation and open space lands, and related services. The inventory should describe the location, size and type of each facility or service, its current condition and capacity, and its intended service area. It should include a description of the park and recreation facilities and services of other private and public entities, including state park and recreation services.

(iii) Counties and cities should estimate demand for parks, open space and recreational services. Estimates must be for at least a planning period of ((~~ten~~)) 10 years, and jurisdictions should consider a planning period that matches that used for other comprehensive plan

elements (e.g., ((~~twenty~~)) 20 years). In preparing estimates, factors that should be considered include, but are not limited to:

(A) Population forecasts and other demographic projections;

(B) Levels of service selected for each type of facility or service to be provided;

(C) User information and participation rates from current facilities and programs;

(D) Surveys or other means of assessing community priorities for park and recreational services;

(E) National and local trends in recreational demands and services;

(F) Facilities and services provided by other private or public entities; and

(G) Review of statewide recreation plans, assessments and recreation trends made available through the department, the Washington state department of fish and wildlife, the Washington state department of natural resources, the recreation and conservation office, and the state parks and recreation commission.

(e) The parks and recreation element should identify future facilities and services needed to meet the estimated demand for parks, open space and recreational programs, consistent with levels of service or planning assumptions and the projections for distribution of growth in the land use element. Consistency with the capital facilities and land use elements should be ensured when identifying existing and future public facilities and services to meet the estimated demand. The parks and recreation element should provide for an integrated parks, recreation and open space system. The system should consist of a complementary set of parks and open spaces that, considered together, meet the needs of a full range of community interests.

(f) Opportunities for intergovernmental coordination.

(i) When preparing the parks and recreation element, counties and cities should review other local, statewide, and regional recreation and land use plans to identify any future facilities that may help in meeting the future demand for parks and recreation facilities.

(ii) Counties and cities should evaluate opportunities for intergovernmental or public/private partnership approaches to meeting regional demand for park and recreation services including, but not limited to:

(A) Joint facility use agreements or contracts;

(B) Interlocal agreements for land acquisition or facility construction to serve region-wide needs;

(C) Contracts with private service providers;

(D) Formation of a single, large regional service provider such as a park and recreation district (chapter 36.69 RCW), park and recreation service area (RCW 36.68.400 through 36.68.620), or metropolitan park district (chapter 35.61 RCW); and

(E) Partnerships with nearby state parks and recreation facilities and services.

(g) Strategies for achieving adopted goals.

(i) Counties and cities should prepare strategies for achieving the adopted goals, policies and objectives, and for meeting the future facilities and service needs. Strategies may include:

(A) Developing needed facilities and programs;

(B) Coordinating intergovernmental efforts to provide needed facilities and programs; or

(C) Adopting development regulations that require provision of needed facilities as a condition of development.

(ii) When creating plans for new park facilities, counties and cities should develop site selection criteria to enable strategic prioritization of acquisition and development opportunities.

(iii) Strategies for financing must be consistent with the financing plan in the capital facilities element. If a local government intends to adopt impact fees as a strategy, it must identify those facilities as necessary for development and should identify them in:

(A) The parks and recreation element;

(B) A separate parks plan; or

(C) In the capital facilities element.

(iv) Counties and cities should evaluate if the identified strategies are sufficient to meet the adopted levels of service. If not, counties and cities should use the priorities set in the visioning process to realign the level of service standards with available resources.

(v) A county or city should also develop protocols to monitor and evaluate the parks and recreation element. These protocols should be consistent with the policies adopted in the capital facilities element regarding reassessment. See WAC 365-196-415. The protocol should include plans to monitor the community's changing recreation needs, evaluate progress toward implementation, and adapt to new information, such as changes to plans of other public or private park and recreation service providers.

NEW SECTION

WAC 365-196-443 Climate change and resiliency element. (1) **Requirements.** Each comprehensive plan shall include a climate change and resiliency element ("climate element") designed to, where applicable, result in reductions in overall greenhouse gas emissions and that must enhance resiliency to and avoid the adverse impacts of climate change, which must include efforts to reduce localized greenhouse gas emissions and avoid creating or worsening localized climate impacts to vulnerable populations and overburdened communities. The climate element is composed of one or both of the following subelements depending on applicability:

(a) A greenhouse gas emissions reduction subelement;

(b) A resiliency subelement.

(2) **Applicability.** The following table includes fully planning counties and cities that must update their comprehensive plans to include climate goals and policies as described in this chapter based on the following criteria: 2021 population per office of financial management as updated, population density, and geographic location. Counties and cities must also update their transportation and land use elements, WAC 365-196-430, Transportation element, and WAC 365-196-405, Land use element, as set forth in chapter 228, Laws of 2023, as noted in this table. For smaller counties and cities: If the population of a county increases to 20,000 as determined by office of financial management or if a city population increases to 6,000 in the future, then this table will not accurately reflect all applicable amendments for your jurisdiction. If so, refer to RCW 36.70A.095 (chapter 228, Laws of 2023).

Table 1: Required Updates to Comprehensive Plan Elements (by Year Due)

Due	Jurisdiction	GHG Reduction Subelement	Climate Resilience Subelement	Transportation Element	Land Use Element
2025	Anacortes	X	X	X	X
	Battle Ground	X	X	X	X
	Bellingham	X	X	X	X
	Burlington	X	X	X	X
	Camas	X	X	X	X
	Clark County	X	X	X	X
	Ferndale	X	X	X	X
	Lacey	X	X	X	X
	Lynden	X	X	X	X
	Mount Vernon	X	X	X	X
	Olympia	X	X	X	X
	Ridgefield	X	X	X	X
	Sedro-Woolley	X	X	X	X
	Skagit County	X	X	X	X
	Thurston County	X	X	X	X
	Tumwater	X	X	X	X
	Vancouver	X	X	X	X
	Washougal	X	X	X	X
	Whatcom County	X	X	X	X
	Yelm	X	X	X	X
2025	Centralia		X	X	X
	Chehalis		X	X	X
	Oak Harbor		X	X	X
	Port Angeles		X	X	X
	Port Townsend		X	X	X
	Sequim		X	X	X
	Shelton		X	X	X
	Woodland		X	X	X
2025	Clallam County		X		X
	Island County		X		X
	Jefferson County		X		X
	Lewis County		X		X
	Mason County		X		X
2025	Blaine		X		
	Bucoda		X		
	Concrete		X		
	Coupeville		X		
	Everson		X		
	Forks		X		
	Friday Harbor		X		
	Hamilton		X		

Due	Jurisdiction	GHG Reduction Subelement	Climate Resilience Subelement	Transportation Element	Land Use Element
	La Center		X		
	La Conner		X		
	Langley		X		
	Lyman		X		
	Morton		X		
	Mossyrock		X		
	Napavine		X		
	Nooksack		X		
	Pe Ell		X		
	Rainier		X		
	San Juan County		X		
	Sumas		X		
	Tenino		X		
	Toledo		X		
	Vader		X		
	Winlock		X		
	Yacolt		X		
2026	Airway Heights	X	X	X	X
	Benton County	X	X	X	X
	Cheney	X	X	X	X
	Franklin County	X	X	X	X
	Kennewick	X	X	X	X
	Liberty Lake	X	X	X	X
	Pasco	X	X	X	X
	Prosser	X	X	X	X
	Richland	X	X	X	X
	Spokane	X	X	X	X
	Spokane County	X	X	X	X
	Spokane Valley	X	X	X	X
	West Richland	X	X	X	X
2026	East Wenatchee		X	X	X
	Ellensburg		X	X	X
	Grandview		X	X	X
	Longview		X	X	X
	Sunnyside		X	X	X
	Toppenish		X	X	X
	Union Gap		X	X	X
	Walla Walla		X	X	X
	Wenatchee		X	X	X
	Yakima		X	X	X
2026	Chelan County		X		X

Due	Jurisdiction	GHG Reduction Subelement	Climate Resilience Subelement	Transportation Element	Land Use Element
	College Place		X		X
	Douglas County		X		X
	Kittitas County		X		X
	Walla Walla County		X		X
	Yakima County		X		X
2026	Benton City		X		
	Bridgeport		X		
	Cashmere		X		
	Chelan		X		
	Cle Elum		X		
	Connell		X		
	Deer Park		X		
	Entiat		X		
	Fairfield		X		
	Granger		X		
	Harrah		X		
	Kahlotus		X		
	Kittitas		X		
	Latah		X		
	Leavenworth		X		
	Mabton		X		
	Mansfield		X		
	Medical Lake		X		
	Mesa		X		
	Millwood		X		
	Moxee		X		
	Naches		X		
	Prescott		X		
	Rock Island		X		
	Rockford		X		
	Roslyn		X		
	Selah		X		
	South Cle Elum		X		
	Spangle		X		
	Tieton		X		
	Waitsburg		X		
	Wapato		X		
	Waterville		X		
	Waverly		X		
	Zillah		X		
2027	Ephrata		X	X	X
	Moses Lake		X	X	X

Due	Jurisdiction	GHG Reduction Subelement	Climate Resilience Subelement	Transportation Element	Land Use Element
	Quincy		X	X	X
2027	Grant County		X		X
	Pacific County		X		X
	Stevens County		X		X
2027	Chewelah		X		
	Columbia County		X		
	Colville		X		
	Coulee City		X		
	Coulee Dam		X		
	Cusick		X		
	Dayton		X		
	Electric City		X		
	Garfield County		X		
	George		X		
	Grand Coulee		X		
	Hartline		X		
	Ione		X		
	Ilwaco		X		
	Kettle Falls		X		
	Krupp		X		
	Long Beach		X		
	Marcus		X		
	Mattawa		X		
	Metaline		X		
	Newport		X		
	Northport		X		
	Pend Oreille County		X		
	Pomeroy		X		
	Raymond		X		
	Royal City		X		
	Soap Lake		X		
	South Bend		X		
	Springdale		X		
	Starbuck		X		
	Warden		X		
	Wilson Creek		X		
2029	Arlington	X	X	X	2024 periodic update
	Auburn	X	X	X	2024 periodic update
	Bainbridge Island	X	X	X	2024 periodic update
	Bellevue	X	X	X	2024 periodic update
	Bonney Lake	X	X	X	2024 periodic update

Due	Jurisdiction	GHG Reduction Subelement	Climate Resilience Subelement	Transportation Element	Land Use Element
	Bothell	X	X	X	2024 periodic update
	Bremerton	X	X	X	2024 periodic update
	Brier	X	X	X	2024 periodic update
	Burien	X	X	X	2024 periodic update
	Covington	X	X	X	2024 periodic update
	Des Moines	X	X	X	2024 periodic update
	DuPont	X	X	X	2024 periodic update
	Duvall	X	X	X	2024 periodic update
	Edgewood	X	X	X	2024 periodic update
	Edmonds	X	X	X	2024 periodic update
	Enumclaw	X	X	X	2024 periodic update
	Everett	X	X	X	2024 periodic update
	Federal Way	X	X	X	2024 periodic update
	Fife	X	X	X	2024 periodic update
	Fircrest	X	X	X	2024 periodic update
	Gig Harbor	X	X	X	2024 periodic update
	Issaquah	X	X	X	2024 periodic update
	Kenmore	X	X	X	2024 periodic update
	Kent	X	X	X	2024 periodic update
	King County	X	X	X	2024 periodic update
	Kirkland	X	X	X	2024 periodic update
	Kitsap County	X	X	X	2024 periodic update
	Lake Forest Park	X	X	X	2024 periodic update
	Lake Stevens	X	X	X	2024 periodic update
	Lakewood	X	X	X	2024 periodic update
	Lynnwood	X	X	X	2024 periodic update
	Maple Valley	X	X	X	2024 periodic update
	Marysville	X	X	X	2024 periodic update
	Mercer Island	X	X	X	2024 periodic update
	Mill Creek	X	X	X	2024 periodic update
	Milton	X	X	X	2024 periodic update
	Monroe	X	X	X	2024 periodic update
	Mountlake Terrace	X	X	X	2024 periodic update
	Mukilteo	X	X	X	2024 periodic update
	Newcastle	X	X	X	2024 periodic update
	Normandy Park	X	X	X	2024 periodic update
	North Bend	X	X	X	2024 periodic update
	Orting	X	X	X	2024 periodic update
	Pacific	X	X	X	2024 periodic update
	Pierce County	X	X	X	2024 periodic update
	Port Orchard	X	X	X	2024 periodic update
	Poulsbo	X	X	X	2024 periodic update
	Puyallup	X	X	X	2024 periodic update
	Redmond	X	X	X	2024 periodic update

Due	Jurisdiction	GHG Reduction Subelement	Climate Resilience Subelement	Transportation Element	Land Use Element
	Renton	X	X	X	2024 periodic update
	Sammamish	X	X	X	2024 periodic update
	SeaTac	X	X	X	2024 periodic update
	Seattle	X	X	X	2024 periodic update
	Shoreline	X	X	X	2024 periodic update
	Snohomish	X	X	X	2024 periodic update
	Snohomish County	X	X	X	2024 periodic update
	Snoqualmie	X	X	X	2024 periodic update
	Stanwood	X	X	X	2024 periodic update
	Steilacoom	X	X	X	2024 periodic update
	Sumner	X	X	X	2024 periodic update
	Tacoma	X	X	X	2024 periodic update
	Tukwila	X	X	X	2024 periodic update
	University Place	X	X	X	2024 periodic update
	Woodinville	X	X	X	2024 periodic update
2029	Algona		X		
	Beaux Arts Village		X		
	Black Diamond		X		
	Buckley		X		
	Carbonado		X		
	Carnation		X		
	Clyde Hill		X		
	Darrington		X		
	Eatonville		X		
	Gold Bar		X		
	Granite Falls		X		
	Hunts Point		X		
	Index		X		
	Medina		X		
	Roy		X		
	Ruston		X		
	Skykomish		X		
	South Prairie		X		
	Sultan		X		
	Wilkeson		X		
	Woodway		X		
	Yarrow Point		X		

(a) The greenhouse gas emissions reduction subelement of the climate element is mandatory for the counties and cities specified in RCW 36.70A.095 and encouraged for all others, including those planning under RCW 36.70A.040 and those planning under chapter 36.70 RCW. The resiliency subelement of the climate element is mandatory for all counties and cities planning under RCW 36.70A.040 and is encouraged for those planning under chapter 36.70 RCW.

(b) The requirements of the greenhouse gas emissions reduction subelement of the climate element set forth in RCW 36.70A.070(9) apply only to those counties that are required or that choose to plan under RCW 36.70A.040 and that also meet either of the criteria set forth in (i), (ii), or (iii) of this subsection on or after April 1, 2021, and the cities with populations greater than 6,000 as of April 1, 2021, within those counties:

(i) A county with a population density of at least 100 people per square mile and a population of at least 200,000;

(ii) A county bordering on the Columbia and Snake rivers with a population density of at least 75 people per square mile and an annual growth rate of at least 1.65 percent; or

(iii) A county located to the west of the crest of the Cascade mountains with a population of at least 130,000.

(c) The requirements of RCW 36.70A.095(2) relating to the transportation element apply only to:

(i) Counties and cities that meet the population criteria set forth in this subsection; and

(ii) Cities with populations of 6,000 or greater as of April 1, 2021, that are located in a county that is required or chooses to plan under RCW 36.70A.040.

(d) The requirements of RCW 36.70A.095(3) relating to the land use element apply only to:

(i) Counties and cities that meet the population criteria set forth in this subsection and (c) of this subsection; and

(ii) Counties that have a population of 20,000 or greater as of April 1, 2021, and that are required or that choose to plan under RCW 36.70A.040.

See conditions of applicability in RCW 36.70A.095.

(3) **The resiliency subelement.** The resiliency subelement must equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of, climate change in human communities and ecological systems through goals, policies, and programs consistent with the best available science as described in chapter 365-195 WAC and scientifically credible climate projections and impact scenarios that moderate or avoid harm, enhance the resiliency of natural and human systems, and enhance beneficial opportunities. The resiliency subelement must prioritize actions that benefit overburdened communities that will disproportionately suffer from compounding environmental impacts and will be most impacted by natural hazards due to climate change.

(a) Specific goals, policies, and programs of the resiliency subelement must include, but are not limited to, those designed to:

(i) Identify, protect, and enhance natural areas to foster resiliency to climate impacts, as well as areas of vital habitat for safe passage and species migration;

(ii) Identify, protect, and enhance community resiliency to climate change impacts, including social, economic, and built environment factors, that support adaptation to climate impacts consistent with environmental justice; and

(iii) Address areas at high risk for climate-aggravated or climate-created natural hazards, including sea level rise, landslides, flooding, drought, heat, smoke, wildfire, and other effects of changes to temperature and precipitation patterns. Sea level rise provisions are also subject to the requirements of RCW 90.58.630.

(b) A natural hazard mitigation plan or similar plan that is guided by RCW 36.70A.020(14) that prioritizes actions that benefit overburdened communities, and that complies with the applicable require-

ments of chapter 36.70 RCW, including the requirements set forth in RCW 36.70A.070 (9)(e), may be adopted by reference to satisfy these requirements, except that to the extent any of the substantive requirements of RCW 36.70A.070 (9)(e) are not addressed, or are inadequately addressed, in the referenced natural hazard mitigation plan, a county or city must supplement the natural hazard mitigation plan accordingly so that the adopted resiliency subelement complies fully with the substantive requirements of RCW 36.70A.070 (9)(e).

(c) Implementation schedule and extensions.

(i) If a county or city intends to adopt by reference a federal emergency management agency natural hazard mitigation plan in order to meet all or part of the substantive requirements set forth in RCW 36.70A.070 (9)(e), and the most recently adopted federal emergency management agency natural hazard mitigation plan does not comply with the requirements of RCW 36.70A.070 (9)(e), the department may grant the county or city an extension of time in which to submit a natural hazard mitigation plan.

(ii) Eligibility for an extension under this subsection prior to July 1, 2027, is limited to a city or county required to review and, if needed, revise its comprehensive plan on or before June 30, 2025, as provided in RCW 36.70A.130, or for a city or county with an existing, unexpired federal emergency management agency natural hazard mitigation plan scheduled to expire before December 31, 2024.

(iii) Extension requests after July 1, 2027, may be granted if requirements for the resiliency subelement are amended or added by the legislature or if the department finds other circumstances that may result in a potential finding of noncompliance with a jurisdiction's existing and approved federal emergency management agency natural hazard mitigation plan.

(iv) A city or county that wishes to request an extension of time must submit a request in writing to the department no later than 60 days before the date on which the city or county is required to review and, if needed, revise its comprehensive plan as provided in RCW 36.70A.130.

(v) Upon the submission of such a request to the department, the county or city may have an additional 48 months from the date provided in RCW 36.70A.130 in which to either adopt by reference an updated federal emergency management agency natural hazard mitigation plan or adopt its own natural hazard mitigation plan, and to then submit that plan to the department.

(vi) The adoption of ordinances, amendments to comprehensive plans, amendments to development regulations, and other nonproject actions taken by a county or city pursuant to RCW 36.70A.070 (9)(d) in order to implement measures specified by the department pursuant to RCW 70A.45.120 are not subject to administrative or judicial appeal under chapter 43.21C RCW.

(4) **The greenhouse gas emissions reduction subelement.** The greenhouse gas emissions reduction subelement of the comprehensive plan and its related development regulations must identify the actions the jurisdiction will take during the planning cycle, consistent with the guidelines published by the department, pursuant to RCW 70A.45.120.

(a) The greenhouse gas subelement will identify actions that will:

(i) Result in reductions in overall greenhouse gas emissions generated by transportation and land use within the jurisdiction but without increasing greenhouse gas emissions elsewhere in the state;

(ii) Result in reductions in per capita vehicle miles traveled within the jurisdiction but without increasing greenhouse gas emissions elsewhere in the state; and

(iii) Prioritize reductions that benefit overburdened communities in order to maximize the co-benefits of reduced air pollution and environmental justice.

(b) Actions not specifically identified in the guidelines developed by the department pursuant to RCW 70A.45.120 may be considered consistent with these guidelines only if:

(i) They are projected to achieve greenhouse gas emissions reductions or per capita vehicle miles traveled reductions equivalent to what would be required of the jurisdiction under the guidelines adopted by the department; and

(ii) They are supported by scientifically credible projections and impact scenarios that indicate their adoption is likely to result in reductions of greenhouse gas emissions or per capita vehicle miles traveled.

(c) A jurisdiction may not restrict population growth or limit population allocation in order to achieve the requirements of RCW 36.70A.070 (9)(d).

(d) The department may not propose or adopt guidelines that include any charge for road usage charge, or any fees or surcharges related to vehicle miles traveled.

(5) **Recommendations for both climate subelements.** A climate element may take the form of a single chapter or may be a collection of climate goals and policies integrated into other chapters (for example, land use, housing, and transportation elements).

(a) Climate sectors.

(i) The climate resiliency and greenhouse gas emissions reduction subelements should include climate goals and policies that could also be characterized within multiple climate sectors ((A) through (K) below) and as defined by WAC 365-196-210:

(A) Agriculture and food systems;
(B) Built environment and energy;
(C) Cultural resources and practices;
(D) Economic development;
(E) Emergency management;
(F) Health and well-being;
(G) Ecosystems;
(H) Transportation;
(I) Waste management;
(J) Water resources;
(K) Zoning;

(b) Climate goals and policies (measures).

(i) This section describes each climate subelement individually. However, a county or city may choose to integrate climate element goals and policies (measures) throughout the other mandatory GMA elements, as climate measures typically address multiple co-benefits within the realm of control of a county or city.

(ii) Resiliency subelement goals and policies should:

(A) Address each natural hazard aggravated by climate change that is relevant to a county or city, based on the science-based assessment of climate impacts prescribed in RCW 36.70A.070 (9)(e)(i)(C).

(B) Address all applicable climate sectors prescribed in subsection (2) of this section. This will help ensure that the collective goals and policies enhance beneficial opportunities as well as address

important areas that may not be included elsewhere in a county's or city's comprehensive plan or hazard mitigation plan.

(iii) GHG emission reduction subelement goals and policies should:

(A) Include goals and policies within the following three climate sectors prescribed in (a)(i)(B), (H), and (K) of this subsection: Built environment and energy; transportation; and zoning. This will ensure that the collective goals and policies address the climate sectors that generate the largest share of emissions in Washington, minimize emissions from natural sources, and protect and enhance natural carbon sinks. Based on the county's or city's greenhouse gas emission estimate or inventory, the jurisdiction's goals and policies may also be within additional sectors such as ecosystems, waste management, and water resources.

(B) GHG emissions reduction goals and policies equivalent to what is required under RCW 36.70A.070 (9)(d) shall be included to reduce GHG emissions and per capita vehicle miles traveled. For the purpose of this section, "equivalent" means goals and policies that:

(I) Are projected to achieve greenhouse gas emissions reductions or per capita vehicle miles traveled reductions equivalent to what would be required of the jurisdiction under the guidelines adopted by the department; and

(II) Are supported by scientifically credible projections and scenarios that indicate their adoption is likely to result in reductions of greenhouse gas emissions or per capita vehicle miles traveled.

(6) **Recommendations for meeting the requirements of the resilience subelement.**

(a) Planning process. Counties and cities that plan under RCW 36.70A.040 must create a climate resilience subelement and then review and revise it at least once every 10-year comprehensive plan periodic update cycle, based on best available science and scientifically credible climate projections per subsection (3) of this section. A natural hazard mitigation plan may be adopted by reference to satisfy the resilience subelement minimum requirements. To meet the requirements, it is recommended to document and utilize the following process:

(i) Step 1: Explore local climate impacts using mapping tools or similar resources, such as the University of Washington's Climate Mapping for a Resilient Washington tool. Supplement the tool, as needed, with more precise climate impact data as available.

(ii) Step 2: Review existing plans and policies adopted by the county or city to identify climate resilience policy gaps, barriers, and opportunities. Conclude this step by determining whether to proceed directly to Step 3 or skip to Step 4, as a climate vulnerability and risk assessment may not be necessary for every county or city.

(iii) Step 3: Conduct a vulnerability and risk assessment to identify assets with the highest relative climate vulnerability and risk. This information can help prioritize and tailor measures for a hazard mitigation plan, a comprehensive plan and subsequent development regulations, or shoreline master program provisions.

(iv) Step 4: Pursue an individual pathway, or a combination of pathways within this section and within the department's climate planning guidance to select goals and policies that build climate resilience. Pathways include:

(A) Pathway 1 - Utilize or revise existing comprehensive plan goals and policies;

(B) Pathway 2 - Develop new goals and policies utilizing the department's guidance; and

(C) Pathway 3 - Update a hazard mitigation plan in accordance with 44 C.F.R., Part 201 (2022 as amended) and adopt it, by reference, in the comprehensive plan.

(v) Step 5: Amend a comprehensive plan with new or adapted goals and policies. If a county or city decides to integrate climate resilience goals and policies in other elements, rather than within a single climate chapter, then the county or city should include an index of the location of the full suite of climate resilience policies when submitting its plan for the department's review.

(b) Hazard mitigation plans that FEMA has approved as meeting the regulations in 44 C.F.R., Part 201.6, including meeting the minimum requirements for approval according to FEMA's current Local Mitigation Planning Policy.

(i) If a county's or city's hazard mitigation plan is adopted by reference in the comprehensive plan but does not address all the minimum requirements prescribed in subsection (3)(a) of this section, the county or city must address those unmet requirements via supplemental goals and policies in its comprehensive plan.

(ii) Similarly, if a county's or city's hazard mitigation plan is adopted by reference in the comprehensive plan but does not address all of the climate sectors prescribed in subsection (5)(a)(i) of this section and all relevant natural hazards in subsection (3)(a) of this section, the county or city should address those sector gaps with supplemental measures in its comprehensive plan.

(7) **Recommendations for meeting the GHG emissions reduction subelement requirements.** Planning process. Counties and cities that meet any of the criteria in subsection (2)(b) of this section must create a greenhouse gas emissions reduction subelement and revise it every comprehensive plan periodic update cycle, based on updated emissions data for the county or city's geographic area and other information. The department recommends the following process:

(a) Step 1: Select a pathway within this section to reduce greenhouse gas emissions and per capita vehicle miles traveled within the county or city's geographic area. Counties and cities should take into account: The availability of local data; staff and budget capacity; whether they are subject to any of the criteria in subsection (2)(b) of this section; and, whether they plan to seek the department's approval per RCW 36.70A.096.

(i) Pathway 1: Counties and cities that wish to voluntarily create a greenhouse gas emissions reduction subelement, and that are not subject to any of the criteria in subsection (2)(b) of this section may ground their choices for reduction measures by conducting an estimate of greenhouse gas emissions in combination with a study of per capita vehicle miles traveled.

(ii) Pathway 2: Counties and cities that are required to create a greenhouse gas emissions reduction subelement and that are subject to any of the criteria in subsection (2)(b) of this section should conduct an inventory of local greenhouse gas emissions. This inventory will include all emission sources, including VMT.

(b) Step 2: Determine the scope, scale, and approach for measuring emissions and per capita vehicle miles traveled within the county's or city's geographic area, as per the selected pathway.

(c) Step 3: Gather sector-specific data, particularly transportation, energy, and buildings, as per the selected pathway and its methodology described in the department's guidance.

(d) Step 4: Calculate emissions based on the data gathered and include a summary table of the data within the comprehensive plan element. This summary table should provide a baseline for tracking progress of reduction measures and establish a record that can be updated for five-year periodic reporting. For those counties and cities required to create a greenhouse gas emissions subelement, set an emissions baseline of 2022 and develop incremental emission-reduction targets toward reaching net-zero emissions by 2050, commensurate with Washington's statewide target, as per RCW 70A.45.020 (1)(c).

(e) Step 5: Select a complimentary set of comprehensive plan goals and policies that combined will:

(i) Achieve incremental and 2050 emissions targets; and

(ii) Reduce per capita vehicle miles traveled. Counties and cities should work with their transportation planning organization to set targets for reducing per capita vehicle miles traveled.

(iii) Select GHG emission-reduction goals and policies from the model policies published with the department's guidance. If a county or city adopts comprehensive plan policies that are not consistent with the department's model measures, then the county or city should use a science-based emissions inventory and carbon wedge analysis to demonstrate that its collective goals and policies are projected to achieve greenhouse gas reductions and protect and enhance natural carbon sinks equivalent to what would be achieved under the department's guidelines, per subsection (4) of this section.

(f) Step 6: Amend the comprehensive plan with new or adapted climate goals and policies. If a county or city decides to integrate greenhouse gas emission reduction goals and policies in other elements rather than within a single climate chapter, then the county or city should provide an index of the location of the full suite of climate measures in a memo when submitting its plans for the department's review. The county and city should preserve the memo as a record of adoption.

(g) Step 7: Evaluate progress at least every five years toward adopted emissions targets, as prescribed in subsection (4) of this section.

(i) Track greenhouse gas emissions and vehicle miles traveled on a total and per capita basis so that emissions reduction is not masked by population growth.

(ii) For the climate measures that provide qualitative benefits, and cannot practically be measured quantitatively, the county or city may report progress on its efforts to advance adopted policies such as updating development regulations, zoning, and engineering design and development standards. Best practices are available in the department's guidance.

(8) **Implementation progress reports.**

(a) Where applicable, a county or city must prepare an implementation progress report every five years in accordance with the schedule described in RCW 36.70A.130, which is generally five years after the adoption of their comprehensive plan. The implementation progress report as described in RCW 36.70A.130(9) must include progress reports on the county's or city's implementation of several GMA elements. This section will focus on the mandatory reporting for the climate element.

(b) In addressing progress on climate measures, a county or city should include a list of climate measures by climate sector that demonstrate consistency with the climate element requirements of this chapter and what progress has been achieved in five years.

(c) If the county or city is required to include a greenhouse gas emissions element per subsection (2) of this section and required to provide an implementation progress report per RCW 36.70A.130(9), then the report shall include the quantified progress on greenhouse gas emissions and vehicle miles traveled reductions per capita within the jurisdiction.

(d) If the county or city is required to include a greenhouse gas emissions element per subsection (2) of this section and required to provide an implementation progress report per RCW 36.70A.130(9), then the report shall include a list of measures that support the reductions.

(9) **Approval of local greenhouse gas emissions reduction subelement.**

(a) Counties and cities that are subject to any of the criteria in subsection (2)(b)(i) through (iii) of this section may seek the department's approval of their subelement. This process is voluntary.

(i) A county or city voluntarily seeking the department's approval of the greenhouse gas emissions reduction subelement must utilize an emissions inventory to select goals and policies that at a minimum satisfy requirements prescribed in subsection (2) of this section.

(ii) Counties and cities seeking the department's approval of their subelement should adopt goals and policies similar to the model goals and policies published by the department, that are within the following three climate sectors, at a minimum:

(A) Transportation;

(B) Built environment and energy; and

(C) Zoning sectors.

(iii) The goals and policies must be within the county's or city's authority to implement and support achieving net-zero emissions by 2050. Such counties or cities should also consider adopting goals and policies from the other sectors, based on a local emissions inventory.

(b) County and city submittal procedure for voluntary review of subelement and time considerations.

Timeline	Submit Notice of Intent 120 days prior to application (~110 days prior to adoption)	Local adoption and Periodic Update Due date	Within 10 days of adoption, submit voluntary approval application	Commerce review period (180 days)	Subelement becomes effective when approved by the department

(i) **Notice of intent** (NOI) must be in writing and submitted to the department at least 120 days prior to applying for approval of the subelement.

(ii) **An application** for approval of a subelement must be within 10 days of taking local action to adopt a greenhouse gas emissions reduction subelement. The adopting ordinance should state that the effective date is upon approval by the department. The application to the department must include the following:

(A) A cover letter from the legislative authority requesting approval;

(B) A copy of the adopted ordinance or resolution for the legislative action to adopt the subelement;

(C) A statement of the goals and policies that are adopted that are consistent with this section, which will demonstrate that the subelement complies with RCW 36.70A.070 (9)(d). The statement must affirm that the subelement includes:

(I) GHG reduction targets;

(II) Goals and policies that will result in overall reductions of GHG emissions and reductions of vehicle miles traveled per capita; and

(III) Goals and policies that are prioritized to benefit overburdened communities.

(D) A copy of the record of actions that the legislative body relied upon in iterative development of the subelement;

(E) A copy of the emissions inventory as described in (b)(i) or (ii) of this subsection as applicable;

(c) Department procedures for review of subelement.

(i) The department will begin reviewing the draft subelement after receipt of the NOI and will advise the county or city of the actions necessary to receive approval.

(ii) The department will approve a proposed greenhouse gas emissions reduction subelement within 180 days of an application unless it determines that the proposed greenhouse gas emissions reduction subelement is not consistent with the policy of RCW 36.70A.070 and, after they are adopted, the applicable guidelines adopted under RCW 70A.45.120.

(iii) The department's final decision to approve or reject the subelement may be appealed as provided in RCW 36.70A.096(6).

(iv) The department's issued decision will state that it is the department's final decision and that there shall be no further modifications by the city or county to the proposed greenhouse gas emissions reduction subelement during the current update cycle. Any modifications by a city or county after the department's final decision will cancel legal protections as provided in RCW 36.70A.280.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-485 Critical areas. (1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space and green space; enhancing recreation opportunities; conserving and enhancing fish and wildlife habitat; protecting and enhancing the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ((~~ground water~~)) groundwater used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and stormwater runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include, but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas must be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process; however, counties and cities must address the requirements to include the best available science in reviewing designations and developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process must take this information into account unless the jurisdiction provides a reasoned, science-based justification for departure.

(e) The department recommends counties and cities review plan, regulation and permit implementation monitoring results and, where applicable, incorporate adaptive management measures to ensure regulations are efficient and effective at protecting critical area functions and values.

(f) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the 100-year ((~~flood plain~~)) floodplain unless no other alternatives exist, and if included, impacts on the ((~~flood plain~~)) floodplain must be mitigated. RCW 36.70.110(8) prohibits expansion of the urban growth area into the 100-year ((~~flood plain~~)) floodplain in some cases. See WAC 365-196-310.

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

WAC 365-196-580 Integration with the Shoreline Management Act.

(1) For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth under RCW 90.58.020 are added as one of the goals of this chapter as set forth under RCW 36.70A.020 without creating an order of priority among the ((~~fourteen~~)) 15 goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures under chapter 90.58 RCW rather than the goals, policies, and procedures set forth in chapter 36.70A RCW for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with chapter 36.70A RCW except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under chapter 36.70A RCW to protect

critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined under RCW 90.58.030; a segment of a master program relating to critical areas, as provided under RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided under RCW 90.58.080. The adoption or update of development regulations to protect critical areas under chapter 36.70A RCW prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if:

(A) The redevelopment or modification is consistent with the local government's master program; and

(B) The local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of (c) of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in (c) of this subsection, has the same meaning as defined under RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of chapter 36.70A RCW, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or the act is intended to affect whether or to what extent agricultural activities, as defined under RCW 90.58.065, are subject to chapter 36.70A RCW.

(e) The provisions under RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section; however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required under chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under chapter 36.70A RCW except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided under RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized under RCW 90.58.030 (2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2).

(7) County participation in the voluntary stewardship program does not change applicability of the Shoreline Management Act, or requirements of local shoreline master programs.

(a) As required by RCW 90.58.065, shoreline master programs shall not limit or modify existing and ongoing agricultural activities occurring on agricultural lands.

(b) Master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-600 Public participation. (1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations, including the participation of vulnerable populations and overburdened communities. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Federally recognized tribes may voluntarily participate in local governments' comprehensive planning processes. Upon receipt of notice in the form of a tribal resolution from a federally recognized Indian tribe whose reservation or ceded lands lie within the county, which indicates the tribe has a planning process or intends to initiate a parallel planning process, the county, cities, and other local governments conducting the planning under this chapter shall enter into good faith negotiations to develop a mutually agreeable memorandum of agreement with such tribes in regard to collaboration and participation in the planning process. If a mutually agreeable memorandum of agreement cannot be reached, the parties must enter mediation as provided in RCW 36.70A.040 (8)(a).

(d) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met. Public participation must be an iterative process that engages historically underrepresented populations. Documentation of

ongoing efforts to engage with vulnerable populations and overburdened communities must be included in the public record.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) ((~~Designing the~~)) Public participation program. Counties and cities should design a public participation program that describes how the public participation requirements will be met.

(i) Implementation of the act requires a series of interrelated steps((~~, including: Development of~~)): Develop the initial comprehensive plan, ((~~evaluating~~)) evaluate amendments as part of the docket cycle, ((~~conducting~~)) include best available science where applicable, conduct the periodic update and ((~~reviewing~~)) review the urban growth boundaries, ((~~amending~~)) amend development regulations, and ((~~conducting~~)) conduct subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public participation program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation ((~~plan~~)) program for a project not covered by ((~~the~~)) an existing public participation ((~~plan~~)) program, a county or city should develop a public participation ((~~plan~~)) program tailored to the type of action under consideration. This public participation ((~~plan~~)) program should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation ((~~plan~~)) program should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the ((~~overall~~)) public participation ((~~plan~~)) program.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation ((~~plan~~)) program, as appropriate.

(vi) The public participation program should include outreach and early coordination with state and tribal agencies with subject matter expertise. Coordination with state agencies and tribes is recommended as draft policies and regulations are being developed.

(vii) Once established, the public participation ((~~plan~~)) program must be broadly disseminated.

(viii) Public participation programs must be iterative and engage historically underrepresented populations. Documentation of ongoing efforts to engage with vulnerable populations and overburdened communities must be made part of the public record.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city ((~~should try to~~)) must involve a broad cross-section of the community, so groups not previously involved in planning may become involved. ((~~Counties and cities should implement~~)) This includes implementing innovative techniques that support meaningful and inclusive engagement for people of color ((~~and~~)), low-income people, vulnerable populations, and overburdened communities. Counties and cities should consider potential barriers to participation that may arise due to race, color, ethnicity, religion, age, disability, income, or education level. Counties and cities should also engage those who may have been impacted by racially disparate impacts, displacement, or exclusion to help identify policies and regulations that contributed to or resulted in these impacts, and identify policies and regulations to address and begin to undo those impacts as required in RCW 36.70A.070 (2)(e) and (f).

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet websites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official website;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the rele-

vant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(v) The public notice must specify the first and last date and time to submit written public comment.

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation ((~~plan~~)) program. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b)(i) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update on a schedule established in RCW 36.70A.130(5).

(ii) Certain smaller, slower-growing counties and cities may take up to an additional two years to complete the update.

(A) The eligibility of a county for the two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than 50,000 and a growth rate of less than 17 percent.

(C) A city is eligible if it has a population of less than 5,000, and either a growth rate of less than 17 percent or a total population growth of less than 100 persons.

(D) Growth rates are measured using the 10-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a county or city qualifies for the extension on the statutory due date, they remain eligible for the entire extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(iii) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance, including a best available science review (see chapter 365-195 WAC);

(ii) Analysis of urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identi-

fies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035 and include additional efforts to ensure that vulnerable populations and overburdened communities are reached.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population and housing needs allocated to a county or city during the most recent urban growth area review (see WAC 365-196-310);

(B) Analysis of patterns of development and densities permitted within urban growth areas (see WAC 365-196-310);

(C) Consideration of critical areas and resource lands ordinances. The department recommends evaluating the results of plan, regulation, and permit monitoring to determine if changes are needed to ensure efficient and effective implementation of critical areas ordinances (see WAC 365-195-920);

(D) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(E) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the 10-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(F) Land use element;

(G) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(H) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the 20-year plan, counties and cities should consider updating them

as part of the periodic update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315). Counties and cities required to submit to the department an implementation progress report under RCW 36.70A.130(9) should use that information in this review; and

(I) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-410
Inventory and analyze existing housing stock and projected housing needs at each income level, identifying the number of housing units needed at each income level to accommodate the local portion of the countywide projection of housing need from the department.		
Capital Facilities	36.70A.070(3)	365-196-415
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-430
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Counties and cities may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a county or city conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process. Counties and cities may not conduct the periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, counties and cities must review the areas and densities contained in the urban growth area and, if needed, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding 20-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310).

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-620 Integration of State Environmental Policy Act process with creation and adoption of comprehensive plans and development regulations. (1) Adoption of comprehensive plans and development regulations are "actions" as defined under State Environmental Policy Act (SEPA). Counties and cities must comply with SEPA when adopting new or amended comprehensive plans and development regulations.

(2) Integration of SEPA review with other analysis required by the act.

(a) The SEPA process is supplementary to other governmental decision-making processes, including the processes involved in creating and adopting comprehensive plans and development regulations under the act. The thoughtful integration of SEPA compliance with the overall effort to implement the act will provide understanding and insight of significant value to the choices growth management requires.

(b) SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another.

(c) When conducting a SEPA analysis, counties and cities should coordinate the development and evaluation of SEPA alternatives with other evaluations required by the act such as:

(i) Evaluation of fiscal impact required by RCW 36.70A.210;

(ii) Review of drainage, flooding and stormwater runoff required by RCW 36.70A.070;

(iii) The forecast of future capital facilities needs required by RCW 36.70A.070(3); and

(iv) The traffic forecast, identification of system needs and analysis of funding capability required in RCW 36.70A.070 (6)(a)(iii)(D), (E) and (F).

(d) Coordination should assure that these evaluations occur against a uniform set of alternatives and provide a complete picture of both the environmental and financial impacts of various alternatives.

(3) Phased environmental review.

(a) The growth management process is designed to proceed in phases, moving, by and large, from general policy-making to more specific implementation measures. Phased review available under SEPA can be in-

tegrated with the growth management process through a strategy that identifies the points in that process where the requirements of the two statutes are connected and seeks to accomplish the requirements of both at those points.

(b) In an integrated approach major emphasis should be placed on the quality of SEPA analysis at the front end of the growth management process - the local legislative phases of plan adoption and regulation adoption. The objective should be to create nonproject impact statements, and progressively more narrowly focused supplementary documents, that are sufficiently informative. These impact statements should reduce the need for extensive and time-consuming analysis during subsequent environmental analysis at the individual project stage.

(c) The SEPA rules authorize joint documents that incorporate requirements of the act and SEPA (WAC 197-11-210 through 197-11-235). In general, using joint documents can provide time and cost savings related to review and adoption of comprehensive plan amendments.

(d) When evaluating comprehensive plan amendments, these amendments should generally be considered together as one action under SEPA so that the cumulative effect of various proposals can be evaluated together, consistent with RCW 36.70A.130 (2)(b).

(e) In conducting SEPA review and making a threshold determination, the county or city should review existing environmental documents. These documents may already address some or all of the potential adverse environmental impacts posed by the items on the docket. As an example, if an environmental impact statement (EIS) was done on the comprehensive plan, the county or city may only need to update or supplement the information in this existing EIS. The county or city may be able to accomplish this by incorporating a document by reference, adopting a document, or preparing a supplemental EIS or an addendum, as authorized by the SEPA rules (chapter 197-11 WAC).

(f) When creating SEPA documents, counties and cities should consider identifying and incorporating previous environmental analysis statements prepared by other lead agencies in connection with other related plans or projects.

(g) When conducting the SEPA analysis of a comprehensive plan amendment, counties and cities should analyze the impacts of fundamental land use planning choices. Because these choices cannot be revisited during project review, the impacts of these decisions must be evaluated when adopting comprehensive plan amendments. This analysis can serve as the foundation for project review. RCW 36.70B.030 identifies the following as fundamental land use planning choices:

(i) The types of land use;

(ii) The level of development, such as units per acre or other measures of density;

(iii) Infrastructure, including public facilities and services needed to serve the development; and

(iv) The characteristics of the development, such as development standards.

(h) SEPA compliance for development regulations should concentrate on the difference among alternative means of successfully implementing the goals and policies of the comprehensive plan. <u>When evaluating the impacts of development regulations, the SEPA analysis must assess the impacts of known or reasonably foreseeable development that would occur as a result of the proposed regulations.</u> This approach can serve the goal that project applications be processed in a timely manner, while not compromising SEPA's basic aim of ensuring consideration of environmental impacts in advance of development.

(4) Interjurisdictional impacts. It is recognized that the growth of each county and city will have ripple effects which will reach across jurisdictional boundaries. Each county or city planning under the act should analyze what effects are likely to occur from the anticipated development. This analysis should be made as a part of the process of complying with SEPA in connection with comprehensive plan adoption. Affected jurisdictions should be given an opportunity to comment on this analysis.

(5) Other guidance found in SEPA rules. The SEPA rules (WAC 197-11-230) contain other guidance for preparing and issuing SEPA documents related to comprehensive plan amendments.

(6) Planned actions. One of the opportunities presented by the application of the act, SEPA, and the Regulatory Reform Act of 1995 (chapter 36.70B RCW and WAC 365-197-030) is the creation of a "planned action." A planned action is a nonproject action whose impacts are analyzed in an EIS associated with a comprehensive plan or subarea plan. The impacts and necessary mitigation are identified in a planned action ordinance. Development projects which are consistent with a planned action ordinance may not require additional environmental review. Planned actions are also addressed in WAC 197-11-168 and 197-11-172.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-640 Comprehensive plan amendment procedures. (1) Each county or city should provide for an ongoing process to ensure:

(a) The comprehensive plan is internally consistent and consistent with the comprehensive plans of adjacent counties and cities. See WAC 365-196-500 and 365-196-510; and

(b) The development regulations are consistent with and implement the comprehensive plan.

(2) Counties and cities should establish procedures governing the amendment of the comprehensive plan. The location of these procedures may be either in the comprehensive plan, or clearly referenced in the plan.

(3) Amendments.

(a) All proposed amendments to the comprehensive plan must be considered by the governing body concurrently and may not be considered more frequently than once every year, so that the cumulative effect of various proposals can be ascertained. If a county or city's final legislative action is taken in a subsequent calendar year, it may still be considered part of the prior year's docket so long as the consideration of the amendments occurred within the prior year's comprehensive plan amendment process.

(b) Amendments may be considered more often under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (3)(b)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the 100-year ((~~flood plain~~)) floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that is part of the adoption or amendment of a county or city budget;

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in agreement with the public participation program established by the county or city under RCW 36.70A.140, and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment;

(vi) To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or

(vii) In the case of an emergency.

(4) Emergency amendments. Public notice and an opportunity for public comment must precede the adoption of emergency amendments to the comprehensive plan. Provisions in RCW 36.70A.390 apply only to moratoria or interim development regulations. They do not apply to comprehensive plans amendments. If a comprehensive plan amendment is necessary, counties and cities should adopt a moratoria or interim zoning control. The county or city should then consider the comprehensive plan amendment concurrently with the consideration of permanent amendments and only after public notice and an opportunity for public comment.

(5) Evaluating cumulative effects. RCW 36.70A.130 (2)(b) requires that all proposed amendments in any year be considered concurrently so the cumulative effect of the proposals can be ascertained. The amendment process should include an analysis of all proposed amendments evaluating their cumulative effect. This analysis should be prepared in conjunction with analyses required to comply with the State Environmental Policy Act under chapter 43.21C RCW.

(6) Docketing of proposed amendments.

(a) RCW 36.70A.470(2) requires that comprehensive plan amendment procedures allow interested persons, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest amendments of comprehensive plans or development regulations. This process should include a means of docketing deficiencies in the comprehensive plan that arise during local project review. These suggestions must be docketed and considered at least annually.

(b) A consideration of proposed amendments does not require a full analysis of every proposal within 12 months if resources are unavailable.

(c) As part of this process, counties and cities should specify what information must be submitted and the submittal deadlines so that proposals can be evaluated concurrently.

(d) Once a proposed amendment is received, the county or city may determine if a proposal should receive further consideration as part of the comprehensive plan amendment process.

(e) Some types of proposed amendments require a significant investment of time and expense on the part of both applicants and the county or city. A county or city may specify in its policies certain types of amendments that will not be carried forward into the amendment process on an annual basis. This provides potential applicants with advance notice of whether a proposed amendment will be carried forward and can help applicants avoid the expense of preparing an application.

(7) Effective date of certain comprehensive plan amendments. RCW 36.70A.067 requires that the initial effective date of an action that expands an urban growth area designated under RCW 36.70A.110, removes the designation of agricultural, forest, or mineral resource lands designated under RCW 36.70A.170, creates or expands a limited area of more intense rural development designated under RCW 36.70A.070 (5)(d), establishes a new fully contained community under RCW 36.70A.350, or creates or expands a master planned resort designated under RCW 36.70A.360, is after the latest of the following dates:

(a) Sixty days after the date of publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided in RCW 36.70A.290(2); or

(b) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

AMENDATORY SECTION (Amending WSR 25-17-058, filed 8/15/25, effective 9/15/25)

WAC 365-196-650 Implementation strategy. Each county or city planning under the act should develop a strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used to implement the comprehensive plan. The strategy should identify each of the development regulations needed. Where applicable, the implementation strategy should be coordinated with the implementation progress report.

(1) Selection. In determining the specific regulations to be adopted, counties and cities may select from a wide variety of types of controls. The strategy should include consideration of:

(a) The choice of substantive requirements, such as the delineation of use zones; general development limitations concerning lot size, setbacks, bulk, height, density; provisions for environmental protection; urban design guidelines and design review criteria; specific requirements for affordable housing, landscaping, parking; levels of service, concurrency regulations and other measures relating to public facilities.

(b) The means of applying the substantive requirements, such as methods of prior approval through permits, licenses, franchises, or contracts.

(c) The processes to be used in applying the substantive requirements, such as permit application procedures, hearing procedures, approval deadlines, and appeals.

(d) The methods of enforcement, such as inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

(2) Identification. The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan. Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Others will need to be written. The strategy should include the actions needed to achieve housing availability and affordability identified in the housing element.

(3) Adoption schedule. The strategy should include a schedule for the adoption or amendment of the development regulations identified.

Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute.

(5) Where applicable, the implementation strategy should form the basis for the implementation progress report required in RCW 36.70A.130(9).

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-660 Supplementing, amending, and monitoring. (1) New development regulations may be adopted as the need for supplementing the initial implementation strategy becomes apparent.

(2) Counties and cities should institute an annual review of growth management implementation on a systematic basis. To aid in this process, counties and cities planning under the act should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan.

(a) This process should also include a review of comprehensive plan or regulatory deficiencies encountered during project review.

(b) The department recommends critical areas regulations be reviewed to ensure they are achieving no net loss of ecosystem functions and values. This review should include an analysis of monitoring plans, regulations and permits to ensure they are efficient and effective at achieving protection goals and implementation benchmarks.

(c) This process should be integrated with provisions for continuous public involvement. See WAC 365-196-600.

(d) Where applicable, this process should be coordinated with the required review and evaluation (buildable lands) in RCW 36.70A.215 and the implementation progress report in RCW 36.70A.130(9).

WSR 26-01-183
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed December 23, 2025, 10:38 a.m., effective January 1, 2026]

Effective Date of Rule: January 1, 2026.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department of revenue (department) is adopting these rules with an effective date of January 1st because, per statute, these rules provide rates used for refunds and property valuations during 2026.

Purpose: The department is amending:

WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2025, which is used when refunding property taxes paid in 2026, as required by RCW 84.69.100.

WAC 458-30-262 to provide the interest rate and property tax component used when valuing classified farm and agricultural land during the 2026 assessment year, as required by RCW 84.34.065.

WAC 458-30-590 to provide the rate of inflation published in 2025, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2026, as required by RCW 84.34.310.

Citation of Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rates of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100.

Adopted under notice filed as WSR 25-21-076 on October 14, 2025.

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 3, Repealed 0.

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

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

Date Adopted: December 23, 2025.

Perry Stern
Rules Coordinator

RDS-6747.1

AMENDATORY SECTION (Amending WSR 24-24-089, filed 12/3/24, effective 1/1/25)

WAC 458-18-220 Refunds—Rate of interest. (1) **Introduction.** Interest applies to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. Interest also applies to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030.

(2) **Calculation of interest rate.** The interest rate is calculated from the equivalent coupon issue yield of the average bill rate for 26-week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid.

(3) **Interest rates.** The following rates are applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1984	1983	9.29%
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%
2007	2006	5.09%
2008	2007	4.81%
2009	2008	2.14%
2010	2009	0.29%
2011	2010	0.21%
2012	2011	0.08%
2013	2012	0.15%
2014	2013	0.085%
2015	2014	0.060%
2016	2015	0.085%

Year tax paid	Auction Year	Rate
2017	2016	0.340%
2018	2017	1.130%
2019	2018	2.085%
2020	2019	2.040%
2021	2020	0.165%
2022	2021	0.050%
2023	2022	2.50%
2024	2023	5.26%
2025	2024	5.115%
2026	2025	4.145%

RDS-6749.1

AMENDATORY SECTION (Amending WSR 24-24-089, filed 12/3/24, effective 1/1/25)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year ((~~2025~~)) 2026, the interest rate and the property tax component ((~~that are~~)) used to value classified farm and agricultural lands are as follows:

(1) The interest rate is ((~~6.58~~)) 7.14 percent; and

(2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((~~1.06~~)) 1.02	Lewis	((~~0.71~~)) 0.81
Asotin	((~~1.08~~)) 1.09	Lincoln	((~~0.96~~)) 0.98
Benton	0.88	Mason	((~~0.78~~)) 0.81
Chelan	((~~0.76~~)) 0.77	Okanogan	0.85
Clallam	((~~0.79~~)) 0.84	Pacific	((~~0.70~~)) 0.73
Clark	((~~0.89~~)) 0.95	Pend Oreille	((~~0.84~~)) 0.79
Columbia	((~~1.09~~)) 1.22	Pierce	1.01
Cowlitz	((~~0.84~~)) 0.89	San Juan	((~~0.54~~)) 0.59
Douglas	((~~0.82~~)) 0.77	Skagit	((~~0.86~~)) 0.87
Ferry	((~~0.87~~)) 0.85	Skamania	((~~0.85~~)) 0.84
Franklin	((~~0.78~~)) 0.83	Snohomish	0.83
Garfield	((~~1.09~~)) 1.10	Spokane	((~~0.93~~)) 0.99

COUNTY	PERCENT	COUNTY	PERCENT
Grant	((~~0.96~~)) 0.94	Stevens	((~~0.76~~)) 0.77
Grays Harbor	((~~0.85~~)) 0.86	Thurston	((~~0.97~~)) 0.99
Island	0.73	Wahkiakum	((~~0.58~~)) 0.62
Jefferson	((~~0.83~~)) 0.82	Walla Walla	((~~0.95~~)) 1.02
King	((~~0.92~~)) 0.89	Whatcom	((~~0.76~~)) 0.81
Kitsap	((~~0.83~~)) 0.86	Whitman	((~~1.34~~)) 1.23
Kittitas	((~~0.69~~)) 0.72	Yakima	((~~0.87~~)) 0.91
Klickitat	((~~0.86~~)) 0.85		

AMENDATORY SECTION (Amending WSR 24-24-089, filed 12/3/24, effective 1/1/25)

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) **Introduction.** This rule provides the rates of inflation discussed in RCW 84.34.330 and WAC 458-30-550 Exemption—Removal or withdrawal. It also explains the department of revenue's (department) obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department - Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based on the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from the farm and agricultural or timber land classifications that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided

by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 2010 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 2017, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 2010 through 2017. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	2013	1.314
2014	1.591	2015	0.251
2016	0.953	2017	1.553
2018	2.169	2019	1.396
2020	0.602	2021	3.860
2022	6.457	2023	3.67
2024	2.57	2025	2.44

WSR 26-01-184
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed December 23, 2025, 10:41 a.m., effective January 23, 2026]

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

Purpose: The department of revenue is amending WAC 458-57-105 Nature of estate tax, definitions, 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax, 458-57-155 Farm deduction, and 458-57-175 Qualified family-owned business interests, to incorporate the 2025 estate tax legislation adopted in ESSB 5813 to increase funding for the education legacy trust account. The Washington legislature enacted statutory changes in 2025 that require updates to the rules.

Citation of Rules Affected by this Order: Amending WAC 458-57-105, 458-57-115, 458-57-155, and 458-57-175.

Statutory Authority for Adoption: RCW 82.01.060 and 82.32.300.

Adopted under notice filed as WSR 25-21-160 on October 22, 2025.

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 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 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: December 23, 2025.

Perry Stern
Rules Coordinator

RDS-6780.1

AMENDATORY SECTION (Amending WSR 14-14-075, filed 6/27/14, effective 7/28/14)

WAC 458-57-105 Nature of estate tax, definitions. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act rules). ((~~The estate tax rule on the nature of estate tax and definitions for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-005.~~))

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) **Relationship of Washington's estate tax to the federal estate tax.** The department administers the estate tax under the legislative enactment of chapter 83.100 RCW, which references the Internal Revenue Code (IRC) as it existed January 1, 2005. Federal estate tax law changes enacted after January 1, 2005, do not apply to the reporting requirements of Washington's estate tax. The department will follow federal Treasury Regulations section 20 (Estate tax regulations), in existence on January 1, 2005, to the extent they do not conflict with the provisions of chapter 83.100 RCW or 458-57 WAC. For deaths occurring January 1, 2009, and after, Washington has different estate tax reporting and filing requirements than the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with the federal government. The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's website at http://www.dor.wa.gov/ under the heading titled forms.

(b) **Lifetime transfers.** Washington estate tax taxes lifetime transfers only to the extent included in the federal gross estate. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Absentee distributee" means any person who is the beneficiary of a will or trust who has not been located;

(b) "Applicable exclusion amount" means:

(i) One million five hundred thousand dollars for decedents dying before January 1, 2006;

(ii) Two million dollars for estates of decedents dying on or after January 1, 2006, ((~~and~~)) but before January 1, 2014; ((~~and~~))

(iii) Two million twelve thousand dollars for estates of decedents dying on or after January 1, 2014, but before January 1, 2015;

(iv) Two million fifty-four thousand dollars for estates of decedents dying on or after January 1, 2015, but before January 1, 2016;

(v) Two million seventy-nine thousand dollars for estates of decedents dying on or after January 1, 2016, but before January 1, 2017;

(vi) Two million one hundred twenty-nine thousand dollars for estates of decedents dying on or after January 1, 2017, but before January 1, 2018;

(vii) Two million one hundred ninety-three thousand dollars for estates of decedents dying on or after January 1, 2018, but before July 1, 2025;

(viii) Three million dollars for estates of decedents dying on or after July 1, 2025, but before January 1, 2026; and

(ix) For estates of decedents dying in calendar year ((~~2014~~)) 2026 and each calendar year thereafter, the amount in (b)((~~(ii)~~)) (viii) of this subsection must be adjusted annually, except as otherwise provided in ((~~(b)(iii) of this subsection~~)) this subsection (b)(ix). The annual adjustment is determined by multiplying ((~~two million dollars by one plus~~)) $3,000,000 by the sum of one and the percentage by which the most recent October consumer price index exceeds the consumer price index for October ((~~2012~~)) 2024, and rounding the result to the nearest ((~~one thousand dollars~~)) $1,000. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable exclusion amount than the applicable exclusion amount for the immediately preceding calendar year. The applicable exclusion amount under ((~~(b)(iii) of this subsection~~)) this subsection

(b)(ix) for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death.

(c) "Consumer price index," for purposes of this subsection, means the consumer price index for all urban customers, all items, for the Seattle((~~-Tacoma-Bremerton~~)) metropolitan area as calculated by the United States Bureau of Labor Statistics. For purposes of this subsection, "Seattle metropolitan area" means the geographic area sample that includes Seattle and surrounding areas;

(d) "Decedent" means a deceased individual;

(e) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

(f) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.300;

(g) "Federal return" means any tax return required by chapter 11 (Estate tax) of the Internal Revenue Code;

(h) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code;

(i) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to:

(i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

(j) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(k) "Internal Revenue Code" or "IRC" means, for purposes of this chapter, the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 2005;

(l) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(m) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative (executor) of an estate;

(n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate;

(o) "Resident" means a decedent who was domiciled in Washington at time of death;

(p) "Spouse" means two individuals with a valid marriage recognized under this or another jurisdiction's laws and includes state registered domestic partners and same-sex spouses. It does not include a marriage prohibited under Washington state law because of close kinship, incest, or bigamy;

(q) "State return" means the Washington estate tax return required by RCW 83.100.050;

(r) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;

(s) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code and includes any shifting upon death of the eco-

nomic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046;

(t) "Washington taxable estate" means the "federal taxable estate" and includes, but is not limited to, the value of any property included in the gross estate under section 2044 of the Internal Revenue Code, regardless of whether the decedent's interest in such property was acquired before May 17, 2005:

(i) Plus amounts required to be added to the Washington taxable estate under RCW 83.100.047 for the marital deduction and surviving spouse benefits that includes state registered domestic partners and same-sex spouses;

(ii) Less:

(A) The applicable exclusion amount;

(B) The amount of any deduction allowed under RCW 83.100.046 for a qualified farm;

(C) Amounts allowed to be deducted from the Washington taxable estate under RCW 83.100.047 for the marital deduction and surviving spouse benefits that includes state registered domestic partners and same-sex spouses; and

(D) The amount of any deduction allowed under RCW 83.100.048 for the qualified family-owned business interest.

RDS-6781.1

AMENDATORY SECTION (Amending WSR 14-14-075, filed 6/27/14, effective 7/28/14)

WAC 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers prepare their return and pay the correct amount of Washington state estate tax. It explains the necessary steps for determining the tax and how the tax is calculated. ((~~The estate tax rule on valuation of property etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-015.~~))

(2) **Determining the property subject to Washington's estate tax.**

(a) **General valuation information.** The value of every item of property in a decedent's gross estate is its date of death fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code, and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the Internal Revenue Code. The alternate valuation method must match the federal estate return, when a federal return is filed. The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the Internal Revenue Code of 2005, is binding on the estate for state estate tax purposes.

(b) **How is the gross estate determined?** The first step in determining the value of a decedent's Washington taxable estate is to determine the total value of the gross estate. The value of the gross

estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the Internal Revenue Code provide a detailed explanation of how to determine the value of the gross estate.

(c) **Deductions from the gross estate.** The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. While sections 2051 through 2056A of the Internal Revenue Code provide a detailed explanation of how to determine the value of the taxable estate the following areas are of special note:

(i) **Funeral expenses.**

(A) Washington is a community property state and under *Estate of Julius C. Lang v. Commissioner*, 97 Fed. 2d 867 (9th Cir. 1938) affirming the reasoning of *Wittwer v. Pemberton*, 188 Wash. 72, 76, 61 P.2d 993 (1936) funeral expenses reported for a married decedent must be halved. Administration expenses are not a community debt and are reported at 100%.

(B) **Example.** John, a married man, died in ((~~2005~~)) 2020 with an estate valued at ((~~$2.5 million. On Schedule J of the federal estate tax return listed~~)) $3,500,000. The following were listed as expenses on Schedule J of the federal estate tax return:

SCHEDULE J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims			
Item Number	Description	Expense Amount	Total Amount
1	**A. Funeral expenses:** Burial and services	$4,000	
	(1/2 community debt)	($2,000)	
	Total funeral expenses		$2,000
	B. Administration expenses:		
	1. Executors' commissions - amount estimated/agreed upon paid. (Strike out the words that do not apply.)		$10,000
	2. Attorney fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		$5,000

The funeral expenses, as a community debt, were properly reported at 50% and the other administration expenses were properly reported at 100%.

(ii) **Mortgages and liens on real property.** Real property listed on Schedule A should be reported at its fair market value without deduction of mortgages or liens on the property. Mortgages and liens are reported and deducted using Schedule K.

(iii) **Washington qualified terminable interest property (QTIP) election.**

(A) A personal representative may choose to make a larger or smaller percentage or fractional QTIP election on the Washington return than taken on the federal return in order to reduce Washington estate liability while making full use of the federal unified credit.

(B) Section 2056 (b)(7) of the Internal Revenue Code states that a QTIP election is irrevocable once made. For the taxpayer that makes

this election, any amount deducted by reason of section 2056 (b)(7) of the Internal Revenue Code is added to, and the value of the property for which a Washington election is made is deducted from, the Washington taxable estate. For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the Internal Revenue Code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate. A QTIP election made on the Washington return is irrevocable, and a surviving spouse who is the lifetime beneficiary of property for which a Washington QTIP election was made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

(iv) **Washington qualified domestic trust (QDOT) election.**

(A) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that otherwise would qualify for the marital deduction, but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of section 2056 (d)(2)(B) of the Internal Revenue Code are satisfied. Unless specifically stated otherwise herein, all provisions of sections 2056(d) and 2056A of the Internal Revenue Code, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the Internal Revenue Code states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect to any decedent, a trust described in section 2056A(a) of the Internal Revenue Code, provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington state, or a corporation formed under the laws of the state of Washington, or a

bank as defined in section 581 of the Internal Revenue Code that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the "Washington Trustee");

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington; and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in (c)(iv)(D) of this subsection.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively identified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds $2 million as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(i), except that: If the bank trustee alternative is used, the bank must be a bank that is authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2 (d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is $2 million or less as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this (c)(iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by section 2056A (b)(3) of the Internal Revenue Code); and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC section 2056A (b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information re-

quested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the application of the Washington tax. In other words, if Washington state estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (c)(iv)(E)(II), the Washington tax will apply to the QDOT at the time of a taxable event as set forth in this subsection (c)(iv)(E)(II) regardless of, for example, whether the distribution is made to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of section 2056A (b)(12) of the Internal Revenue Code, then the Washington tax will not apply to: Any distribution before the date of the death of the surviving spouse from a QDOT; or the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under section 2056A (b)(4) of the Internal Revenue Code).

(d) **Washington taxable estate.** The estate tax is imposed on the "Washington taxable estate." The "Washington taxable estate" is defined in WAC 458-57-105 (3)(t).

(e) **Federal taxable estate.** The "federal taxable estate" is defined in WAC 458-57-105 (3)(i).

(3) **Calculation of Washington's estate tax.**

(a) The tax is calculated by applying Table W to the Washington taxable estate.

Table W

(For deaths occurring on or after July 1, 2025)

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
$0	$1,000,000	$0	10.00%	$0
$1,000,000	$2,000,000	$100,000	15.00%	$1,000,000
$2,000,000	$3,000,000	$250,000	17.00%	$2,000,000
$3,000,000	$4,000,000	$420,000	19.00%	$3,000,000
$4,000,000	$6,000,000	$610,000	23.00%	$4,000,000
$6,000,000	$7,000,000	$1,070,000	26.00%	$6,000,000
$7,000,000	$9,000,000	$1,330,000	30.00%	$7,000,000
$9,000,000		$1,930,000	35.00%	$9,000,000

Table W

(For deaths occurring ((~~on or after~~)) January 1, 2014 to June 30, 2025)

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
$0	$1,000,000	$0	10.00%	$0
$1,000,000	$2,000,000	$100,000	14.00%	$1,000,000

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
$2,000,000	$3,000,000	$240,000	15.00%	$2,000,000
$3,000,000	$4,000,000	$390,000	16.00%	$3,000,000
$4,000,000	$6,000,000	$550,000	18.00%	$4,000,000
$6,000,000	$7,000,000	$910,000	19.00%	$6,000,000
$7,000,000	$9,000,000	$1,100,000	19.50%	$7,000,000
$9,000,000		$1,490,000	20.00%	$9,000,000

((~~**Table W**~~

~~(For deaths occurring before January 1, 2014)~~

~~Washington Taxable Estate is at Least~~	~~But Less Than~~	~~The Amount of Tax Equals Initial Tax Amount~~	~~Plus Tax Rate %~~	~~Of Washington Taxable Estate Value Greater Than~~
~~$0~~	~~$1,000,000~~	~~$0~~	~~10.00%~~	~~$0~~
~~$1,000,000~~	~~$2,000,000~~	~~$100,000~~	~~14.00%~~	~~$1,000,000~~
~~$2,000,000~~	~~$3,000,000~~	~~$240,000~~	~~15.00%~~	~~$2,000,000~~
~~$3,000,000~~	~~$4,000,000~~	~~$390,000~~	~~16.00%~~	~~$3,000,000~~
~~$4,000,000~~	~~$6,000,000~~	~~$550,000~~	~~17.00%~~	~~$4,000,000~~
~~$6,000,000~~	~~$7,000,000~~	~~$890,000~~	~~18.00%~~	~~$6,000,000~~
~~$7,000,000~~	~~$9,000,000~~	~~$1,070,000~~	~~18.50%~~	~~$7,000,000~~
~~$9,000,000~~		~~$1,440,000~~	~~19.00%~~	~~$9,000,000~~))

(b) Each year the department will publish each calendar year's "applicable exclusion amount." The "applicable exclusion amount" is adjusted annually and is defined in WAC 458-57-105 (3)(b).

RDS-6782.1

AMENDATORY SECTION (Amending WSR 06-07-051, filed 3/9/06, effective 4/9/06)

WAC 458-57-155 Farm deduction. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers determine if the estate is eligible for the farm deduction and to correctly calculate the deduction.

(2) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions;

(b) "Employee of a farm" means a person hired by the decedent, or a member of the decedent's family, to work on the farm and who receives a set wage, salary, or benefits. The person must be an active employee of the farm on the date of the death of the decedent. "Employee of a farm" does not include a self-employed person, independent contractor, or tenant farmer;

(c) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantation; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands;

((~~(c)~~)) (d) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii)(A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

((~~(d)~~)) (e) "Member of the family" means, with respect to any individual, only:

(i) An ancestor of the individual;

(ii) Spouse of the individual;

(iii) A lineal descendant of the individual; of the individual's spouse, or a parent of the individual; or

(iv) The spouse of any lineal descendant described in ((~~(d)~~)) (e) (iii) of this subsection.

A legally adopted child of an individual shall be treated as the child of such individual by blood.

((~~(e)~~)) (f) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

((~~(f)~~)) When farm property is held in a trust, only the individuals with a present-beneficiary interest in the trust may qualify as a "qualified heir" or "member of decedent's family" under this rule.

(g) "Qualified nonfamilial heir" means an employee of a farm who materially participated in the operation of the farm and who acquired property, or to whom property passed, from the decedent. For the purposes of this subsection (g), material participation must be determined in a manner similar to the manner used for purposes of 26 U.S.C. Sec. 1402(a)(1) of the federal Internal Revenue Code.

(h)(i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of ((~~(f)~~)) (h)(i)(A)(II) and (C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection ((~~(f)~~)) (h)(i)(C)(II), material participation shall be determined in a manner similar to the manner used for purposes of section 1402 (a)(1) of the Internal Revenue Code (IRC).

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under section 2032A of the IRC, reduced by any amounts allowable as a deduction under section 2053 (a)(4) of the IRC; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the IRC, determined without regard to any special valuation under section 2032A of the IRC, reduced by an amount allowable as a deduction in respect of such property under section 2053 (a)(4) of the IRC.

((~~(g)~~)) (i) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of ((~~(f)~~)) (h)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection ((~~(1)(b)~~)) (3)(a) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

((~~(h)~~)) (j) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

((~~(i)~~)) (k) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market.

(3) **Farm deduction—Qualification criteria.**

(a) A deduction from the Washington taxable estate is available for the value of qualified real property and the value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use. The value of tangible personal property used by any qualified nonfamilial heir for a qualified use may be included in the deduction. In certain circumstances an estate of a tenant farmer may deduct the value of agricultural personal property. See subsection (7) of this section. If the estate is eligible for the federal special valuation of farmland it would also be eligible for the state deduction. The estate does not have to elect special valuation treatment for federal purposes in order to take the state deduction. Unlike the federal special valuation for farmland there is no requirement that the heir to the land and equipment continue farming.

(b) There are several criteria that must be met before the deduction can be taken:

(i) Decedent at the time of his or her death was a citizen or resident of the United States;

(ii) Fifty percent or more of the estate's adjusted value must be in agricultural real and personal property;

(iii) On the date of the decedent's death the real and personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent's family;

(iv) The real and personal property must pass from the decedent to a qualified heir; and

(v) Twenty-five percent or more of the estate consists of agricultural real property (land) that was actively managed by the decedent or the decedent's family.

(4) **What does "acquired from the decedent" mean?** Property shall be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under section 1014(b) of the IRC;

(b) The property is acquired by any person from the estate; or

(c) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(5) **Treatment of qualified real property held as a community property.** If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property shall be taken into account under this section.

(6) **Value of trees growing on woodlands.** In the case of qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(7) **Tenant farmers.** If the following criteria are met, the estate of a tenant farmer may deduct from the Washington taxable estate the value of the agricultural personal property:

(a) Decedent at the time of his or her death was a citizen or resident of the United States;

(b) Fifty percent or more of the estate adjusted value must be in agricultural personal property;

(c) On the date of the decedent's death the personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent's family; and

(d) The personal property must pass from the decedent to a qualified heir.

(8) **Examples.**

(a) The decedent died May 18, ((~~2005~~)) 2020, with an adjusted gross estate valued at ((~~$4 million~~)) $4,000,000. The decedent was a dry land wheat farmer and owned 2000 acres of land valued at ((~~$2 million~~)) $2,000,000 ($1,000 per acre) and $500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last ((~~twenty~~)) 20 years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment exceeds the required 50% or more of the adjusted gross estate ($2,000,000 + $500,000 > $4,000,000 x 50%). The value of the 2000 acres and the farm equipment can be deducted from the decedent's federal taxable estate. In this example, estate tax is not due. The calculations are shown below:

Federal taxable estate	$4,000,000
Less $2,500,000 farm deduction	- $2,500,000
Less $1,500,000 statutory exemption	- $1,500,000
Washington taxable estate	$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy

of the filed and signed federal return and all supporting documentation.

(b) The decedent died August 28, ((~~2005~~)) 2020, with an adjusted gross estate valued at ((~~$5 million~~)) $5,000,000. The decedent was a hay farmer and owned 600 acres of land valued at ((~~$1.8 million~~)) $1,800,000 ($3,000 per acre) and $500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last ((~~twenty~~)) 20 years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment did not meet the required 50% or more of the adjusted gross estate, therefore, the estate cannot deduct the value of the farm and farm equipment ($1,800,000 + $500,000 < $5,000,000 x 50%). Here are the calculations:

Federal taxable estate	$4,000,000
Less $1,500,000 statutory exemption	- $1,500,000
Washington taxable estate	$3,500,000

Based on the tax table, the estate owes $470,000 in Washington estate tax.

(c) The decedent died May 23, ((~~2005~~)) 2020, with an adjusted gross estate valued at ((~~$1.6 million~~)) $1,600,000. The decedent was a tenant hay farmer that owned $400,000 of hay in storage that had been harvested but not sold and $800,000 in farm equipment. The decedent was a U.S. citizen, used the farm equipment in a qualified use for the last six years, and left the equipment to his son-in-law, a qualified heir. The value of the farm equipment met the required 50% or more of the adjusted gross estate so it can be deducted from the decedent's federal taxable estate ($800,000 = $1,600,000 x 50%). In this example no estate tax is due. The calculations are shown below:

Federal taxable estate	$1,600,000
Less $800,000 farm deduction	- $800,000
Less $1,500,000 statutory exemption	- $1,500,000
Washington taxable estate	$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

(d) The decedent died April 7, ((~~2006~~)) 2021, with an adjusted gross estate valued at ((~~$2.5 million~~)) $2,500,000. The decedent owned 100 acres of timberland valued at $100,000 ($1,000 per acre), timber valued at $800,000 ($80,000 per acre), 200 acres of pasture land valued at $500,000 ($2,500 per acre) and $50,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last ((~~ten~~)) 10 years, and left the timber and farm land to his daughter, a qualified heir. The value of the timberland and farm acreage and equipment exceeded the required 50% or more of the adjusted gross estate therefore the estate can deduct the value of the timber and farm land and farm equipment ($100,000 + $800,000 + $500,000 + $50,000 > $2,500,000 x 50%). The calculations are shown below:

Federal taxable estate	$2,500,000
Less $1,450,000 farm deduction	- $1,450,000
Less $2,000,000 statutory exemption	- $2,000,000

Washington taxable estate	$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

RDS-6783.1

AMENDATORY SECTION (Amending WSR 14-14-075, filed 6/27/14, effective 7/28/14)

WAC 458-57-175 Qualified family-owned business interests. (1) **Introduction.** This rule applies to deaths occurring on or after January 1, 2014, and is intended to determine if the estate is eligible for the qualified family-owned business interest deduction and to correctly calculate the deduction.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Applicable deduction amount" means:

(i) Two million five hundred thousand dollars for estates of decedents dying on or after January 1, 2014, but before July 1, 2025;

(ii) Three million dollars for estates of decedents dying on or after July 1, 2025, but before January 1, 2026; and

(iii) For estates of decedents dying in calendar year 2026 and each calendar year thereafter, the amount in (a)(ii) of this subsection must be adjusted annually, except as otherwise provided in this subsection. The annual adjustment is determined by multiplying $3,000,000 by the sum of one and the percentage by which the most recent October consumer price index for October 2024 and rounding the result to the nearest $1,000. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable deduction amount than the applicable deduction amount for the immediate preceding calendar year.

(b) "Consumer price index" has the same meaning as in WAC 458-57-105.

(c) "Material participation" has the same meaning as provided in section 2032A (e)(6) of the Internal Revenue Code as amended or renumbered as of January 1, 2005. Under the federal tax provision, "material participation" generally means the individual is materially involved in making significant management decisions for the trade or business, but not necessarily the day-to-day operating decisions.

A decedent or a qualified heir will not be treated as materially participating in the family-owned business if:

(i) The income derived from carrying out the trade or business is from the management decisions of another individual or entity under an arrangement between the other individual or entity and the decedent or qualified heir.

(ii) The activities that constitute material participation of any agent of the decedent or qualified heir are not considered the activities of the decedent or qualified heir when determining their material participation in the family-owned business.

(iii) A trustee's activities managing a trust for the benefit of other individuals shall not be considered when determining whether any of the present interest beneficiaries of the trust materially participate in the family-owned business.

((~~(b)~~)) (d) "Member of the decedent's family" and "member of the family" have the same meaning as "member of the family" in RCW 83.100.046(10).

((~~(c)~~)) (e) "Qualified family-owned business interest" has the same meaning as provided in section 2057(e) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

((~~(d)~~)) (f) "Qualified heir" has the same meaning as provided in section 2057(i) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

((~~(e)~~)) (g) When a business interest is held in a trust, only the individuals with a present-beneficiary interest in the trust may qualify as a "qualified heir" or "member of decedent's family" under this rule.

(3) **Criteria for claiming the deduction.**

(a) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests. The total deduction may not exceed ((~~two million five hundred thousand dollars~~)) the applicable deduction amount.

(b) The deduction is available only if all the following criteria are met:

(i) The value of the decedent's qualified family-owned business interests must exceed ((~~fifty~~)) 50 percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount provided in RCW 83.100.020 ((~~(1)(a)~~));

(ii) During the eight-year period ending on the date of the decedent's death, there must have been periods aggregating five years or more during which:

(A) Such interests were owned by the decedent or a member of the decedent's family;

(B) There was material participation, within the meaning of section 2032A (e)(6) of the Internal Revenue Code, by the decedent or a member of the decedent's family in the operation of the trade or business to which such interests relate;

(iii) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and

(iv) The value of the decedent's qualified family-owned business interests is not more than ((~~six million dollars~~)) $6,000,000.

(4) **Amounts deductible under this section.**

(a) Only amounts included in the decedent's federal taxable estate may be deducted under this subsection.

(b) Amounts deductible under RCW 83.100.046 regarding property used for farming may not be deducted under this section.

(5) **Additional estate tax imposed - Circumstances - Amount.**

(a) If the qualified heir, within three years of decedent's death and prior to the qualified heir's death, meets one of the four criteria listed below, that qualified heir will be assessed additional estate tax.

(i) The material participation requirements described in section 2032A (c)(6)(b)(ii) of the Internal Revenue Code are not met with re-

spect to the qualified family-owned business interest which was acquired or passed from the decedent;

(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the Internal Revenue Code;

(iii) The qualified heir loses United States citizenship within the meaning of section 877 of the Internal Revenue Code or with respect to whom section 877 (e)(1) applies, and such heir does not comply with the requirements of section 877(g) of the Internal Revenue Code; or

(iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(b) The amount of the additional estate tax imposed under this subsection if one of the four criteria in (a) of this subsection is met is equal to the amount of tax savings with respect to the qualified family-owned business interest acquired or passed from the decedent.

(c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability was due under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).

(d) The additional estate tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.

(e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for any additional estate tax and interest under this subsection and is entitled to a receipt or writing showing such discharge.

(f) Amounts due under this subsection attributable to any qualified family-owned business interest are secured by a lien in favor of the state on the property in respect to which such interest relates. The lien arises at the time the Washington return is filed on which a deduction under this section is taken and continues in effect until:

(i) The additional estate tax liability under this subsection has been satisfied or has become unenforceable by reason of lapse of time; or

(ii) The department is satisfied that no further tax liability will arise under this subsection.

(g) Security acceptable to the department may be substituted for the lien imposed by (f) of this subsection.

(h) For purposes of the assessment or correction of an assessment for additional estate taxes and interest imposed under this subsection, the limitations period in RCW 83.100.095 begins to run on the due date of the return required under (d) of this subsection.

(i) For purposes of this subsection, a qualified heir may not be treated as disposing of an interest described in section 2057 (e)(1)(A) of the Internal Revenue Code by reason of ceasing to be en-

gaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of the qualified heir's family.

(6) **Information to be furnished to the department:**

(a) The personal representative of the estate claiming the deduction is required to provide the names and contact information of all qualified heirs on forms prescribed by the department.

(b) Any qualified heir upon the department's request, must submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (5) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within ((~~thirty~~)) 30 days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is ((~~five hundred dollars~~)) $500 and may be collected in the same manner as the tax imposed under subsection (5) of this section.

WSR 26-01-187
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 23, 2025, 1:48 p.m., effective January 23, 2026]

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

Purpose: The department of social and health services is adopting amendments to WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? These amendments provide clarity on exempt income types for cash and basic food assistance calculations and better align with statute and federal law.

Citation of Rules Affected by this Order: Amending WAC 388-450-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.300, 74.04.510, 74.08.090, 74.08A.120, and 82.08.0206.

Other Authority: RCW 43.03.230.

Adopted under notice filed as WSR 25-22-075 on October 31, 2025.

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 23, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5116.2

AMENDATORY SECTION (Amending WSR 23-06-039, filed 2/23/23, effective 3/26/23)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? (1) We do not count the following types of income when we determine your cash assistance and basic food benefits:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds, earned income tax credit (EITC), and Washington's working families tax credit (WFTC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal $25 supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source;

(k) ((~~Legally obligated child support payments received by someone who gets temporary assistance for needy families (TANF) or state family assistance (SFA) benefits;~~

~~(l)~~)) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as voluntary agency (VOLAG) payments;

((~~(m)~~)) (l) Payments we are directly told to exclude as income under state or federal law;

((~~(n)~~)) (m) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; ((~~and~~))

((~~(o)~~)) (n) Distributions for qualified disability expenses from an achieving a better life experience (ABLE) account; and

(o) Medicare advantage supplemental benefits.

(2) For basic food only:

(a) We do not count the total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf; and

(b) We do count money withheld because you were overpaid for not meeting requirements of a federal, state, or local means tested programs such as temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and supplemental security income (SSI).

(3) For cash only we do not count:

(a) Income to individuals to compensate participation in part-time boards and commissions received under RCW 43.03.230.

(b) For temporary assistance for needy families (TANF) or state family assistance (SFA) recipients, legally obligated, current child support payments as defined in WAC 388-422-0005.

WSR 26-01-192
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 23, 2025, 2:51 p.m., effective January 23, 2026]

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

Purpose: The department of social and health services is adopting amendments to WAC 388-447-0005 What evidence do we consider to determine incapacity? and 388-449-0010 What evidence do we consider to determine disability? These amendments clarify which health care professionals can be considered as a supplemental or treating medical source and update chemical dependency professional titles to be consistent with current certification language.

Citation of Rules Affected by this Order: Amending WAC 388-447-0005 and 388-449-0010.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, and 74.62.030.

Adopted under notice filed as WSR 25-22-076 on October 31, 2025.

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 2, 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 2, Repealed 0.

Date Adopted: December 23, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5115.1

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

WAC 388-447-0005 What evidence do we consider to determine incapacity? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Medical doctor (MD);

(ii) Doctor of osteopathy (DO);

(iii) Doctor of optometry (OD) for visual disorders;

(iv) Doctor of podiatry (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;

(ix) Doctor of dental surgery (DDS) or doctor of medical dentistry (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; and

(x) Chief of staff of a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Psychiatrist;

(ii) Psychologist;

(iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice;

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;

(vi) Clinical social worker;

(vii) Mental health professional (MHP); and

(viii) Physician treating you for a mental impairment.

(2) "Supplemental medical evidence" means information from a licensed or certified health professional who can provide supporting documentation for impairments established by an "acceptable medical source" listed in subsection (1) of this section. "Supplemental medical evidence" sources include, but are not limited to:

(a) Naturopath;

(b) Chiropractor;

(c) Physical therapist; and

(d) ((~~Chemical dependency professional (CDP)~~)) Substance use disorder professional (SUDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

WAC 388-449-0010 What evidence do we consider to determine disability? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Medical doctor (MD);

(ii) Doctor of osteopathy (DO);

(iii) Doctor of optometry (OD) for visual disorders;

(iv) Doctor of podiatry (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice; and

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Psychiatrist;

(ii) Psychologist;

(iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice; and

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning.

(2) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in subsection (1) of this section. "Treating medical sources" must be licensed or certified to provide healthcare and include, but are not limited to:

(a) Physician treating you for a mental impairment;

(b) Clinical social worker;

(c) Mental health professional (MHP);

(d) Naturopath;

(e) Chiropractor;

(f) Physical therapist; and

(g) ((~~Chemical dependency professional (CDP)~~)) Substance use disorder professional (SUDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

WSR 26-01-199
PERMANENT RULES
WESTERN WASHINGTON UNIVERSITY
[Filed December 23, 2025, 3:38 p.m., effective January 23, 2026]

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

Purpose: Housekeeping revisions to chapter 516-21 WAC; specifically, updating employee titles to align with the current organizational structure.

Citation of Rules Affected by this Order: Amending WAC 516-21-010, 516-21-020, 516-21-030, 516-21-110, 516-21-195, 516-21-220, 516-21-240, 516-21-245, 516-21-250, 516-21-260, 516-21-270, 516-21-280, 516-21-290, 516-21-299, 516-21-300, 516-21-310, 516-21-330, and 516-21-340.

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

Adopted under notice filed as WSR 25-21-138 on October 21, 2025.

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 18, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 18, 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 23, 2025.

Dolapo Akinrinade
Rules Coordinator

RDS-6774.1

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-010 Introduction. The student conduct code is intended to support the mission and values of Western Washington University by promoting integrity, responsibility, and accountability. As a public institution of higher education, the university is committed to maintaining a learning environment that supports student development through fostering community values and promoting holistic wellness for the Western community. As members of this community, students are expected to understand and comply with the student conduct code, as well as other university rules, regulations, procedures, and policies.

The board of trustees of Western Washington University, acting under the authority of RCW 28B.35.120(12) has established the following regulations for student conduct. The responsibility for enforcement of the student conduct code lies with the university president ((~~and is delegated to the vice president for enrollment and student services~~)) or the president's designee.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-020 Definitions. As used in this chapter, the following words and phrases mean:

(1) **Catalog.** The *Western Washington University General Catalog*.

(2) **Code.** The student conduct code.

(3) **Conduct board.** The persons designated by the dean of student((~~s~~)) life to consider a conduct matter, typically for a full hearing but may also be convened for an appeal. Conduct board members are experienced and were provided appropriate training specific to their role.

(4) **Conduct hold.** A block placed on a student's official university record at the request of a conduct officer or dean of student((~~s~~)) life. A conduct hold prohibits a student from registering for classes, and may prohibit the request of an official transcript, or receiving a degree from the university until the hold has been removed.

(5) **Conduct officer.** A conduct officer or their authorized designee as determined by the dean of student((~~s~~)) life. Conduct officers include conduct board members and all receive appropriate training as required for decision makers under Title IX regulations.

(6) **Day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(7) **Dean of student((~~s~~)) life.** The person designated by the ((~~vice~~)) university president ((~~for enrollment and student services~~)) for oversight and administration of the code.

(8) **Guest.** Any person who is not a member of the university community, who is on university property or attending an official university function at the invitation and/or hosting of a student.

(9) **Member of the university community.** Any person who is a student, university official, registered volunteer or who is otherwise employed or contracted by the university. Any question regarding a person's status in a particular situation for purposes of this code shall be determined by the dean of student((~~s~~)) life.

(10) **Official university function.** Any live or virtual activity, on or off campus, that is initiated, sponsored, or supervised by any entity of Western Washington University.

(11) **Preponderance of evidence.** Defined as "more likely than not," the standard of responsibility that is used when determining whether a violation of the student conduct code has occurred.

(12) **Reasonable person similarly situated.** The standard of a reasonable person taking into consideration any particularized circumstances, perspectives, and identities of the complainant within the context of the alleged conduct/incident.

(13) **Retaliation.** Retaliation includes, but is not limited to, intimidation, threats, harassment, and/or other adverse action taken against any student or other person for filing a complaint or participating in a university investigation or student conduct proceeding in good faith.

(14) **Sexual violence.** Sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

(15) **Shuttle diplomacy.** Resolution without direct contact between parties.

(16) **Student.** Any person who:

(a) Has been formally admitted to the university;

(b) Is enrolled in one or more classes at the university, including nonmatriculated international students attending language institutes or foreign study programs;

(c) Is participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;

(d) Is participating in a university-sponsored study abroad program;

(e) Was enrolled in a prior quarter or summer session at the university and is eligible to continue enrollment in the quarter or summer session that immediately follows; or

(f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were enrolled in or participating in a program offered by the university.

(17) **Title IX.** Title IX refers to any behavior covered under federal regulation and investigated by Western's office of civil rights and Title IX compliance. Definitions and regulations related to alleged violations of Title IX begin in WAC 516-21-291. How the university responds to and addresses discrimination on the basis of sex (including sex-based characteristics, sex-based stereotypes, pregnancy and related conditions, gender identity, or sexual orientation), and related retaliation are governed by state and federal laws, regulations, and court rulings in addition to university policy under POL-U1600.02 and POL-U1600.04. To the extent this code conflicts with state or federal law, state or federal law shall take precedence.

(18) **University.** Western Washington University and all associated programs, including those offered online and/or at off-campus program sites and includes those properties identified in subsection (20) of this section.

(19) **University official.** Any person employed or contracted by the university, who is performing assigned teaching, administrative, or professional responsibilities. University officials may be full- or part-time((~~,~~)) and may include student staff members.

(20) **University property.** All land, buildings, facilities, electronic presences, and other property that is owned, used, leased, or controlled by Western Washington University wherever located. University property also includes computer systems, virtual programs and platforms, and adjacent streets and sidewalks.

(21) **WAC.** An abbreviation for the Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-030 Jurisdiction. (1) General. The student conduct code applies to all student conduct that occurs on university property or in connection with any official university function including university-sponsored activities and transit to/from university functions or activities.

(2) Off-campus conduct. In addition to subsection (1) of this section, student conduct that occurs off campus may be subject to the student conduct code when it:

(a) Adversely affects the safety or well-being of any member of the university community; or

(b) Adversely affects the pursuit of the university's vision, mission, or values; or

(c) Involves academic work or any records, documents, or identifications of the university.

In determining whether to exercise jurisdiction over such conduct, a conduct officer shall consider the seriousness of the alleged offense, the risk of harm involved, and whether the alleged complainant(s) are members of the university community. Any question of interpretation or application of jurisdiction shall be referred to the dean of student((~~s~~)) life for final determination.

(3) Students are responsible for their conduct from the time they have confirmed their enrollment at Western through the awarding of their degree. This includes conduct that occurs before classes begin, after classes end, and during periods between actual terms of enrollment.

(4) Online conduct. The student conduct code applies to behavior conducted online, via electronic mail, text message, or other electronic means, subject to subsections (1) and (2) of this section.

(5) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program; and

(d) These standards of conduct.

(6) A student with a pending conduct violation may not avoid the conduct process by withdrawing from the university. In these circumstances, either:

(a) The university will proceed with the conduct process and, if so, the respondent will be provided with a continued opportunity to participate; and/or

(b) A conduct hold may be placed on the student's official record, preventing them from registering for classes, requesting an official transcript, or receiving a degree from the university. This hold will remain in place until the student has met with the conduct officer to discuss the alleged conduct violation(s) and may include completion of conduct process.

(7) The code applies to the conduct of any student employee whose position is conditioned upon their student status.

(8) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct proceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

(9) Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A recognized or registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved multiple organization officers, members, or guests.

(10) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment). Harassment is conduct by any means that is severe or pervasive. It is of such a nature that it would cause a reasonable person in the complainant's position substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities or participate in the activities of the university. Harassment causes the complainant substantial emotional distress and undermines the complainant's ability to work, study, or participate in the complainant's regular life activities or participate in the activities of the university and ((~~harrassment~~)) harassment is a violation of the code.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-195 Notification of criminal arrest. Failure by the student to notify the office of student life of any off-campus felony arrest, or when the arrest is for an offense that is violent, weapons-related, involves kidnapping, or requires that the student register as a sex offender by any legal authority within the U.S., within five calendar days of release from custody is a violation of the code. The university may send a letter to the student requiring that they make an appointment for an interview. During this interview, the dean of student((~~s~~)) life or their designee shall discuss with the student:

(1) The facts involved in the student's arrest;

(2) The student's obligation to keep the university informed of the progress of any criminal charge(s);

(3) The student's obligation to advise the university of the final disposition of any criminal charge(s); and

(4) Whether the behavior falls under jurisdiction of the student code.

The university will cooperate with law enforcement and other agencies administering a corrective or rehabilitative program for the student. See also *POL-U5620.02 Notifying Campus Community About Sex and Kidnapping Offenders*.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-240 Student conduct process. (1) The ((~~vice president for enrollment and student services~~)) university president or the president's designee is responsible for administration of the code. Supervision of the code has been delegated by the ((~~vice~~)) president to the dean of student((~~s~~)) life.

(2) A conduct officer(s) shall be appointed and supervised by the dean of student((~~s~~)) life or their authorized designee. A conduct officer has the authority to consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer. The conduct officer will then consider this report and make a referral to the conduct board in matters requiring a full hearing.

(3) Conduct officers, conduct board, and the dean of student((~~s~~)) life or authorized designees have full authority to administer a decision under the code.

(4) Consolidation. In any student conduct matter in which there are common issues or parties, the conduct officer or presiding officer may decide to consolidate the proceedings. This decision is within the sole discretion of the conduct officer or presiding officer.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-245 Interim measures. After receiving a complaint of misconduct, the dean of student((~~s~~)) life may implement interim measures intended to safeguard a member, or members, of the Western community. An interim measure will be as minimally restrictive as possible and will remain in place until the complaint is resolved. Interim measures can include administrative no-contact orders, trespass orders, or similar directives. Notices for interim measures are made in writing and will include how an objection can be raised.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-250 Student rights in the conduct process. Alleged violations of the code will be resolved through the student conduct process, respecting fairness and due process for all involved parties.

(1) A student accused of violating the code, known as the respondent, has certain rights in the conduct process. These include the right to:

(a) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board;

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

(c) Be accompanied through the conduct process by an advisor of their choice and at their own expense. A respondent should select as an advisor a person who is not involved in the same complaint and whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;

(d) Remain silent or decline to respond to any question(s) during any conduct meeting or hearing;

(e) Review information relied upon by the conduct officer or appeals board in making a determination;

(f) Receive written notification of the findings, decision, and basis for each delivered within seven business days of the date of the final meeting with a conduct officer, or 10 business days of the date of a hearing with an appeals board;

(g) Request an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for appeal;

(h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and

(i) Waive any of the rights contained in this section.

(2) An individual who has filed a complaint alleging violence or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, known as the complainant, has certain rights in the conduct process. These include the right to:

(a) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board;

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

(c) Be accompanied through the conduct process by an advisor of their choice and at their own expense. A complainant should select as an advisor a person who is not involved in the complaint and whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;

(d) Remain silent or decline to respond to any question(s) during the conduct meeting;

(e) Review information relied upon by the conduct officer or appeals board in making a determination;

(f) Receive written notification of the findings, decision and basis for each, delivered within seven business days of the date of the respondent's final meeting with a conduct officer or 10 business days of the date of a hearing with an appeals board;

(g) Request an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for appeal;

(h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and

(i) Waive any of the rights contained in this section.

(3) For incidents involving sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complainants shall have the following additional rights:

(a) To be notified of the availability of counseling, academic support, and general assistance and support resources, both on campus and in the surrounding community;

(b) Have past behavior unrelated to the alleged behavior excluded; the conduct officer, appeals board chair, or dean of student((~~s~~)) life will make a final determination regarding such behavior if in question;

(c) To be free from questioning about their sexual history involving anyone other than the respondent;

(d) Submit an oral or written impact statement to the conduct officer, and/or appeals board, and/or dean of student((~~s~~)) life (if applicable), for consideration;

(e) To request an administrative no contact order against the respondent(s) during the conduct process;

(f) To have alternative accommodations to avoid being in the physical presence of the respondent during the conduct process; and

(g) Be free of any form of retaliation. Complainants should report any retaliation that occurs for further action. See *POL-U1600.02 Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation*.

(4) Respondents and complainants have the right to request reasonable accommodations through Western's disability access center, and to have the reason for such requests be kept private from another involved party.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-260 Procedures for immediate interim suspension. In consultation with university officials, the dean of student((~~s~~)) life may suspend a student from the university on an immediate interim basis, pending criminal proceedings, or a medical evaluation, and/or action through the student conduct process.

(1) An interim suspension may only be imposed when the dean of student((~~s~~)) life has cause to believe that the student:

(a) Has violated the student conduct code; and

(b) Poses an immediate danger to the safety or security of the university community; and/or

(c) Poses an ongoing threat of serious disruption or interference with the normal operations of the university.

(2) During the interim suspension, a student may be denied access to university activities and privileges, including access to classes, university property, and/or campus residence halls and apartments.

(3) A student suspended from the university on an interim basis shall be notified in writing of the terms of the interim suspension. The notice, which shall be delivered via email and in person, if possible, shall include the alleged violation(s), the circumstances, reasons, and terms of the interim suspension, and the time, date and location of a meeting to discuss the interim suspension.

(4) The interim suspension meeting shall occur no fewer than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. The purpose of the interim suspension meeting is for the student to have an opportunity to demonstrate why the terms specified in the interim sus-

pension notice should not continue, or why the suspension should be less restrictive.

(5) Cases of interim suspension are given priority through the student conduct process. The interim suspension will remain in effect until a final decision has been made on the pending code violation(s) or until the dean of student((~~s~~)) life determines that the reasons for imposing the interim suspension no longer exist or are not supported by available evidence.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-270 Proceedings for violations of the code. (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered a complaint.

(2) After a consideration of the complaint, a conduct officer may take any of the following actions:

(a) Review the complaint, and make a determination to resolve it through a brief hearing or full hearing, and communicate that decision to the relevant parties;

(b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation;

(c) Dismiss the complaint, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises; or

(d) A conduct officer may resolve a matter by agreement/alternative dispute resolution. Agreements may be reached directly or through alternative dispute resolution including, but not limited to, shuttle diplomacy or mediation. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

(i) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(ii) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party in the student conduct process. Complaints alleging conduct covered by Title IX are not subject to agreement/alternative dispute resolution through the student conduct process.

(3) In complaints alleging a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer. The conduct officer will then make determinations regarding which code prohibitions may have

been violated, and whether to resolve the matter through a brief hearing or full hearing.

(4) Brief hearings. The majority of student conduct matters are resolved through a brief hearing with a conduct officer. Such a hearing is a brief adjudication conducted in accordance with the Washington state Administrative Procedure Act chapter 34.05 RCW and allows the conduct officer to review available information, hear the relevant parties' views, make a determination, and assign sanctions.

(5) Full hearings. Full hearings are conducted by a conduct board and are used in matters in which the respondent faces possible suspension or expulsion; generally, a final investigation report from Western Washington University's office of civil rights and Title IX compliance are resolved through full hearings. Full board hearings are conducted in accordance with the Washington state Administrative Procedure Act.

(6) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location (five days for full hearings). Any request to extend the time and/or date of the conduct officer meeting should be addressed to the conduct officer. The written notice shall include:

(a) A brief summary of the complaint, including the sections of the code allegedly violated;

(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;

(c) The time, date, and place of the meeting;

(d) A copy of, or link to, the code.

(7) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer or board, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

(8) All notifications under the code are delivered by electronic mail to the students' university email account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.

(9) Upon written request to the dean of student((~~s'~~)) life's office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.

(10) A conduct officer's or board's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.

(11) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, conduct board chair, or dean of student((~~s~~)) life shall have the discretion to determine admissibility of evidence.

(12) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or board, the complaint may be considered in their absence, and the conduct officer or board may issue a decision based upon that information.

(13) If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-280 Basis for appeal. (1) A student found in violation of the code may appeal the conduct officer's or board's findings and/or the sanctions imposed. For incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, a complainant may also request an appeal. An appeal may be requested for any reason including:

(a) The proceedings were not conducted in conformity with prescribed procedures and significantly impacted the outcome of the student conduct process;

(b) The sanctions imposed are substantially disproportionate to the violation(s) committed;

(c) The decision reached did not properly consider the information presented; and/or

(d) New information becomes available that was unavailable at the time of the original meeting and could substantially impact the original decision. A summary of this new information and its potential impact must be included. The dean of student((~~s~~)) life or designee may then refer the complaint to the conduct officer for further action as appropriate.

(2) The appeal must be submitted by the respondent or complainant (if applicable) in writing to the dean of student((~~s~~)) life within 10 days of the decision. The appeal must state, as clearly and concisely as possible, the reason for the appeal.

(3) No sanction will begin while an appeal or request for review is pending. However, interim measures (e.g., administrative no-contact orders, trespass, loss of privileges) may continue.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-290 Appeal procedures. (1) Appeals can be made by the respondent (or complainant in incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination) and must be made to the dean of student((~~s~~)) life.

(2) The dean of student((~~s~~)) life or their designee reviews the appeal.

(3) Where new information, unavailable at the time of the original meeting, that could substantially impact the original decision, is received, the dean of student((~~s~~)) life or designee may then refer the complaint to the conduct officer for further action as appropriate. The dean of student((~~s~~)) life or their designee may, at their discretion, refer the complaint to a different conduct officer for reconsideration.

(4) In appeals in which the possible or recommended sanction is not expulsion or suspension as determined by the conduct officer, a designee of the dean of student((~~s~~)) life will consider the appeal and may hold an informal meeting, giving each party an opportunity to be informed of the conduct officer's view of the matter and to explain their view of the matter.

(5) In appeals in which the possible or recommended sanction is expulsion or suspension as determined by the conduct officer, the dean of student((~~s~~)) life will review the available documentation including the appeal, any investigation report, the board's decision, and recordings. Any involved person (e.g., respondent, witnesses, complainant) may be called to meet if necessary and at the discretion of the dean of student((~~s~~)) life.

(6) Respondent and complainant (if applicable) will be informed of the outcome of reviews and/or appeals simultaneously and in writing within 10 days.

(7) If there is no request for appeal received by the dean of student((~~s~~)) life within 10 days, the decision of the conduct officer is considered final. If there is no request for review within five days (or 10 days of an appeals board decision), the decision is considered final.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-299 Appeals under Title IX. (1) The parties shall have the right to request a review from the initial conduct order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. Appeals of initial conduct orders under Title IX will be considered by the dean of student((~~s~~)) life.

(2) The ((~~vice president of enrollment and student services~~)) dean of student life or their delegate will determine whether the grounds for a request for review have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial conduct order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The provost and executive vice president ((~~of enrollment and student services~~)) or their delegate shall serve the final decision on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-300 Deviations from established procedures. Deviations from the timelines set forth in this code may be granted by the dean of student((~~s~~)) life, upon request, for good cause. Respondent (and complainant, if applicable) will be informed simultaneously and in writing of extensions and the reason for the extension.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-310 Confidentiality of conduct proceedings and records. (1) The confidentiality of all conduct proceedings and records will be maintained in compliance with the student records policy as applicable with state and federal laws. Conduct records prepared by a conduct officer, the conduct board, and/or the dean of student((~~s~~)) life:

(a) Will be held in the office of student life for six years, except in cases of suspension, interim suspension, or expulsion, which are permanent records; and

(b) Will not be shared with any member of the public, except upon the informed written consent of the student(s) involved or as stated in the student records policy, or as required by law or court order. This includes, but may not be limited to:

(i) Information disclosed in conformance with exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act (FERPA) and implementing regulations found at 34 C.F.R. Sec. 99.

(ii) Files subjected to public records requests as required by state law.

(iii) In cases involving any crime of violence or a nonforcible sex offense where the complainant is deceased, final results of any disciplinary proceeding may be shared with the complainant's next of kin, upon their written request.

(2) The conduct officer's findings may be shared with the complainant, as required by law, in cases involving violence as defined by FERPA or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

(3) The findings may also be shared with university officials involved in the completion or supervision of the sanction and/or the student. See also chapter 516-26 WAC, Student records.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

WAC 516-21-330 Interpretation of the code. Any question of interpretation or application of the code shall be referred to the dean of student((~~s~~)) life for final determination.

AMENDATORY SECTION (Amending WSR 24-21-105, filed 10/18/24, effective 11/18/24)

WAC 516-21-340 Revision of the code. The code shall be reviewed every five years or more often, if needed. Student conduct code revisions will receive the most significant community deliberation including attempts to solicit feedback from Western students, internal policy control groups, and Washington Administrative Code reviews which includes a public hearing. The office of student life is responsible for completing periodic reviews of state and federal legislation, and community feedback, to make recommendations for changes to the code.

Once recommendations are complete, they will be forwarded to the provost and executive vice president ((~~for enrollment and student services~~)). See also POL-U1000.11 *Developing and Maintaining University Provisions of the Washington Administrative Code*.

WSR 26-01-200
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2025-10—Filed December 23, 2025, 3:57 p.m., effective January 23, 2026]

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

Purpose: Implements SSB 5579 (codified at RCW 48.43.732). This law regulates public statements by health carriers and certain health care facilities and providers regarding potential contract expirations and terminations. The final rule ensures that interested organizations understand their rights and obligations under the new law.

Citation of Rules Affected by this Order: New WAC 284-170-131, 284-170-365, 284-170-441, 284-170-443, 284-170-445, and 284-170-447; and amending WAC 284-170-360 and 284-170-421.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.732(5).

Adopted under notice filed as WSR 25-22-098 on November 4, 2025.

Changes Other than Editing from Proposed to Adopted Version: The office of the insurance commissioner made the following technical changes to the final rule:

(1) WAC 284-170-441(2) of the final rule clarifies that the section (regarding public statement restrictions) does not apply to terminations that are:

(a) For cause;

(b) Due to the death of a provider;

(c) Due to the permanent closure of the health care facility or the practice of a health care provider; or

(d) Due to the retirement of a health care provider.

(2) WAC 284-170-131(7) of the final rule defines "public statement" to include communication "made accessible to the public." The proposed rule defined public statement to include communication made "to … the general public."

(3) WAC 284-170-131(7) includes a new sentence stating: ""Public statement" does not include communications that are internally shared within a carrier, health care facility or health care provider organization solely for business planning purposes."

A final cost-benefit analysis is available by contacting Rules Coordinator, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7000, email rulescoordinator@oic.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 6, Amended 2, 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: December 23, 2025.

Patty Kuderer
Insurance Commissioner

RDS-6767.3

NEW SECTION

WAC 284-170-131 Definitions applicable to RCW 48.43.732. The following definitions apply only to RCW 48.43.732 and WAC 284-170-441, 284-170-445, and 284-170-447.

(1) "Cause to be made" means initiating, arranging, or directing another entity to make a public statement defined in this section.

(2) "Control" including the terms "controlled by" and "common control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a health care provider or health care facility, such as through ownership of voting securities, membership rights, or by contract.

(3) "Health care provider" and "health care facility" have the same meaning as defined in RCW 48.43.005.

(4) "Notices" mean letters or other written notifications sent directly to enrollees, by physical mail or electronically, including communicating through enrollees' electronic health records or portals, regarding expiring or terminating provider contracts described in RCW 48.43.732.

(5) "Otherwise affiliated with" or "affiliated with" means:

(a) A health care provider that directly, indirectly, or through one or more intermediaries, is controlled by or is under common control or ownership with a facility; or

(b) A health care provider that operates all or a substantial part of the health care services or property of a facility under a lease, management, or operating agreement.

(6) "Provider contract" has the same meaning as defined in RCW 48.43.732.

(7) "Public statement" means written or verbal communication, whether made electronically, orally, or through physical documents, by health care providers, health care facilities, carriers, or health care providers employed by, contracted with, or otherwise affiliated with a health care facility:

(a) Made to health plan enrollees or patients; or

(b) Made accessible to the public.

"Public statement" includes, but is not limited to, notices, press releases, opinion articles such as op-eds, web pages, emails, social media posts, letters, communication through electronic health records, and individual verbal, written, or electronic communications. "Public statement" does not include communications that are internally shared within a carrier, health care facility, or health care provider organization exclusively for business planning purposes.

(8) "Specific legal obligation" and "legal obligation" means a statutory, regulatory, judicial, or other legal requirement obligating a carrier, health care provider, or health care facility to take a specific action.

AMENDATORY SECTION (Amending WSR 16-07-144, filed 3/23/16, effective 4/23/16)

WAC 284-170-360 Enrollee's access to providers. (1) Each issuer must allow an enrollee to choose a primary care provider who is accepting new patients from a list of participating providers.

(a) Enrollees also must be permitted to change primary care providers at any time with the change becoming effective not later than the beginning of the month following the enrollee's request for the change.

(b) The issuer must ensure at all times that there are a sufficient number of primary care providers in the service area accepting new patients to accommodate new enrollees if the plan is open to new enrollment, and to ensure that existing enrollees have the ability to change primary care providers.

(2) Each issuer must allow an enrolled child direct access to a pediatrician from a list of participating pediatricians within their network who are accepting new patients.

(a) Enrollees must be permitted to change pediatricians at any time, with the change becoming effective not later than the beginning of the month following the enrollee's request for the change.

(b) Each issuer must ensure at all times that there are a sufficient number of pediatricians in the service area accepting new patients to accommodate new enrollees if the plan is open to new enrollment, and to ensure that existing enrolled children have the ability to change pediatricians.

(3) Each issuer must have a process whereby an enrollee with a complex or serious medical condition or mental health or substance use disorder, including behavioral health condition, may receive a standing referral to a participating specialist for an extended period of time. The standing referral must be consistent with the enrollee's medical or mental health needs and plan benefits. For example, a one-month standing referral would not satisfy this requirement when the expected course of treatment was indefinite. However, a referral does not preclude issuer performance of utilization review functions.

(4) Each issuer must provide enrollees with direct access to the participating chiropractor of the enrollee's choice for covered chiropractic health care without the necessity of prior referral. Nothing in this subsection prevents issuers from restricting enrollees to seeing only chiropractors who have signed participating provider agreements or from utilizing other managed care and cost containment techniques and processes such as prior authorization for services. For purposes of this subsection, "covered chiropractic health care" means covered benefits and limitations related to chiropractic health services as stated in the plan's medical coverage agreement, with the exception of any provisions related to prior referral for services.

(5) Each issuer must provide, upon the request of an enrollee, access by the enrollee to a second opinion regarding any medical diagnosis or treatment plan from a qualified participating provider of the enrollee's choice. The issuer may not impose any charge or cost upon the enrollee for such second opinion other than the charge or cost imposed for the same service in otherwise similar circumstances.

((~~(6) Each issuer must cover services of a primary care provider whose contract with the plan or whose contract with a subcontractor is being terminated by the plan or subcontractor without cause under the terms of that contract:~~

~~(a) For at least sixty days following notice of termination to the enrollees; or~~

~~(b) In group coverage arrangements involving periods of open enrollment, only until the end of the next open enrollment period.~~

~~(i) Notice to enrollees must include information of the enrollee's right of access to the terminating provider for an additional sixty days.~~

~~(ii) The provider's relationship with the issuer or subcontractor must be continued on the same terms and conditions as those of the contract the plan or subcontractor is terminating, except for any provision requiring that the issuer assign new enrollees to the terminated provider.~~

~~(7) Each issuer must make a good faith effort to assure that written notice of a termination is provided at least thirty days prior to the effective date of the termination to all enrollees who are patients seen on a regular basis by the provider or facility whose contract is terminating, irrespective of whether the termination was for cause or without cause. When a termination for cause provides less than thirty days notice to the carrier or provider, an issuer must make a good faith effort to assure that written notice of termination is provided immediately to all enrollees.~~))

NEW SECTION

WAC 284-170-365 Continuity of care protections. (1) Each carrier must cover services of a primary care provider whose contract with the plan or whose contract with a subcontractor is being terminated by the plan or subcontractor without cause under the terms of that contract:

(a) For at least 60 days following notice of termination to the enrollees; or

(b) In group coverage arrangements involving periods of open enrollment, only until the end of the next open enrollment period.

(i) Notice to enrollees must include information of the enrollee's right of access to the terminating provider for an additional 60 days.

(ii) The provider's relationship with the carrier or subcontractor must be continued on the same terms and conditions as those of the contract the plan or subcontractor is terminating, except for any provision requiring that the carrier assign new enrollees to the terminated provider.

(2) Each carrier must provide continuity of care services beginning on the date of contract termination to enrollees pursuant to section 133 of the No Surprises Act (42 U.S.C. 300gg-113) and any implementing federal regulations.

AMENDATORY SECTION (Amending WSR 16-07-144, filed 3/23/16, effective 4/23/16)

WAC 284-170-421 Provider contracts—Standards—Hold harmless provisions. The execution of a contract by an issuer does not relieve the issuer of its obligations to any enrollee for the provision of

health care services, nor of its responsibility for compliance with statutes or regulations. In addition to the contract form filing requirements of this subchapter, all individual provider and facility contracts must be in writing and available for review upon request by the commissioner.

(1) An issuer must establish a mechanism by which its participating providers and facilities can obtain timely information on patient eligibility for health care services and health plan benefits, including any limitations or conditions on services or benefits.

(2) Nothing contained in a participating provider or a participating facility contract may have the effect of modifying benefits, terms, or conditions contained in the health plan. In the event of any conflict between the contract and a health plan, the benefits, terms, and conditions of the health plan must govern with respect to coverage provided to enrollees.

(3) Each participating provider and participating facility contract must contain the following provisions:

((")(a) {Name of provider or facility} hereby agrees that in no event, including, but not limited to nonpayment by {name of issuer}, {name of issuer's} insolvency, or breach of this contract will {name of provider or facility} bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against an enrollee or person acting on their behalf, other than {name of issuer}, for services provided pursuant to this contract. This provision does not prohibit collection of {deductibles, copayments, coinsurance, and/or payment for noncovered services}, which have not otherwise been paid by a primary or secondary issuer in accordance with regulatory standards for coordination of benefits, from enrollees in accordance with the terms of the enrollee's health plan.

(b) {Name of provider or facility} agrees, in the event of {name of issuer's} insolvency, to continue to provide the services promised in this contract to enrollees of {name of issuer} for the duration of the period for which premiums on behalf of the enrollee were paid to {Name of issuer} or until the enrollee's discharge from inpatient facilities, whichever time is greater.

(c) Notwithstanding any other provision of this contract, nothing in this contract shall be construed to modify the rights and benefits contained in the enrollee's health plan.

(d) {Name of provider or facility} may not bill the enrollee for covered services (except for deductibles, copayments, or coinsurance) where {name of issuer} denies payments because the provider or facility has failed to comply with the terms or conditions of this contract.

(e) {Name of provider or facility} further agrees (i) that the provisions of (a), (b), (c), and (d) of this subsection shall survive termination of this contract regardless of the cause giving rise to termination and shall be construed to be for the benefit of {name of issuer's} enrollees, and (ii) that this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between {name of provider or facility} and enrollees or persons acting on their behalf.

(f) If {name of provider or facility} contracts with other providers or facilities who agree to provide covered services to enrollees of {name of issuer} with the expectation of receiving payment directly or indirectly from {name of issuer}, such providers or facilities must agree to abide by the provisions of (a), (b), (c), (d), and (e) of this subsection.("))

(4) Beginning January 1, 2027, each provider contract, as defined in RCW 48.43.732, must contain a provision entitled "ENROLLEE/PATIENT NOTICE REQUIREMENTS FOR EXPIRING OR TERMINATING CONTRACTS." This provision must be placed in the provisions of the provider contract addressing contract expirations or terminations. This provision must include the following language:

(a) {Name of provider/facility and name of carrier} agree to follow all applicable requirements of RCW 48.43.732 and corresponding regulations at WAC 284-170-441, 284-170-445, and 284-170-447.

(b) If this provider contract expires by its own terms or one party gives notice to the other party of an intended termination without cause in accordance with the terms of this provider contract, provider/facility and carrier may not make or cause to be made public statements regarding such expiration or termination until 45 days prior to the termination date of the provider contract.

(c) Except for notifications to enrollees/patients that the contract termination is no longer applicable, such as in the case of a rescission of the contract termination, all notices sent to enrollees and patients under this contract termination provision must either:

(i) Solely utilize the standard template language posted on the website of the office of the insurance commissioner under WAC 284-170-445, with no modifications to the text of the template other than to insert the specific information requested in the bracketed sections of the template. Notices complying with this subsection may be sent to enrollees and patients without the commissioner's review or prior approval; or

(ii) Receive the commissioner's prior approval if the notice does not solely utilize the template language. Notices described in this subsection must be reviewed and approved by the commissioner prior to being used.

(iii) Provider/facility and carrier may send enrollees and patients the notices described in this subsection electronically rather than by physical mail if the enrollee or patient has consented to receive electronic communications.

(d) Carrier acknowledges that, for violations of RCW 48.43.732 and WAC 284-170-441 and 284-170-445 by carriers, the commissioner may pursue enforcement actions under RCW 48.02.080 or impose a civil monetary penalty upon carriers of up to $100 per noncompliant notice, per day, per enrollee to whom the notice has been sent in advance of the 45-day period established under WAC 284-170-441.

(e) Provider/facility acknowledges that, for potential violations of RCW 48.43.732 and WAC 284-170-441 and 284-170-445 by health care providers and health care facilities (as those terms are defined in RCW 48.43.005), if the commissioner has cause to believe that any health care provider or health care facility has violated the requirements of RCW 48.43.732 or WAC 284-170-441 or 284-170-445, the commissioner may submit information to the department of health or the appropriate health care facility or provider licensing or disciplining entity.

(5) A provider contract cannot, by its terms or other provisions, waive or include language that is inconsistent with the prohibited conduct and requirements set forth in RCW 48.43.732.

(6) The contract must inform participating providers and facilities that willfully collecting or attempting to collect an amount from an enrollee knowing that collection to be in violation of the participating provider or facility contract constitutes a class C felony under RCW 48.80.030(5).

((~~(5)~~)) (7) An issuer must notify participating providers and facilities of their responsibilities with respect to the health issuer's applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance, appeal and adverse benefit determination procedures, data reporting requirements, pharmacy benefit substitution processes, confidentiality requirements and any applicable federal or state requirements.

((~~(6)~~)) (8) An issuer must make all documents, procedures, and other administrative policies and programs referenced in the contract available for review by the provider or facility prior to contracting. An issuer may comply with this subsection by providing electronic access.

(a) Participating providers and facilities must be given reasonable notice of not less than ((~~sixty~~)) 60 days of changes that affect provider or facility compensation or that affect health care service delivery unless changes to federal or state law or regulations make such advance notice impossible, in which case notice must be provided as soon as possible.

(b)(i) Subject to any termination and continuity of care provisions of the contract, a provider or facility may terminate the contract without penalty if the provider or facility does not agree with the changes, subject to the requirements in subsection ((~~(9)~~)) (11) of this section.

(ii) A material amendment to a contract may be rejected by a provider or facility. The rejection will not affect the terms of the existing contract. A material amendment has the same meaning as in RCW 48.39.005.

(c) No change to the contract may be made retroactive without the express written consent of the provider or facility.

(d) An issuer must give a provider or facility full access to the coverage and service terms of the applicable health plan for an enrolled patient.

((~~(7)~~)) (9) Each participating provider and participating facility contract must contain the following provisions:

(a) "No health carrier subject to the jurisdiction of the state of Washington may in any way preclude or discourage their providers from informing patients of the care they require, including various treatment options, and whether in their view such care is consistent with medical necessity, medical appropriateness, or otherwise covered by the patient's service agreement with the health carrier. No health carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of a patient with a health carrier. Nothing in this section shall be construed to authorize providers to bind health carriers to pay for any service."

(b) "No health carrier may preclude or discourage patients or those paying for their coverage from discussing the comparative merits of different health carriers with their providers. This prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier."

((~~(8)~~)) (10) Subject to applicable state and federal laws related to the confidentiality of medical or health records, an issuer must require participating providers and facilities to make health records available to appropriate state and federal authorities involved in assessing the quality of care or investigating complaints, grievances, appeals, or review of any adverse benefit determinations of enrollees.

An issuer must require providers and facilities to cooperate with audit reviews of encounter data in relation to the administration of health plan risk adjustment and reinsurance programs.

((~~(9)~~)) (11) An issuer and participating provider and facility must provide at least ((~~sixty~~)) 60 days' written notice to each other before terminating the contract without cause.

((~~(10)~~)) (12) Whether the termination was for cause, or without cause, the issuer must make a good faith effort to ensure written notice of a termination is provided at least ((~~thirty~~)) 30 days prior to the effective date of the termination or immediately for a termination for cause that results in less than ((~~thirty~~)) 30 days notice to a provider or carrier to all enrollees who are patients seen:

(a) On a regular basis by a specialist;

(b) By a provider for whom they have a standing referral; or

(c) By a primary care provider.

((~~(11)~~)) (13) An issuer is responsible for ensuring that participating providers and facilities furnish covered services to each enrollee without regard to the enrollee's enrollment in the plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill, or licensing restrictions.

((~~(12)~~)) (14) An issuer must not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the issuer that jeopardizes patient health or welfare or that may violate state or federal law.

((~~(13)~~)) (15) Every participating provider contract must contain procedures for the fair resolution of disputes arising out of the contract.

((~~(14)~~)) (16) Participating provider and facility contracts entered into prior to the effective date of these rules must be amended upon renewal to comply with these rules, and all such contracts must conform to these provisions no later than July 1, 2016. The commissioner may extend the July 1, 2016, deadline for an issuer for an additional one year, if the issuer makes a written request. That request must explain how a good faith effort at compliance has been made, provide the specific reasons the deadline cannot be met, and state the date the issuer expects to be in compliance (no more than one year beyond July 1, 2016).

NEW SECTION

WAC 284-170-441 Public statements regarding contract terminations. (1) In the case of a provider contract defined in RCW 48.43.732 that is expiring by its own terms or for which one party has given notice to the other party of an intended termination without cause in accordance with the terms of the provider contract, carriers, health care providers and health care facilities, and health care providers employed by, contracted with, or otherwise affiliated with a health care facility may not make or cause to be made public statements regarding such expiration or termination until 45 days prior to the expiration or termination date.

(2) This section does not apply to expirations or terminations that are:

(a) For cause;
(b) Due to the death of a provider;
(c) Due to the permanent closure of a health care facility or the practice of a health care provider;
(d) Due to the retirement of a health care provider.

NEW SECTION

WAC 284-170-443 Provider contract terminations—Notice requirements—General standards. (1) This section applies to any contract termination other than those under RCW 48.43.732.

(2) Each carrier must make a good faith effort to assure that notice of a termination is provided at least 30 days prior to the effective date of the termination to all enrollees who are patients seen on a regular basis by the provider or facility whose contract is terminating, irrespective of whether the termination was for cause or without cause.

(3) When a termination provides less than 30 days notice to the carrier or provider, a carrier must make a good faith effort to assure that written notice of termination is provided immediately to all enrollees.

NEW SECTION

WAC 284-170-445 Provider contract terminations under RCW 48.43.732—Notice requirements. (1) This section applies to provider contracts as set forth in RCW 48.43.732 that are expiring by their own terms or for which one party has given notice to the other party of an intended termination without cause in accordance with the terms of the provider contracts.

(2) By December 1, 2025, the commissioner shall develop and publish standard enrollee/patient notice templates. The standard enrollee/patient notice templates will be posted on the public website of the office of the insurance commissioner by December 1, 2025. The commissioner may modify the templates periodically, as determined necessary.

(a) Beginning January 1, 2026, all notices sent to enrollees and patients under this section must either:

(i) Solely utilize the standard template language posted on the website of the office of the insurance commissioner under this section, with no modifications to the text of the template other than to insert the specific information required in the bracketed sections of the template. Notices complying with this subsection may be sent to enrollees and patients without the commissioner's review or prior approval; or

(ii) For notices that do not solely utilize the standard template as described in this section, receive the commissioner's prior approval before the notices are sent to enrollees. In determining whether to approve or deny proposed notices, the commissioner may consider, but is not limited to, consideration of: Whether the notices contain the minimum information required by RCW 48.43.732(4); whether the notices clearly inform the enrollee of their options and rights to ac-

cess health care services; whether the notices are generally consistent with the standard template language under this section; and whether the notices make any statements related to the intent or conduct of the other party to the contract dispute.

(b) The commissioner shall develop a process by which carriers, health care providers, and facilities may submit proposed notices to the commissioner under the circumstances described in (a)(ii) of this subsection. Instructions for this process will be posted on the website of the office of the insurance commissioner on or before January 1, 2026. Carriers, health care providers, and facilities must submit proposed notices to the commissioner a minimum of 14 business days in advance of the date they intend to deliver such notice to the enrollee/patient.

(3) Carriers, health care providers, and health care facilities may send enrollees and patients the notices described in this section electronically rather than by physical mail if the enrollee or patient has consented to receive electronic communications.

(4) Notifications to enrollees/patients that the contract termination is no longer applicable, such as a rescission of the contract termination, are not subject to the requirements of this section.

(5) This section does not apply to expirations or terminations that are:

(a) For cause;

(b) Due to the death of a provider;

(c) Due to the permanent closure of a health care facility or the practice of a health care provider;

(d) Due to the retirement of a health care provider.

NEW SECTION

WAC 284-170-447 Enforcement—Public statements and notices regarding contract terminations. (1) For violations of RCW 48.43.732 and WAC 284-170-421 (4) and (5), 284-170-441, and 284-170-445 committed by carriers on or after January 1, 2026, the commissioner may pursue enforcement actions under RCW 48.02.080 or impose a civil monetary penalty upon carriers of up to $100 per noncompliant notice, per day, per enrollee to whom the notice has been sent in advance of the 45-day period established under RCW 48.43.732 and WAC 284-170-441.

(2) For potential violations of RCW 48.43.732 and corresponding regulations in WAC 284-170-421 (4) and (5), 284-170-441, and 284-170-445 by health care providers and health care facilities on or after January 1, 2026, if the commissioner has cause to believe that any health care provider or health care facility is in violation, the commissioner may submit information to the department of health or the appropriate health care facility or provider licensing or disciplining entity.

(3) During the period of July 27, 2025, to December 31, 2025, the commissioner will provide informational notices to carriers and health care providers and facilities if the commissioner finds there has been a violation of RCW 48.43.732. Any informational notices issued by the commissioner during this period will be public records and may be subject to disclosure.

WSR 26-01-206
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-12—Filed December 24, 2025, 7:20 a.m., effective January 24, 2026]

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

Purpose: Washington department of fish and wildlife classified the island marble butterfly as endangered and amended WAC 220-610-010 Wildlife classified as endangered species, to include island marble butterfly among the other listed endangered wildlife.

Citation of Rules Affected by this Order: Amending WAC 220-610-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, and 77.12.020.

Other Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, and 77.12.020.

Adopted under notice filed as WSR 25-21-081 on October 15, 2025.

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 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 12, 2025.

James R. Anderson
Commission Chair

OTS-5922.1

AMENDATORY SECTION (Amending WSR 23-24-005, filed 11/27/23, effective 12/28/23)

WAC 220-610-010 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
Oregon vesper sparrow	*Pooecetes gramineus affinis*
pygmy rabbit	*Brachylagus idahoensis*
fisher	*Pekania pennanti*
gray wolf	*Canis lupus*
grizzly bear	*Ursus arctos*
killer whale	*Orcinus orca*
sei whale	*Balaenoptera borealis*

Common Name	Scientific Name
fin whale	*Balaenoptera physalus*
blue whale	*Balaenoptera musculus*
humpback whale	*Megaptera novaeangliae*
North Pacific right whale	*Eubalaena japonica*
sperm whale	*Physeter macrocephalus*
woodland caribou	*Rangifer tarandus caribou*
Columbian sharp-tailed grouse	*Tympanuchus phasianellus columbianus*
sandhill crane	*Grus canadensis*
snowy plover	*Charadrius nivosus*
upland sandpiper	*Bartramia longicauda*
spotted owl	*Strix occidentalis*
western pond turtle	*Clemmys marmorata*
leatherback sea turtle	*Dermochelys coriacea*
mardon skipper	*Polites mardon*
Oregon silverspot butterfly	*Speyeria zerene hippolyta*
Oregon spotted frog	*Rana pretiosa*
northern leopard frog	*Rana pipiens*
Taylor's checkerspot	*Euphydryas editha taylori*
Streaked horned lark	*Eremophila alpestris strigata*
Tufted puffin	*Fratercula cirrhata*
North American lynx	*Lynx canadensis*
marbled murrelet	*Brachyramphus marmoratus*
Loggerhead sea turtle	*Caretta caretta*
Yellow-billed cuckoo	*Coccyzus americanus*
Pinto abalone	*Haliotis kamtschatkana*
Greater sage grouse	*Centrocercus urophasianus*
Ferruginous hawk	*Buteo regalis*
Cascade red fox	*Vulpes vulpes cascadensis*
western gray squirrel	*Sciurus griseus*
Island marble butterfly	*Euchloe ausonides insulanis*

WSR 26-01-207
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed December 24, 2025, 8:03 a.m., effective January 24, 2026]

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

Purpose: The health care authority (agency) amended this rule to update the manufacturer's suggested retail price list and invoice dating requirements. Invoices and price lists provided to the agency to support claims for by report items must be dated within 12 months prior to the date of service.

Citation of Rules Affected by this Order: Amending WAC 182-543-9000.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Adopted under notice filed as WSR 25-23-051 on November 14, 2025.

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 1, Repealed 0.

Date Adopted: December 24, 2025.

Wendy Barcus
Rules Coordinator

RDS-6806.1

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-9000 General reimbursement. (1) The medicaid agency pays qualified providers who meet all conditions in WAC 182-502-0100 for medical equipment, repairs, and related services provided on a fee-for-service (FFS) basis as follows:

(a) To agency-enrolled medical equipment providers, qualified complex rehabilitation technology (CRT) suppliers, pharmacies, and home health agencies under their national provider identifier (NPI) numbers, subject to the limitations of this chapter, and according to the procedures and codes in the agency's current medical equipment billing guide;

(b) In accordance with the health care common procedure coding system (HCPCS) guidelines for product classification and code assignation; and

(c) Providers must code the specific brand and model of wheelchair or CRT products dispensed according to the centers for medicare

and medicaid services' (CMS) pricing, data analysis, and coding (PDAC) website.

(2) The agency sets, evaluates, and updates the maximum allowable fees for medical equipment and related services at least once yearly, unless otherwise directed by the legislature or determined necessary by the agency.

(3) The agency sets the rates for medical equipment codes subject to the federal financial participation (FFP) limitation at the lesser of medicare's prevailing payment rates in the Durable Medical Equipment Prosthetics/Orthotics, and Supplies (DMEPOS) Fee Schedule or Competitive Bid Area (CBA) rate. For all other procedure codes, the agency sets rates using one of the following:

(a) Medicare fee schedules;

(b) Legislative direction;

(c) Input from stakeholders or relevant sources that the agency determines to be reliable and appropriate;

(d) Pricing clusters; or

(e) A by-report (BR) basis.

(4) The medicaid agency evaluates a by-report (BR) item, procedure, or service for its medical necessity, appropriateness and reimbursement value on a case-by-case basis. The agency's reimbursement rate is a percentage of the manufacturer's list or manufacturer's suggested retail price (MSRP), or a percentage of the wholesale acquisition cost (AC). The MSRP or invoice must be dated within 12 months prior to the date of service and must substantiate the specific supply being billed. The agency uses the following percentages:

(a) For basic standard wheelchairs, ((~~sixty-five~~)) 65 percent of MSRP or ((~~one hundred forty~~)) 140 percent of AC;

(b) For wheelchair parts and add-on CRT accessories and parts, ((~~eighty-four~~)) 84 percent of MSRP or ((~~one hundred forty~~)) 140 percent of AC;

(c) For wheelchair seat and back cushions, CRT manual wheelchair base, and up-charge modifications and seating systems, ((~~eighty~~)) 80 percent of MSRP or ((~~one hundred forty~~)) 140 percent of AC;

(d) For CRT power-drive wheelchair base, ((~~eighty-five~~)) 85 percent of MSRP or ((~~one hundred forty~~)) 140 percent of AC;

(e) For prosthetics and orthotics and medical supplies and related services, ((~~eighty-five~~)) 85 percent of MSRP or ((~~one hundred twenty-five~~)) 125 percent of AC;

(f) For other medical equipment, ((~~eighty~~)) 80 percent of MSRP or ((~~one hundred twenty-five~~)) 125 percent of AC;

(g) For medical supplies, ((~~eighty-five~~)) 85 percent of MSRP or ((~~one hundred twenty-five~~)) 125 percent of AC.

(5) When establishing reimbursement rates for medical equipment based on pricing clusters for a specific HCPCS code, the maximum allowable fee is the median or average amount of all items in the cluster. The pricing cluster is comprised of all the brands/models for which the agency obtains pricing information. However, the agency may limit the number of brands/models included in the pricing cluster due to:

(a) A client's medical needs;

(b) Product quality;

(c) Introduction, substitution or discontinuation of certain brands/models; and/or

(d) Cost.

(6) When there is only a rental rate on the DMEPOS fee schedule, the agency sets the maximum allowable purchase rate at either the DME-

POS rate divided by 0.15 or multiplied by ((~~ten~~)) 10. The agency sets the maximum allowable fee for daily rental at one-three-hundredth of the new purchase price or one-thirtieth of the monthly rental rate on the DMEPOS fee schedule;

(7) The agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary to:

(a) Assure that payments are sufficient to enlist providers and maintain access to care and services; or

(b) Comply with legislative budget directives.

(8) The agency's maximum payment for medical equipment and related services is the lesser of either the:

(a) Providers' usual and customary charges; or

(b) Established rates, except as provided in WAC 182-543-8200.

(9) The agency is the payor of last resort for clients with medicare or third-party insurance.

(10) The agency's reimbursement for a prosthetic or orthotic includes the cost of any necessary molds, fitting, shipping, handling or any other administrative expenses related to provision of the prosthetic or orthotic to the client.

(11) The agency's reimbursement rate for purchased or rented covered medical equipment and related services includes all of the following:

(a) Any adjustments or modifications to the medical equipment required within three months of the date of delivery or covered under the manufacturer's warranty. This does not apply to adjustments required because of changes in the client's medical condition;

(b) Any pick-up or delivery fees or associated costs (e.g., mileage, travel time, gas, etc.);

(c) Telephone calls;

(d) Shipping, handling, and/or postage;

(e) Routine maintenance that includes testing, cleaning, regulating, and assessing the client's equipment;

(f) Fitting and set-up; and

(g) Instruction to the client or client's caregiver in the appropriate use of the medical equipment.

(12) Medical equipment and related services supplied to eligible clients under the following reimbursement methodologies are included in those methodologies and are not reimbursed under fee-for-service:

(a) Hospice providers' per diem reimbursement;

(b) Hospitals' diagnosis-related group (DRG) reimbursement;

(c) Managed care plans' capitation rate;

(d) Skilled nursing facilities' per diem rate; and

(e) Professional services' resource-based relative value system reimbursement (RBRVS) rate.

(13) The provider must make warranty information, including date of purchase, applicable serial number, model number or other unique identifier of the equipment, and warranty period, available to the agency upon request.

(14) The dispensing provider who furnishes the medical equipment to a client is responsible for any costs incurred to have a different provider repair the equipment when:

(a) Any medical equipment the agency considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The equipment continues to be medically necessary.

(15) If the rental medical equipment must be replaced during the warranty period, the agency recoups ((~~fifty~~)) 50 percent of the total amount previously paid toward rental and eventual purchase of the medical equipment delivered to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The equipment continues to be medically necessary.

(16) The agency does not reimburse for medical equipment, related services, and related repairs and labor charges under fee-for-service when the client is:

(a) An inpatient hospital client;

(b) Eligible for both medicare and medicaid, and is staying in a skilled nursing facility in lieu of hospitalization;

(c) Terminally ill and receiving hospice care; or

(d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(17) The agency rescinds any purchase order for a prescribed item if the equipment was not delivered to the client before the client:

(a) Dies;

(b) Loses medical eligibility;

(c) Becomes covered by a hospice agency; or

(d) Becomes covered by a managed care organization.

(18) A provider may incur extra costs for customized equipment that may not be easily resold. In these cases, for purchase orders rescinded in subsection (7) of this section, the agency may pay the provider an amount it considers appropriate to help defray these extra costs. The agency requires the provider to submit justification sufficient to support such a claim.

(19) For clients residing in skilled nursing facilities, see WAC 182-543-5700.

WSR 26-01-208
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed December 24, 2025, 8:08 a.m., effective January 24, 2026]

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

Purpose: The health care authority (agency) amended this chapter to clarify rules for rural health clinics (RHC) applying for a change in scope rate adjustment and an interim-rate to final-rate adjustment. The agency clarified that it is the agency's intent to align with the medicare cost report (MCR) with regard to all-inclusive rates or individual rates by RHC; specifically, that the agency follows the rate structure calculated in the MCR when setting medicaid RHC encounter rates. If RHC encounter rates are combined on the MCR, medicaid encounter rates will be combined. If the MCR has split rates for each RHC on the cost report, medicaid encounter rates will be split for each clinic. Additionally, the agency added detailed clarification to the rules regarding adding dental services to an RHC through a change in scope application.

Citation of Rules Affected by this Order: Amending WAC 182-549-1100, 182-549-1400, and 182-549-1500.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Adopted under notice filed as WSR 25-23-028 on November 12, 2025.

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 3, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 24, 2025.

Wendy Barcus
Rules Coordinator

RDS-6727.2

AMENDATORY SECTION (Amending WSR 22-22-049, filed 10/27/22, effective 1/1/23)

WAC 182-549-1100 Rural health clinics—Definitions. This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter, the definitions found in chapter 182-500 WAC apply.

"APM index" - The agency uses the alternative payment methodology (APM) to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic

(RHC) providers. The index is derived from the federal medicare economic index (MEI).

"Base year" - The year that is used as the benchmark in measuring an RHC's total reasonable costs for establishing base encounter rates.

"Change in scope" - The process by which an RHC's rate(s) can be adjusted due to changes in type, intensity, duration, or amount of services outlined under WAC 182-549-1500.

"Cost center" - A category of service approved to be provided by the RHC under WAC 182-549-1200 and reported in the medicare cost report and supplemental documentation. The categories of services to be provided by the RHC may include medical and dental.

"Encounter" - A face-to-face or telemedicine (including audio-only telemedicine) visit between an encounter-eligible client and an RHC provider who exercises independent judgment when providing services that qualify for encounter rate reimbursement.

"Encounter-eligible client" - A client who receives benefits under Title XIX (medicaid) or Title XXI (CHIP).

"Encounter rate" - A cost-based, facility-specific rate for covered RHC services.

"Enhancements (also called managed care enhancements or supplemental payments)" - A monthly amount the agency pays to RHCs through a managed care organization (MCO) that has contracted with the RHC to provide services to clients enrolled with the MCO. The enhancement is in addition to the negotiated payment that RHCs receive from the MCO. RHCs participating in the payment method described in WAC 182-549-1450 (7)(b) do not receive enhancements.

"Fee-for-service" - A payment method the agency uses to pay providers for covered medical services provided to Washington apple health clients, which excludes services provided by the agency's contracted managed care organizations and services that qualify for an encounter payment.

"Interim rate" - The rate the agency establishes to pay an RHC for covered RHC services prior to the establishment of a permanent rate for that RHC.

"Medicare cost report" - The cost report is a statement of costs and provider utilization ((~~that occurred during the time period covered by the cost report~~)). RHCs must complete and submit a report annually to medicare.

"Medicare economic index (MEI)" - An index published in the Federal Register used in the calculation of changes to determine allowed charges for physician services. The agency adjusts RHC encounter rates and enhancement rates by the MEI each year on January 1st.

"Mobile unit" - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

"Permanent unit" - The objects, equipment, and supplies necessary for the provision of the services furnished directly by the RHC are housed in a permanent structure.

"Rebasing" - The process of recalculating encounter rates using actual cost report data for all rural health clinics listed in the medicare cost report.

"Rural area" - An area that is not delineated as an urbanized area by the U.S. Census Bureau.

"Rural health clinic (RHC)" - A clinic, as defined in 42 C.F.R. 405.2401(b), that is primarily engaged in providing RHC services and is:

• Located in a rural area designated as a shortage area as defined under 42 C.F.R. 491.2;

• Certified by medicare as an RHC in accordance with applicable federal requirements; and

• Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

"Rural health clinic (RHC) services" - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 C.F.R. Part 491.9.

AMENDATORY SECTION (Amending WSR 22-22-049, filed 10/27/22, effective 1/1/23)

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM are at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an RHC submits its first audited or as filed medicare cost report to the agency, the agency pays the RHC an average encounter rate of other similar RHCs within the state, otherwise known as an interim rate. Similar RHCs are defined as either all hospital based or all free-standing RHCs.

(b) Upon the RHC's request to the agency, which must include the submission of ((~~the RHC's~~)) their first as filed or audited medicare cost report, the agency calculates the ((~~RHC's~~)) PPS rates for ((~~RHC~~)) core services for all RHCs in the medicare cost report.

(i) The agency ((~~sets~~)) rebases each RHC's encounter rate(s) by dividing 100 percent of the RHC's costs ((~~divided~~)) by the total number of RHC encounters reported in the submitted cost report. ((~~The encounter rate is effective on the date the agency receives the submitted medicare cost report from the RHC.~~

~~(c)~~)) (ii) If the medicare cost report contains less than 12 months of data for the RHC(s), the agency sets an interim rate. Within 18 months of the effective date of the interim rate adjustment, the RHC must submit a medicare cost report to the agency, containing 12 months of data for the RHC(s).

(iii) The agency follows the rate structure calculated in the medicare cost report when setting medicaid RHC encounter rates. If RHC encounter rates are combined on the medicare cost report, medicaid encounter rates will be combined. If the medicare cost report has separate rates for each RHC on the cost report, medicaid encounter rates will be separate for each clinic.

(c) The agency uses the medicare cost report data and applies medicaid-specific adjustments, such as adding medicaid services not covered by medicare and allocating overhead to services not reported in the medicare cost report (e.g., dental services).

(d) The encounter rate is effective for all RHCs on the date the agency receives the submitted medicare cost report from the RHC.

(e) RHCs receive this rate for the remainder of the calendar year during which the submitted medicare cost report became available to the agency. The agency then adjusts the encounter rate each January 1st by the ((~~percent~~)) percentage change ((~~in~~)) of the medicare economic index (MEI) as reported in the Federal Register.

(4) For RHCs in existence during calendar years 1999 and 2000, the agency set((~~s~~)) the encounter rates prospectively using a weighted average of 100 percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency ((~~adjusts~~)) adjusted PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) The agency ((~~determines~~)) determined PPS base encounter rates using medicare's audited cost reports, and each year's rate ((~~is~~)) was weighted by the total reported encounters. The agency ((~~does~~)) did not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates ((~~is~~)) was as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are adjusted by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency calculated RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM used the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates were increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result was the year 2009 APM rates for each RHC that chose to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency paid RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC had the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM used each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM, known as APM-3, is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates are increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency periodically rebases the encounter rates using the RHC cost reports and other relevant data. Rebasing is done only for RHCs that are reimbursed under the APM.

(e) The agency makes sure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating RHCs for services provided beginning July 1, 2017, and ending December 31, 2022.

(a) Each RHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM, known as APM-4, is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each RHC. The PMPM rate accounts for enhancement payments in accordance with the definition of enhancements in WAC 182-548-1100. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the RHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the RHC a PMPM payment each month in addition to the amounts the MCO pays the RHC.

(iv) The agency may prospectively adjust the RHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) RHC encounter rate changes.

(v) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the RHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(iv) of this subsection.

(B) If the RHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(iv) of this subsection.

AMENDATORY SECTION (Amending WSR 22-22-049, filed 10/27/22, effective 1/1/23)

WAC 182-549-1500 Rural health clinics—Change in scope of service rate adjustment. In accordance with 42 U.S.C. 1396a (bb)(3)(B), the agency adjusts its payment rate to a rural health clinic (RHC) to take into account any increase or decrease in the scope of the RHC's services. The procedures and requirements for any such rate adjustments are described below.

(1) **Triggering events.**

(a) An RHC may file a change in scope of services rate adjustment application with the agency on its own initiative only when the RHC satisfies the criteria described in (a)(i), (ii), ((~~and~~)) (iii), and (iv) of this subsection.

(i) When the cost to the RHC of providing covered health care services to eligible clients has increased or decreased due to one or more of the following triggering events:

(A) A change in the type of health care services the RHC provides;

(B) A change in the intensity of health care services the RHC provides. Intensity means the total quantity of labor and materials consumed by an individual client during an average encounter has increased;

(C) A change in the duration of health care services the RHC provides. Duration means the length of an average encounter has increased;

(D) A change in the amount of health care services the RHC provides in an average encounter;

(E) Any change comparable to (a)(i)(A) through (D) of this subsection in which the type, intensity, duration or amount of services has decreased and the cost of an average encounter has decreased.

(ii) The cost change equals or exceeds:

(A) An increase of one and three-quarters percent in the prospective payment system (PPS) rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate;

(B) A decrease of two and one-half percent in the PPS rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate; or

(C) A cumulative increase or decrease of five percent in the PPS rate per encounter as compared to the current year's cost per encounter.

(iii) The costs reported to the agency to support the proposed change in scope rate adjustment are reasonable and accurate under state and federal law.

(iv) An approved change in scope includes rate adjustments using the overhead and visit allocation methodology as reported for all RHCs listed in the medicare cost report. The medicaid rate may also include the allocation of overhead to medicaid eligible services not reported in the medicare cost report (e.g., dental services), as directed by the agency.

(b) At any time, the agency may instruct the RHC to file a medicare cost report with a position statement indicating whether the RHC asserts that its PPS rate should be increased or decreased due to a change in the scope of services.

(i) The RHC files a completed medicare cost report and position statement no later than 90 calendar days after receiving the instruction from the agency to file an application;

(ii) The agency reviews the ((~~RHC's~~)) RHC(s) cost report and position statement under the same criteria listed above for an application for a change in scope adjustment;

(iii) The agency will not request more than one change in scope in a calendar year.

(2) **Filing requirements.**

(a) The RHC may apply for a prospective change in scope of service rate adjustment, a retrospective change in scope of service rate adjustment, or both, in a single application.

(b) Unless instructed to file an application by the agency, the RHC may file no more than one change in scope of service application per calendar year; however, more than one type of change in scope may be included in a single application.

(c) The RHC files for a change in scope of service rate adjustment based on the following deadlines, whichever is later:

(i) Ninety calendar days after the end of the RHC's fiscal year, demonstrating that the change in scope occurred.

(ii) Ninety calendar days after the RHC learned the cost threshold in subsection (1)(a)(ii) of this section was met.

(d) Prospective change in scope.

(i) A prospective change in scope of service rate adjustment application states each triggering event listed in subsection (1)(a)(i) of this section that supports the RHC's application.

(ii) A prospective change in scope of service rate adjustment application must be based on one of the following:

(A) A change the RHC plans to implement in the future. The RHC submits 12 months of projected data and costs sufficient to establish an interim rate; or

(B) A change with less than 12 months of experience to support the change reflected in the medicare cost report. The RHC submits a combination of historical data and projected costs sufficient to establish an interim rate.

(iii) The interim rate adjustment goes into effect after the change takes effect.

(iv) The interim rate is subject to the post change in scope review and rate adjustment process defined in subsection (5) of this section.

(v) If the change in scope occurs less than 90 calendar days after the RHC submitted a complete application to the agency, the interim rate takes effect no later than 90 calendar days after the complete application was submitted to the agency.

(vi) If the change in scope occurs more than 90 calendar days but less than 180 calendar days after the RHC submitted a complete application to the agency, the interim rate takes effect when the change in scope occurs.

(vii) If the RHC fails to implement a change in service identified in its prospective change in scope of service rate adjustment application within 180 calendar days, the application is void and the RHC may resubmit the application to the agency, in such a circumstance, (b) of this subsection does not apply.

(viii) If the change in scope is based on a triggering event that already occurred but is supported by less than 12 months of data in the filed cost report, the interim rate takes effect on the date the RHC submitted the completed application to the agency.

(e) Retrospective change in scope.

(i) A retrospective change in scope of service rate adjustment application states each triggering event listed in subsection (1)(a)(i) of this section that supports its application and includes 12 months of data documenting the cost change caused by the triggering event. A retrospective change in scope is a change that took place in the past and the RHC is seeking to adjust its rate(s) based on that change.

(ii) If approved, a retrospective rate adjustment takes effect on the date the RHC submitted a complete application to the agency, as determined by the agency.

(3) **Supporting documentation.**

(a) To apply for a change in scope of service rate adjustment, the RHC submits the following supporting documentation for all RHCs in the medicare cost report to the agency in electronic format by email to fqhcrhc@hca.wa.gov:

(i) Medicare cost report;

(ii) A narrative description of the proposed change in scope;

((~~(ii)~~)) (iii) A description of each cost center on the cost report that was or will be affected by the change in scope;

((~~(iii)~~)) (iv) The RHC's most recent audited financial statements, if audit is required by federal law;

((~~(iv)~~)) (v) The implementation date for the proposed change in scope; and

((~~(v)~~)) (vi) Any additional documentation requested by the agency.

(b) A prospective change in scope of service rate adjustment application must also include the projected medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit for the 12-month period following implementation of the change in scope.

(c) A retrospective change in scope of service rate adjustment application must also include the medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for one of the following:

(i) The 12-month period following the implementation of the triggering event; or

(ii) The fiscal year following implementation of the proposed change in scope.

(4) **Review of the application.**

(a) Application processing.

(i) The agency reviews the application for completeness, accuracy, and compliance with program rules.

(ii) Within 60 days of receiving the application, the agency notifies the RHC of any deficient documentation or requests any additional information that is necessary to process the application. If the RHC does not provide the agency with the documentation or information requested within 30 calendar days of the request, the agency may deny the application.

(iii) Within 90 calendar days of receiving a complete application, including any additional documentation or information that the agency might request, the agency sends the RHC:

(A) A decision stating whether it will implement a PPS rate change; and

(B) A rate-setting statement if the rate change is implemented.

(iv) The RHC may appeal the decision on the application as provided for in WAC 182-549-1650.

(b) Determining rate for change in scope.

(i) The agency sets an interim rate for prospective changes in scope by adjusting the RHC's existing rate by the projected average cost per encounter of any approved change. The agency reviews the costs to determine if they are reasonable, and sets a new interim rate based on the determined cost per encounter.

(ii) The agency sets an adjusted encounter rate for retrospective changes in scope by adjusting the RHC's existing rate by the documented average cost per encounter of the approved change. The agency reviews the costs to determine whether they are reasonable, and sets a new rate based on the determined cost per encounter.

(iii) The agency follows the rate structure calculated in the medicare cost report when setting medicaid RHC encounter rates. If RHC encounter rates are combined on the medicare cost report, medicaid encounter rates will be combined. If the medicare cost report has separate rates for each RHC on the cost report, medicaid encounter rates will be separate for each clinic.

(c) If the RHC is paid under an alternative payment methodology (APM), any change in scope of service rate adjustment approved by the agency modifies the PPS rate in addition to the APM.

(d) The agency may delegate the duties related to application processing and rate setting to a third party. The agency retains final responsibility and authority for making decisions related to changes in scope.

(5) **Post change in scope of services rate adjustment review.**

(a) If the approved change in scope rate adjustment was based on a retrospective change in scope application (i.e., based on a year or more of actual encounter data), the agency may conduct a post change in scope rate adjustment review for all RHCs listed in the medicare cost report.

(b) If the approved change in scope rate adjustment was based on a prospective change in scope application (i.e., less than a full year of actual encounter data), ((~~the RHC submits~~)) the following information is submitted to the agency for each RHC listed in the medicare cost report within 18 months of the effective date of the rate adjustment:

(i) The most recent audited or as filed medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for 12 consecutive months of experience following implementation of the change in scope;

(ii) A narrative description of the request;

(iii) A description of each cost center on the cost report that was affected by the change in scope;

(iv) The RHC's most recent audited financial statements, if audit is required by applicable law; and

(v) Any additional documentation requested by the agency.

(c) The agency conducts the post change in scope review within 90 calendar days of receiving the cost report and encounter data from the RHC.

(d) If necessary, the agency adjusts the encounter rate(s) within 90 calendar days to make sure that the rate reflects the reasonable cost of the change in scope of services.

(e) A rate adjustment based on a post change in scope review takes effect on the date the agency issues its adjustment. The new rate is prospective.

(f) If the RHC fails to submit the post change in scope cost report or related encounter data, the agency provides written notice to the clinic within 30 calendar days.

(g) If the RHC fails to submit required documentation within five months of the notice identified in (f) of this subsection, the agency may reinstate the prechange in scope encounter rate going forward from the date the interim rate was established. The agency may recoup any overpayment to the RHC.

WSR 26-01-209
PERMANENT RULES
PUBLIC DISCLOSURE COMMISSION
[Filed December 24, 2025, 8:34 a.m., effective January 1, 2026]

Effective Date of Rule: January 1, 2026.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The effective date is required to match the date the statutory changes come into effect, and any further delay in implementing the new rules would create confusion with the public by referencing repealed statutory citations.

Purpose: To change all statutory citations within Title 390 WAC to match the recodified law under new Title 29B RCW.

Citation of Rules Affected by this Order: Amending chapters 390-05, 390-14, 390-16, 390-17, 390-18, 390-19, 390-20, 390-24, 390-28, 390-32, and 390-37 WAC.

Statutory Authority for Adoption: RCW 42.17A.110 and chapter 164, Laws of 2024 (SSB 5857 (2024)).

Adopted under notice filed as WSR 25-21-153 on October 22, 2025.

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 218, 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: December 24, 2026 [2025].

Sean Flynn
General Counsel

RDS-6735.2

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

WAC 390-05-002 Mission and purpose of the public disclosure commission. (1) The public disclosure commission was created by the passage of Initiative 276 in 1972 for the principal purpose of providing the public with accurate information about certain financial affairs of candidates and elected officials, about the financing of election campaigns and the sponsors of political advertising, and about expenditures made in the course of lobbying. The passage of Initiative 134 in 1992 further expounded the purpose of the commission and the law.

(2) The duties, responsibilities, and powers of the commission, and provisions for establishing the commission and appointing the members thereof, are set forth in ((~~chapter 42.17A~~)) Title 29B RCW.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-005 Definition—Public disclosure commission. The "public disclosure commission" is the commission appointed by the governor pursuant to RCW ((~~42.17A.100~~)) 29B.20.010. The public disclosure commission shall hereinafter be referred to as the commission.

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

WAC 390-05-010 Purpose of rules. The purpose of these rules is to implement the provisions of ((~~chapter 42.17A~~)) Title 29B RCW, referred to throughout as the act, by declaring the policies of the commission, particularly with regard to the interpretation and enforcement of the act by the commission.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-120 Public disclosure commission—Role of the executive director. (1) The executive director acts as the commission's chief administrative officer and is accountable to the commission for agency administration. In addition, the executive director will:

(a) Act as the appointing authority for agency staff, including the authority to hire, set salaries, promote, assign work, evaluate, take corrective action and, where appropriate, terminate staff.

(b) Propose agency budgets for commission approval and oversee fiscal management of the agency.

(c) Exercise such other management oversight, decision-making and administrative action to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with and equitable enforcement of the act.

(d) Determine when appropriate and authorize enforcement alternatives set out in chapter 390-37 WAC to resolve complaints filed with the commission.

(e) Act as liaison between the commission and other public agencies.

(f) Research, develop, and draft policy positions, administrative rules, interpretations and advisory options for presentation to the commission.

(g) Enter into contracts and agreements on behalf of the commission.

(2) The executive director may delegate authority to subordinates, consistent with agency delegation of authority protocols as adopted by the commission, to act for the executive director as needed and appropriate.

(3) The executive director may perform other duties as authorized by ((~~chapter 42.17A~~)) Title 29B RCW, Title 390 WAC, or as prescribed or delegated by the commission.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-190 Definition—Agent. "Agent," as that term is used in ((~~chapter 42.17A~~)) Titles 29B RCW and ((~~Title~~)) 390 WAC, means a person, whether the authority or consent is direct or indirect, express or implied, oral or written, who:

(1) Is authorized by another to act on their behalf; or

(2) Represents and acts for another with the authority or consent of the person represented.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-192 Definition—Aggregate. The term "aggregate," as used in the act and in these rules, means, for purposes of:

(1) A candidate for state or local office subject to contribution limits under RCW ((~~42.17A.405~~)) 29B.40.020, the total amount of contributions received by the candidate, an agent of the candidate and any political committee affiliated with the candidate from the beginning of the election cycle;

(2) A candidate for local office not subject to contribution limits under RCW ((~~42.17A.405~~)) 29B.40.020 or judicial office, the total amount of contributions received by the candidate, an agent of the candidate and any political committee affiliated with the candidate from the beginning of the candidate's campaign;

(3) A bona fide political party or caucus political committee, the total amount of contributions received by the committee from January 1st of the current calendar year;

(4) A political committee, the total amount of contributions received by the committee from the date of organization;

(5) A continuing political committee, the total amount of contributions received by the committee from January 1st of the current calendar year;

(6) A contributor, the total amount of all contributions received from a person, and any person affiliated with the person, to any one candidate or political committee;

(7) A person making independent expenditures with respect to a candidate and the reporting and disclosure provisions of RCW ((~~42.17A.255, 42.17A.630, and 42.17A.320~~)) 29B.25.120, 29B.50.080, and 29B.30.050, an independent expenditure made by a person in support of a candidate that shall be added to any independent expenditure by the same person in opposition to one or more of the candidate's opponents; and, for purposes of a person making independent expenditures with respect to a ballot proposition, an independent expenditure made by a person in support of a ballot proposition that shall be added to any independent expenditure by the same person in opposition to the ballot proposition or in support of an alternative ballot proposition;

(8) The special reports required by RCW ((~~42.17A.265 and 42.17A.625~~)) 29B.25.140 and 29B.50.070, the total amount of contributions received or expenditures made by a single person or entity during the special reporting period;

(9) An employer of a registered lobbyist, the total amount of all contributions made to a political committee supporting or opposing a

candidate for state office, or to a political committee supporting or opposing a statewide ballot proposition during the preceding calendar year;

(10) The sponsor of a grass roots lobbying campaign, the total amount of contributions received since the beginning of the campaign and the total amount of expenditures made during the time frames specified in RCW ((~~42.17A.640(1)~~)) 29B.50.100(1);

(11) RCW ((~~42.17A.570~~)) 29B.45.040, the total amount of all time and demand deposits in each financial institution on December 31st;

(12) RCW ((~~42.17A.755~~)) 29B.60.020, the total amount of monetary penalty that the commission may impose for multiple violations of the act.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-200 Definition—Candidates for public office—Time of filing. The following circumstances shall give rise to presumption that an individual is a "candidate" as that term is defined in RCW ((~~42.17A.005~~)) 29B.10.090:

(1) The existence of a political committee promoting the election of such individual for public office with the knowledge and consent of that individual; or

(2) A public declaration of candidacy by an individual even if the candidacy is conditioned on a future occurrence; or

(3) Meeting the requirements set forth in WAC 390-16-230.

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

WAC 390-05-210 Definition—Contribution. (1) The term "contribution" as defined in the act and used in these rules shall be deemed to include, among other things, furnishing services, property or rights on an unequal basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution is provided, it shall be reported at its fair market value per WAC 390-05-235 and, pursuant to RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) ***Duplicating political advertising.*** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, digital, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee, is a contribution to the candidate or political committee.

(3) ***Consulting with a candidate.*** An expenditure made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a candidate, or the candidate's authorized committee or agent, is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, con-

cert, or collaboration with, or at the request or suggestion of a candidate, or the candidate's authorized committee or agent, when:

(a) Any arrangement, coordination, or direction by the candidate, or the candidate's authorized committee or agent, is given to the expending person prior to the publication, distribution (digital or otherwise), display or broadcast, of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents;

(b) An expenditure is made based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or the candidate's authorized committee or agent, with a view toward having an expenditure made;

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or

(d) An expenditure is made by or in consultation with any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, or the candidate's authorized committee or agent. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a candidate, or the candidate's authorized committee or agent, when a person performs only "ministerial functions" for two or more candidates or political committees pursuant to RCW ((~~42.17A.005~~)) 29B.10.380 and WAC 390-05-243.

(4) ***Consulting with a caucus political committee.*** An expenditure, not otherwise qualifying as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a caucus political committee or its agent, is a contribution to such caucus political committee. An expenditure is presumed to be made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a caucus political committee or its agent, when:

(a) Any arrangement, coordination, or direction by the caucus political committee, its agent, or another political committee financed, controlled or operated by the caucus, is given to the expending person prior to the publication, distribution, display, or broadcast of political advertising or electioneering communications, or prior to an expenditure being made by that person supporting that caucus political committee, or one or more of the candidates supported by it, or opposing one or more of those candidates' opponents;

(b) An expenditure is made based on information about the caucus political committee's plans, projects, or needs provided to the expending person by the caucus political committee, its agent, or another political committee financed, controlled, or operated by the caucus with a view toward having an expenditure made;

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or has been an officer of the caucus political committee or another political committee financed, controlled, or operated by the caucus; or

(d) The expenditure is made by or in consultation with any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or

has been receiving any form of campaign-related compensation or reimbursement from the caucus political committee, its agent, or another political committee financed, controlled, or operated by the caucus. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a caucus political committee or its agent, when a person performs only "ministerial functions" for two or more candidates or political committees pursuant to RCW ((~~42.17A.005~~)) 29B.10.380 and WAC 390-05-243.

(5) ***Consulting with a bona fide political party.*** An expenditure, not otherwise qualifying as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a bona fide political party or its agent, is a contribution to such bona fide political party. An expenditure is presumed to be made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a bona fide political party, when:

(a) Any arrangement, coordination or direction by the bona fide political party, its agent, or a political committee financed, controlled or operated by the party is given to the expending person prior to the publication, distribution, display, or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that bona fide political party, or one or more of the candidates supported by it, or opposing one or more of those candidates' opponents;

(b) An expenditure is made based on information about the bona fide political party's plans, projects, or needs provided to the expending person by the bona fide political party or its agent with a view toward having an expenditure made;

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or has been an officer of the bona fide political party or a political committee financed, controlled, or operated by the bona fide political party; or

(d) An expenditure is made by, through, or in consultation with, any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the bona fide political party, its agent, or a political committee financed, controlled, or operated by the bona fide political party. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of the bona fide political party, a political committee financed, controlled, or operated by a bona fide political party or their agents, when a person performs only "ministerial functions" for two or more candidates or political committees pursuant to RCW ((~~42.17A.005~~)) 29B.10.380 and WAC 390-05-243.

(6) ***Consulting with other political committees.*** An expenditure made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination, or direction by the political committee, its agent, or another political committee financed, controlled, or operated by the committee is given to the expending person prior to the publication, distribution (digital or otherwise), dis-

play, or broadcast of political advertising, or prior to an expenditure being made by that person benefiting that political committee;

(b) An expenditure is made based on information about the political committee's plans, projects, or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made;

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by, through, or in consultation with any person who, during the ((~~twelve~~)) 12 months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent, or another political committee financed, controlled, or operated by the committee. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a political committee or its agent, when a person performs only "ministerial functions" for two or more candidates or political committees pursuant to RCW ((~~42.17A.005~~)) 29B.10.380 and WAC 390-05-243.

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

WAC 390-05-215 Receipt of a campaign contribution. "Receipt" of a campaign contribution, as that term is used in the act and in these rules, shall be deemed to occur as follows:

(1) For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW ((~~42.17A.560~~)) 29B.45.020, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.

(2) For all other contributions, receipt shall be deemed to occur at the earliest date of the following:

(a) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson, or agent obtains possession of the contribution;

(b) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson, or agent is informed of the contribution, or becomes aware that the campaign, or in the case of an earmarked contribution, the intermediary or conduit has possession of the contribution; or

(c) The date that the contribution becomes available for use by the candidate or committee.

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

WAC 390-05-235 Definition—Fair market value. (1) "Fair market value" as that term is used in the act and in these rules means the amount of money which a purchaser willing, but not obliged, to buy would pay a seller willing, but not obligated, to sell, for property, goods, or services.

(2)(a) In reference to real property, "fair market value" or "value," as used in the act and in these rules is the present cash value that a well-informed buyer or lessee, willing but not obligated to buy or lease that property, would pay, and that a well-informed seller, or lessor, willing but not obligated to sell or lease it, would accept, taking into consideration all uses to which the property is adapted and might in reason be applied.

(b) If, in determining "fair market value" or "value," the amount a buyer would pay and the amount a seller would accept would be based on varying standards, then the fair market value of the contribution shall be based on the amount the contributor would ordinarily accept for selling the property, rather than the amount the candidate or political committee would ordinarily pay. For example, if a contributor who sells property in the ordinary course of their business at a wholesale price donates such property to a candidate or political committee who would ordinarily pay the retail price as a consumer, then the fair market value of the contribution shall be the wholesale price.

(3)(a) Any person who donates an item for sale, raffle, auction or awarding at a fund-raising event is making a contribution to the recipient candidate or political committee in an amount equal to the fair market value of the item donated.

(b) Any person who buys a donated item makes a contribution equal in value to the difference between the purchase or auction price and the fair market value of the donated item.

(c) If the purchase or auction price is the same as the fair market value, the buyer's contribution is zero. If the purchase or auction price is less than the fair market value, the buyer's contribution is zero and the donor's contribution is reduced to the amount of the sale or auction price.

(4) The value of any in-kind contribution donated to any candidate or political committee subject to contribution limits pursuant to RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030 shall not, when combined with other contributions to that candidate or political committee, exceed the donor's applicable contribution limit as set forth in RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030. The value of an in-kind contribution donated as an exempt contribution to a bona fide political party committee or other political committee eligible to receive exempt funds is only subject to the limit imposed by RCW ((~~42.17A.420~~)) 29B.40.070.

(5)(a) Except as provided in WAC 390-16-207, if a person permits a candidate, a candidate's authorized committee, or a political committee to use the telephones of a business, union, organization, or other entity without charge for the purpose of making local campaign-related calls, the telephone usage is an in-kind contribution and shall be valued at its fair market value or, if no fair market value is ascertainable, one dollar per telephone per calendar day or part thereof.

(b) If calls are permitted with assessed charges, the charges are also an in-kind contribution unless the candidate, the candidate's authorized committee, or the political committee reimburses the person in full within ((~~thirty~~)) 30 days of making such calls.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-243 Ministerial functions by persons holding administrative offices. As used in the act and in these rules:

(1) "Ministerial functions" means the activities and duties of an administrative office that satisfy RCW ((~~42.17A.005~~)) 29B.10.380 and require:

(a) Data entry for a candidate or political committee;

(b) Filing reports that have been reviewed and approved for filing by the candidate or political committee officer;

(c) Maintaining campaign finance and other similar records including making them available for inspection upon direction by the candidate or political committee officer;

(d) Writing and depositing checks at the direction of the candidate or political committee officer;

(e) Communications related to ministerial functions (to respond to questions about data entry, to discuss or review a candidate or committee's bank account balance, to schedule times to receive contribution checks at events, to review reports with the candidate or committee prior to filing, and similar communications) but do not involve attending strategy or campaign planning meetings or portions of meetings with candidates or political committee officers or their agents; or

(f) Other similar campaign finance activities and duties.

(2) "Administrative office" means a person performing campaign finance related clerical support or recordkeeping activities on behalf of candidates and political committees, when, for the purposes of RCW ((~~42.17A.005~~)) 29B.10.380, those activities:

(a) Are directed by the candidate or political committee officer and require performance of activities by the administrative office in a prescribed manner;

(b) Are approved by the candidate or political committee officer for whom the services are performed;

(c) Do not involve the exercise of personal judgment or discretion, including authorizing expenditures;

(d) Do not involve the disclosure, except as required by law, of any information regarding a candidate or committee's plans, projects, activities or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available, or otherwise engage in activity that is a contribution; and

(e) Do not involve the performance of functions other than ministerial functions.

(3) A person performing only ministerial functions on behalf of two or more candidates or political committees is not:

(a) Considered an agent so long as they have no authority to authorize expenditures or make decisions on behalf of the candidate or committee; or

(b) An officer pursuant to WAC 390-05-245. However, that person's name, address and title must be reported on the C-1 or C-1pc registration form.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-271 General applications of RCW ((~~42.17A.555~~)) 29B.45.010. (1) RCW ((~~42.17A.555~~)) 29B.45.010 does not restrict the right of any individual to express their own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

(2) RCW ((~~42.17A.555~~)) 29B.45.010 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-273 Definition—Normal and regular conduct. Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW ((~~42.17A.555~~)) 29B.45.010, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-275 Definition—Party organization. "Party organization," as that term is used in the act and in these rules, means a bona fide political party as defined in RCW ((~~42.17A.005~~)) 29B.10.070 and applied in WAC 390-05-210.

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

WAC 390-05-290 Political advertising definitions. (1) "Mass communication," as that term is used in the act and in these rules,

means a communication, digital or otherwise, intended to reach a large audience through any of the following methods:

(a) Advertising displays, newspaper advertising, billboards, signs;

(b) Brochures, articles, tabloids, fliers, periodicals;

(c) Radio or television presentations;

(d) Sample ballots (see WAC 390-17-030);

(e) Online or other electronic transmission methods;

(f) One hundred or more letters, emails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a ((~~thirty~~)) 30-day period; and

(g) Other mass means of disseminating political advertising, unless excluded ((~~by chapter 42.17A~~)) under Title 29B RCW or ((~~Title~~)) 390 WAC.

(2) "Online" means disseminating through a network of interconnected computers or devices, such as the internet or similar systems enabling electronic dissemination or exchange of communications. Examples include, but are not limited to, internet websites, social media, and other digital platforms, emails, and text messages.

(3) "Political advertising" as that term is defined in the act and used in these rules includes ((~~a~~)) any mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto, in a regularly published print or electronic medium, or on a radio or television broadcast, where payment for the space or time of such content is not normally required.

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

WAC 390-05-300 Suspension of reporting requirements for small jurisdictions. The following reporting requirements do not apply in jurisdictions with fewer than ((~~two thousand~~)) 2,000 registered voters, as of the date of the most recent general election in the jurisdiction:

(1) The F-1 financial reports of public officials required by RCW ((~~42.17A.700~~)) 29B.55.010 and WAC 390-24-010, 390-24-020 and 390-24-025;

(2) The L-5 public agency lobbying reports required by RCW ((~~42.17A.635~~)) 29B.50.090 and WAC 390-20-120;

(3) The C-1 through C-4 campaign finance reports required for ballot issues by RCW ((~~42.17A.205 through 42.17A.240 and 42.17A.425~~)) 29B.25.020 through 29B.25.100 and 29B.40.080, and WAC 390-16-011, 390-16-031, 390-16-036, 390-16-041, and independent campaign expenditure reports (C-6) required for ballot issues by RCW ((~~42.17A.255~~)) 29B.25.120 and WAC 390-16-050.

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

WAC 390-05-305 Petition for disclosure—Form. The registered voters of a jurisdiction where reporting requirements are suspended may petition the commission to reinstate the reporting requirements suspended in jurisdictions with fewer than ((~~two thousand~~)) 2,000 registered voters, as provided under RCW ((~~42.17A.135~~)) 29B.20.070 and this section.

(1) The commission shall reinstate the reporting requirements in a jurisdiction with fewer than ((~~two thousand~~)) 2,000 registered voters at its next regular or special meeting, if:

(a) A certified "petition for disclosure" containing the valid signatures of ((~~fifteen~~)) 15 percent of the number of registered voters of the jurisdiction as of the date of the most recent general election in the jurisdiction is filed with the commission; or

(b) The jurisdiction has by ordinance, resolution, or other official action petitioned the commission to void the suspension with respect to elected officials, candidates and ballot propositions for the jurisdiction.

(2) If reporting requirements are reinstated by petition, the commission shall promptly notify all known affected candidates and incumbent elected officials of their duty to file disclosure reports, and direct such persons to file the required statements within ((~~thirty~~)) 30 days of the commission order.

(3) A petition for disclosure shall be filed electronically using the means provided by the PDC, or if an electronic method has not been provided, the petition shall be filed on legible((~~, on~~)) 8-1/2" x 11" paper. The petition must include the following information:

(a) The name of the jurisdiction;

(b) A request that public disclosure be required;

(c) The names and addresses of all known candidates and ballot proposition committees in the jurisdiction who will be required to report;

(d) The legibly printed name and address and the legal signature of at least ((~~fifteen~~)) 15 percent of the number of registered voters in the jurisdiction as of the date of the most recent general election in the jurisdiction.

(4) The petition shall be verified and certified by the auditor or elections officer of the county or counties in which the jurisdiction is located. The signatures shall be verified by comparing the signatures on the petition to the signatures on the voter registration roll. The auditor shall place the auditor's seal on each verified page of the petition in order to certify it to the commission.

(5) A suggested form for petition is:

> "We, the undersigned citizens and registered voters of (name of jurisdiction), request that the Public Disclosure Commission order disclosure in (name of jurisdiction)."

(6) A suggested form for the petition of a jurisdiction by ordinance, resolution, or other official action is:

> "We, the (governing board) of (name of jurisdiction) request that the Public Disclosure Commission order disclosure in (name of jurisdiction). This request is made pursuant to RCW

((~~42.17A.135~~)) 29B.20.070 and WAC 390-05-305."

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the authority in RCW ((~~42.17A.125~~)) 29B.20.050 that the commission may revise the monetary contribution limits and reporting thresholds and code values of the act to reflect changes in economic conditions, the previous and current amounts are:

((~~Code~~)) RCW Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
Campaign Finance Reporting				
((~~.005(15)~~)) 29B.10.160	Limit for the value of volunteer services excluded from the definition of "Contribution"	$50 (1989)	n/a	$200
((~~.005(21)~~)) 29B.10.220	Reporting threshold for "Electioneering Communication"	$1,000 (2011)	n/a	$2,000
((~~.005(30)~~)) 29B.10.310	Reporting threshold for "Independent Expenditure"	$1,000 (2019)	n/a	$2,000
((~~.005(30)~~)) 29B.10.310	Limit for the value of volunteer campaign worker expenses exempted from threshold for "Independent Expenditure"	$250 (2018)	n/a	$350
((~~.005(46)(a)~~)) 29B.10.470	Maximum limit for qualification as a "Remediable Violation" where no contribution limit applies	$1,000 (2018)	n/a	$1,500
((~~.110(8) .135(7)~~)) 29B.20.030(8) & 29B.20.070(7)	Limit on eligibility for reporting exceptions by small campaigns ("mini reporting" pursuant to WAC 390-16-105 et seq.)	$5,000 (2010)	n/a	$7,000
((~~.207(1)(a)(i)~~)) 29B.25.030 (1)(a)(i)	Incidental committee - Threshold of expenditures for registration	$25,000 (2018)	n/a	$35,000
((~~.235(1)~~)) 29B.25.090(1)	Incidental committee - Threshold for reporting top 10 contributors	$10,000 (2018)	n/a	$15,000
((~~.235(3)(b)~~)) 29B.25.090 (3)(b)	Incidental committee - Threshold for regular monthly reporting of contributions or expenditures	$200 (2018)	n/a	$500
((~~.220(4)~~)) 29B.25.060(4)	Limit for retaining accumulated unidentified contributions	$300 (1973)	n/a	$500

((~~Code~~)) RCW Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
((~~.225(2)~~)) 29B.25.070(2)	Continuing PAC - Regular monthly campaign reports - Threshold for regular monthly reporting of contributions or expenditures	$200 (1982)	n/a	$750
((~~.235(3)(a)~~)) 29B.25.090 (3)(a)	Regular monthly campaign reports - Threshold for regular monthly reporting of contributions or expenditures - PAC	$200 (1982)	n/a	$750
((~~.230(2)~~)) 29B.25.080(2)	Contributions fund-raising - Limit on amounts eligible for special reporting of fund-raising activities	$25 - event $50 - auction (1989)	n/a	$100 (event) $150 (auction)
((~~.230(4)~~)) 29B.25.080(4)	Contributions fund-raising - Threshold for reporting identity of contributors	$50 (1989)	n/a	$150
((~~.235(5) & .240(2)~~)) 29B.25.090(5) & 29B.25.100(2)	Contributions - Threshold for required reporting identity of contributors	$25 (1982)	n/a	$100
((~~.240(2)~~)) 29B.25.100(2)	Threshold for reporting pledges	$100 (2019)	n/a	$150
((~~.240(7)~~)) 29B.25.100(7)	Threshold for reporting expenditure activity	$50 (1982)	n/a	$200
((~~.240(9)~~)) 29B.25.100(9)	Threshold for reporting source of debt	$750 (2018)	n/a	$1,000
((~~.250~~)) 29B.25.110	Out-of-state PAC - Threshold for reporting contributions	$25 - In-state (1983) $2,550 - Out-of-state (2010)	$2,680 (2016)	$100 (In-state) $4,000 (Out-of-state)
((~~.265~~)) 29B.25.140	"Last-minute contribution" - Reporting threshold (see also RCW ((~~42.17A.625~~)) 29B.50.070)	$1,000 (2001)	n/a	$1,500
((~~.255(1)~~)) 29B.25.120(1)	Independent expenditure ("not otherwise reported") - Threshold for including incidental volunteer expenses	$50 (1995)	n/a	$200
((~~.255(2)~~)) 29B.25.120(2)	Independent expenditure ("not otherwise reported") - Threshold for reporting	$100 (1973)	n/a	$1,000
((~~.255(5)~~)) 29B.25.120(5)	Independent expenditure ("not otherwise reported") - Threshold for itemized expenditures	$50 (1989)	n/a	$200

((~~Code~~)) RCW Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
((~~.260~~)) 29B.25.130	Independent expenditure (political advertising) - Threshold for reporting	$1,000 (2001)	n/a	$2,000
((~~.305~~)) 29B.30.020	Independent expenditure (electioneering communication) - Threshold for reporting the source of funding from special solicitations or other (nongeneral treasury) funds	$250 (2005)	n/a	$400
((~~.305~~)) 29B.30.020	Independent expenditure (electioneering communication) - Threshold for detailed reporting of expenditure	$100 (2005)	n/a	$200
((~~.625~~)) 29B.50.070	Threshold for lobbyists and lobbyist employers reporting making a last-minute contribution	$1,000 (2001)	n/a	$1,500
((~~.630(1)~~)) 29B.50.080(1)	Aggregate threshold for special report (C-7) by nonindividuals who make contributions or independent expenditures	$16,000/contributions per year (2010) $800/independent expenditures per year (2010)	$20,000/contributions per year $1,000/independent expenditures per year	$24,000 per year $1,200 per year
((~~.630(1)~~)) 29B.50.080(1)	Threshold for reporting compensation paid to elected officials (or family) on the C-7 special report	$800 (2010)	n/a	$1,200
Campaign Contribution Limits				
((~~.405(2)~~)) 29B.40.020(2)	Limits on contributions to candidates:			
	- Candidates for state legislative office	$800 (2010)	$1,000	$1,200
	- Candidates for county office	$800 (2010)	$1,000	$1,200
	- Candidates for other state office	$1,600 (2010)	$2,000	$2,400
	- Candidates for special purpose districts	$1,600 (2010)	$2,000	$2,400
	- Candidates for city council office	$800 (2010)	$1,000	$1,200
	- Candidates for mayoral office	$800 (2010)	$1,000	$1,200
	- Candidates for school board office	$800 (2010)	$1,000	$1,200
	- Candidates for hospital district	$800 (2010)	$1,000	$1,200
((~~.410(1)~~)) 29B.40.030(1)	- Candidates for judicial office	$1,600 (2010)	$2,000	$2,400
((~~.405(4)~~)) 29B.40.020(4)	State and local party and caucus committee limits on contributions to a candidate:			
	- State parties and caucus committee	$0.80 × per registered voter (2010)	$1.00 per registered voter	$1.20 per registered voter

((~~Code~~)) RCW Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
	- County and legislative district parties	$0.40 × per registered voter (2010)	$0.50 per registered voter	$0.60 per registered voter
	- Limit on aggregate of all county and legislative district parties to a candidate	$0.40 × per registered voter (2010)	$0.50 per registered voter	$0.60 per registered voter
((~~.405(7)~~)) 29B.40.020(7)	Limits to political parties and caucus committees:			
	- To caucus committee	$800 (2010)	$1,000	$1,200
	- To political party	$4,000 (2010)	$5,500	$6,000
((~~.405(3)~~)) 29B.40.020(3)	Recall - Limits to state or local official or to PAC supporting recall:			
	- State legislative office and local office	$800 (2010)	$1,000	$1,200
	- Other (nonlegislative) state office and port district	$1,600 (2010)	$2,000	$2,400
((~~.405(5)~~)) 29B.40.020(5)	Recall - Limits for political parties and caucus committees to state or local officials or to PACs supporting recall:			
	- State parties and caucuses	$0.80 × per registered voter (2010)	$1.00 per registered voter	$1.20 per registered voter
	- County and legislative district parties	$0.40 × per registered voter (2010)	$0.50 per registered voter	$0.60 per registered voter
	- Limit for all county and legislative district parties to state official up for recall or political committee supporting recall	$0.40 × per registered voter (2010)	$0.50 per registered voter	$0.60 per registered voter
((~~.405(12)~~)) 29B.40.020(12)	Threshold for contributions by political committees to be eligible to make a contribution	$10 (from 10 persons) (1993)	n/a	$25 (from 10 persons)
((~~.420~~)) 29B.40.070	Limits on large contributions:			
	- Statewide office	$50,000 - (2010)	n/a	$75,000
	- Other (nonstatewide) office	$5,000 - other (2010)	n/a	$7,500
((~~.442~~)) 29B.40.120	Threshold for one political committee to be eligible to make a contribution to another political committee	$10 (from 10 persons) (2011)	n/a	$25 (from 10 persons)
((~~.445(3)~~)) 29B.40.130(3)	Maximum limit for reimbursement of candidate loan to own campaign	$4,700 (2010)	$6,000	$7,500
((~~.475~~)) 29B.40.190	Contribution must be made by written instrument	$100 (2019)	n/a	$100

((~~Code~~)) RCW Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
((~~.600 - .640~~)) 29B.50.010 through 29B.50.100	Lobbying disclosure and restrictions - See WAC 390-20-150			
((~~.710~~)) 29B.55.030	Code values for statement of personal financial affairs - See WAC 390-24-301			

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-500 Definition—Debate or forum. "Debate or forum" means qualifying events under RCW ((~~42.17A.005~~)) 29B.10.220 where candidates are invited based upon predefined objective criteria, including where only one candidate in an uncontested race participates.

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

WAC 390-05-515 Exclusion from contributions, independent expenditures, and electioneering communications—Communications within membership organizations. (1) In determining whether an organization's political communications are limited to its "members" for purposes of communications that are excluded from the definitions of a contribution, independent expenditure, or electioneering communication, as provided ((~~in RCW 42.17A.005~~)) within chapter 29B.10 RCW of the act and used in these rules, the commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and formal organizing documents, membership criteria, and services it provides its members. An organization will not be considered a membership organization if it is primarily a commercial entity or for-profit entity selling products to customers even though it may refer to its customers as "members."

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account:

(a) Whether the members affirmatively accept membership;

(b) The rights and obligations conferred on members by the organization, including whether members have the right to vote for:

(i) Election of directors or officers;

(ii) Changes to the articles or bylaws; or

(iii) The disposition of all or substantially all of the assets of the organization or on a merger or dissolution; and

(c) A required payment of a predetermined amount of membership dues.

(3) If an organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134 (e)-(g),

the commission will consider these FEC criteria as indicators of legitimate membership organizations or valid members.

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider whether any distribution to nonmembers is incidental and isolated.

AMENDATORY SECTION (Amending WSR 19-08-092, filed 4/3/19, effective 5/4/19)

WAC 390-05-521 Definition—Payments received by incidental committees. (1) Except as provided in subsection (2) of this section for the purpose of reporting the top ((~~ten~~)) 10 largest sources of payments to an incidental committee, pursuant to RCW ((~~42.17A.235~~)) 29B.25.090, a "payment" means any monetary transfer or in-kind value accepted by the incidental committee, regardless of the donative intent or benefit received by the person making the transfer.

(2) A "payment" does not include:

(a) A source of funding the nonprofit organization is legally bound and explicitly prohibited from using for the purpose of supporting or opposing a candidate or ballot proposition campaign; or

(b) The fair market appreciation of assets held by an incidental committee such as in an investment account, including a brokerage account, and the sale or transfer of such assets from the account to the incidental committee.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-522 Definition—Place of business. "A place of business in the state of Washington" as that term is used in reference to out-of-state political committees in RCW ((~~42.17A.250~~)) 29B.25.110 (1)(f) means the business is headquartered in or has a primary place of business in Washington state.

For example, if a national corporation headquartered outside of Washington state has retail outlets in Washington and that national corporation contributes ((~~two hundred fifty dollars~~)) $250 to an out-of-state political committee that is subject to reporting under RCW ((~~42.17A.250~~)) 29B.25.110, the out-of-state committee is not required to disclose the national corporation as a contributor under RCW ((~~42.17A.250~~)) 29B.25.110 (1)(f).

AMENDATORY SECTION (Amending WSR 19-08-092, filed 4/3/19, effective 5/4/19)

WAC 390-05-535 Definition—Nonprofit organization within the meaning of incidental committee. A "nonprofit organization," as the term is used in the definition of "incidental committee" in RCW ((~~42.17A.005~~)) 29B.10.290, means an entity that meets one or more of the following criteria:

(1) An entity that is exempt from income tax under Title 26 U.S.C. Sec. 501(c) of the federal Internal Revenue Code;

(2) An organization, association or corporation whose income is not paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state; or

(3) A limited partnership or limited liability company where an entity described in subsection (1) or (2) of this section is a general partner or managing member, respectively.

RDS-6736.1

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-14-011 Purpose of this chapter—To implement the Public Records Act and describe the commission. (1) The purpose of chapter 390-14 WAC is to establish the commission's procedures to provide full access to its public records and to implement the provisions of the Public Records Act under chapter 42.56 RCW for the commission.

(2) The commission implements and enforces ((~~chapter 42.17A~~)) Title 29B RCW, the laws governing campaign finance, lobbying, reporting by public treasurers, and personal financial affairs disclosures. A description of the commission organization, general operations and procedures is under chapter 390-12 WAC. More information is located on its website at www.pdc.wa.gov. The commission does not implement or enforce the Public Records Act for other public agencies.

(3) If you wish to obtain general information or copies of records, you do not need to submit a formal public records request. You will often find such information on the commission's website, or you may make an informal routine inquiry by contacting the commission office.

(a) The commission is a disclosure agency. The commission is required to operate a website. Therefore, the commission routinely places numerous categories of records on its website. You are strongly encouraged to review the website prior to making a public records request. The website provides records and other information that can be viewed at no cost, including: The agency's organizational chart; contact information; statutes; rules and rule-making activity; final orders; enforcement case information and records; declaratory orders; interpretive statements; external policies; manuals; fact books; brochures; videos; commission meeting agendas, materials, and minutes; strategic plans; reports; campaign finance data, reports, and forms; lobbying data, reports and forms; other forms and reports; news releases; and, filer information. Information on the website is updated regularly.

(b) You may also contact the commission office to make an informal routine inquiry for a record.

(i) For example, informal routine inquiries generally seek a particular form, brochure, manual, report, lobbyist directory, or other similar readily available record specifically filed or created for the public under ((~~chapter 42.17A~~)) Title 29B RCW and they can often be responded to on the same or next business day by providing the record. Informal routine inquiries do not seek a record that includes any exempt information, require any clarification, require providing records in installments, or require a search of different types of agency records or records sent to storage. In addition, informal routine inquiries do not provide any fair notice that the inquiry is a formal public records request submitted under the Public Records Act under chapter 42.56 RCW.

(ii) If your informal routine inquiry concerns a record or information on the commission's website, agency staff may direct you to its online location.

(iii) Informal routine inquiries are not subject to the time periods or other procedures in the Public Records Act.

(4) If you want to make a formal request for a record under the Public Records Act, see WAC 390-14-025.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-14-026 Access goals to campaign and lobbying reports. The commission sets the following goals for access to all reports, copies or reports, or copies of data or information included in reports, filed under RCW ((~~42.17A.205, 42.17A.225, 42.17A.235, 42.17A.255, 42.17A.265, 42.17A.600, 42.17A.615, 42.17A.625, and 42.17A.630~~)) 29B.25.020, 29B.25.070, 29B.25.090, 29B.25.120, 29B.25.140, 29B.50.010, 29B.50.050, 29B.50.070, and 29B.50.080.

(1) In January of 2001, when reports are filed with the commission, staff will endeavor to make the report available as follows:

(a) Submitted by electronic means:

(i) Available in the commission office within two business days and;

(ii) Available on the commission website within four business days.

(b) Submitted on paper:

(i) Available in the commission office within four business days and;

(ii) Available on the commission website within seven business days.

(2) In January of 2002, when reports are filed with the commission, staff will endeavor to make the report available as follows:

(a) Submitted by electronic means available in the commission office and on the commission website within two business days and;

(b) Submitted by paper, available in the commission office and on the commission website within four business days.

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-14-035 What records are exempt from public inspection and copying? (1) The public records officer may redact information from any record prior to permitting public inspection or copying if the information is exempt from disclosure according to RCW 42.56.210, another section of chapter 42.56 RCW or other applicable law. After such information is redacted, the remainder of the record may be made available. It is possible a record may be withheld in its entirety.

(2) If the agency denies all or part of your request, you will be provided a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(3) Examples of exemptions that the agency may cite include, but are not limited to: Records related to a pending investigation (RCW 42.56.240(1)); records protected by the attorney client privilege or attorney work product (RCW 42.56.290 and 5.60.060); personal information in any files maintained for employees, appointees or elected officials to the extent that disclosure would violate their right to privacy (RCW 42.56.230); and bank account, credit card or similar numbers (RCW 42.56.230).

(4) During the course of any investigation, records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.56.240(1), until the investigation is completed. See WAC 390-37-060(4).

(5) If you make a request for a record that implicates the privacy of an individual as defined in RCW 42.56.050, the agency may provide written notice of the request to allow the individual to request a protective order from a court under chapter 42.56 RCW.

(6) The commission is required by law to return certain documents provided to the commission by candidates, campaigns, or political committees within one week of the completion of an audit or field investigation; therefore, those records may not be in the agency's possession if a records request is made after that time. See RCW ((~~42.17A.105~~)) 29B.20.020.

(7) The agency is prohibited by RCW 42.56.070 from disclosing lists of individuals for commercial purposes. If you request such records you may be required to sign an affidavit attesting that you will not use those records for commercial purposes.

(8) The commission may, in its discretion, release requested records despite the applicability of exemptions, if it determines that it is in the public interest and that the rights of third parties will not be prejudiced. This provision does not apply to releases of lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-14-100 List of elected public officials. (1) The public disclosure commission shall prepare a list of all state elected officials of the state of Washington. The list shall be updated annually by January 15th.

(2) The list shall contain the names of those entities that are reported by state elected officials and successful candidates for state office pursuant to RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g).

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-14-110 List of elected public officials—Name not on list, impact. (1) The commission has as part of its authority the power to suspend or modify reporting requirements of chapter ((~~42.17A~~)) 29B.20 RCW, if it finds after hearing that literal application of the act would work a manifestly unreasonable hardship and suspension or modification will not frustrate the purposes of the act.

(2) The commission shall presume it is a manifestly unreasonable hardship for a lobbyist employer or other person filing PDC Form C-7 pursuant to RCW ((~~42.17A.630~~)) 29B.50.080 to report the compensation paid to a state elected official, a successful candidate for state office, an immediate family member of a state elected official or successful candidate for state office, or a corporation, partnership, joint venture, association, union or other entity in which one of these individuals holds any office, directorship, general partnership interest, or an ownership interest of ((~~ten~~)) 10 percent or more, if:

(a) The name of such official, candidate, family member or entity does not appear on the most recent list of state elected officials prepared by the commission pursuant to WAC 390-14-100; and

(b) The lobbyist employer or other filer does not have actual knowledge of compensation being paid to such official, candidate, family member or entity.

RDS-6737.1

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

WAC 390-16-001 Campaign finance disclosure. Pursuant to chapter ((~~42.17A~~)) 29B.25 RCW, candidates, political committees, and other persons participating in elections are subject to reporting requirements with the public disclosure commission. This chapter provides information on how to meet those requirements. To provide the public with full and immediate disclosure, electronic filing is required where the commission has provided an electronic filing method. The executive director may waive the electronic filing requirement and allow for the use of another written format based on a filer's lack of technological ability to file electronically. Links to electronic filing systems, forms and the instructions for filing can be found on the PDC website.

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

WAC 390-16-011A Sponsored political committee. (1) "Sponsored political committees," "sponsors of political committees," and "authorized committees," as those terms are used in the act and these rules, are defined in chapter 29B.10 RCW ((~~42.17A.005~~)). This rule applies to political committees that are not authorized by a candidate, or by the public official against whom recall charges have been filed.

(2) A sponsored political committee must include on its C-1pc the name of at least one sponsor in the committee's name.

(3) For purposes of determining whether a political committee is sponsored, as defined in chapter 29B.10 RCW ((~~42.17A.005~~)), by having received ((~~eighty~~)) 80 percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders, the political committee organized to support or oppose a particular candidate or ballot proposition must consider all contributions received by the committee in the previous ((~~twelve~~)) 12 months.

(4) A sponsored political committee must amend its C-1pc ((~~sixty~~)) 60 days before an election in which it participates if the committee's name on its most recently filed C-1pc does not include at least one current sponsor. To determine if the committee received ((~~eighty~~)) 80 percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders at the time of the amendment:

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition must consider all contributions received in the previous ((~~twelve~~)) 12 months through the date of filing the amended C-1pc.

(b) A committee organized to support or oppose a particular candidate or ballot proposition must consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-013 Incidental committees—Registration and reporting requirements and method for reporting. (1) Chapter ((~~42.17A~~)) 29B.25 RCW requires the disclosure of monetary and in-kind contributions and expenditures by nonprofit organizations that participate significantly in candidate and ballot proposition campaigns in Washington state. Nonprofit organizations that make contributions or expenditures in Washington elections above specified thresholds, and are not otherwise defined under the law as political committees, must file organizational statements with the PDC and disclose certain contributors, regardless of the organization's primary purpose. These are referred to in the law as "incidental committees." To be an incidental committee, triggering the requirements to file a statement of organization with the PDC and then file the required disclosure reports, an organization must expect to make contributions or expenditures of at least $35,000 in a calendar year for an election campaign and receive a payment of at least $15,000 from a single source.

(2) The official form for providing the statement of organization by incidental committees as required by RCW ((~~42.17A.207~~)) 29B.25.030 is designated the incidental committee registration report, or "C-1-IC."

(3) The official form for reporting top 10 payments and expenditures by incidental committees as required under RCW ((~~42.17A.240~~)) 29B.25.100 is designated the incidental committee payments and political expenditures report, or "C-8."

(4) These reporting forms must be filed electronically when the PDC has provided an electronic method to do so. Until an electronic method is provided, the reporting forms should be downloaded from the PDC's website, www.pdc.wa.gov, or obtained at the PDC office, in Olympia, Washington, and submitted by postal mail or hand delivery. The executive director may make exceptions on a case-by-case basis for an incidental committee that lacks the technological ability to file reports electronically.

(5) For purposes of determining whether a nonprofit organization has the expectation of making contributions or expenditures aggregating at least $35,000 in a calendar year that then triggers the reporting requirements:

(a) Contributions include any monetary or in-kind contributions made to a political committee, including a political committee that the nonprofit organization sponsors; and

(b) Contributions do not include contributions made to an out-of-state political committee, unless the contribution is earmarked or otherwise designated specifically for any in-state election campaign or political committee.

(6) The sources of the top 10 largest cumulative payments of $15,000 or greater, as required to be reported on the C-8 report, must include:

(a) The top 10 sources of payments within the current calendar year through the applicable reporting period, including any changes to the top 10 sources from the previous reporting period; and

(b) The total cumulative payment value, within the current calendar year through the applicable reporting period, made from a person who is reported on the current report as a source of a top 10 payment.

(7) For purposes of reporting the sources of the top 10 largest cumulative payments of $15,000 or greater, for payments received from multiple persons in an aggregated form, only a payment of more than $15,000 from any single person must be reported, but not the aggregated payment to the nonprofit organization itself or through any intermediary aggregated payment.

(8) An incidental committee may request a modification or suspension of reporting requirements in cases of manifestly unreasonable hardship pursuant to RCW ((~~42.17A.120~~)) 29B.20.040, as set forth in chapter 390-28 WAC.

(9) Each incidental committee is automatically dissolved at the end of the calendar year in which it was registered, or upon completion of all reporting requirements for that year, whichever is later. Dissolution does not absolve the nonprofit organization that registered as an incidental committee from responsibility for any obligations resulting from a finding before or after dissolution of a violation committed prior to dissolution. Dissolution in this context refers only to the termination of an incidental committee created to fulfill the nonprofit's reporting responsibilities under chapter ((~~42.17A~~)) 29B.25 RCW, and is not intended to affect the legal status of the nonprofit organization itself.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-031 Statement of contributions deposit. The official form for statement of contributions deposit, as required by RCW ((~~42.17A.235~~)) 29B.25.090, is designated "C-3."

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-032 Auction report. The official form for reporting items donated and sold at auctions, as required by RCW ((~~42.17A.240(2)~~)) 29B.25.100(2), is designated "Attachment Au." This attachment shall accompany each C-3 which reports the receipt of funds from an auction.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-033 Earmarked contributions—How to report. The official form for reporting the details surrounding an earmarked contribution, as required by RCW ((~~42.17A.270~~)) 29B.25.150, is designated "Special Report E." This report shall be filed within two business days of receiving a contribution earmarked for another candidate or committee.

AMENDATORY SECTION (Amending WSR 23-07-004, filed 3/1/23, effective 4/1/23)

WAC 390-16-034 Additional contribution reporting requirements. Pursuant to RCW ((~~42.17A.240~~)) 29B.25.100, each report required under RCW ((~~42.17A.235~~)) 29B.25.090 shall disclose, in addition to the name and address of each person who has made one or more contributions in the aggregate amount of more than $250, their occupation, and the name and location (city and state) of their employer.

AMENDATORY SECTION (Amending WSR 24-12-019, filed 5/24/24, effective 6/24/24)

WAC 390-16-037 Purpose of campaign expenditures—How to report. (1) Any person required to report the "purpose" of an expenditure under RCW ((~~42.17A.240(6), or 42.17A.255 (5)(b)~~)) 29B.25.100(6), or 29B.25.120 (5)(b), must identify any candidate(s) or ballot proposition(s) that are supported or opposed by the expenditure as required to be filed under RCW ((~~42.17A.205 (2)(f) and (g)~~)) 29B.25.020 (2)(f) and (g);

(2) Whenever an expenditure is made to a candidate or a political committee pursuant to an agreement or understanding of any kind re-

garding how the recipient will use the expenditure, the report must describe in detail that agreement or understanding and the goods and/or services to be provided.

Example A: If an expenditure is made directly to a vendor for get-out-the-vote (GOTV) phone calls or robocalls, the purpose must include the following details:

Vendor Name	Purpose	Amount
ABC Robocall	GOTV—phone bank 28th and 29th Legislative districts	$1,000

Example B: If an expenditure is made directly to a vendor for printing, the purpose must include the following details:

Vendor Name	Purpose	Amount
ABC Printing	5,000 brochures	$3,000

(3) Any expenditure using "synthetic media," as defined under RCW ((~~42.62.020~~)) 29B.35.010, in the creation or distribution of any political advertising or other expenditure, must identify:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising, if any; and

(c) The description of any audience targeting information provided as a service for any digital communication by a digital communication platform, or other vendor.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-039 Total contributions and expenditures—How to report. (1) A continuing political committee which is not organized to support or oppose a particular candidate or ballot proposition shall report total contributions and expenditures based on a calendar year, or upon the basis of a fiscal year if the commission expressly authorizes this method. The report filed by such a continuing political committee covering January (or the first month thereafter for which a report would be required by RCW ((~~42.17A.225 and 42.17A.235~~)) 29B.25.070 and 29B.25.090) shall contain in summary the following items remaining at the end of the year:

(a) Funds on hand;

(b) The total of outstanding pledges;

(c) Unpaid loans and outstanding obligations;

(d) Pledges given to others but not yet paid.

(2) Each candidate, each political committee and each continuing political committee organized to support or oppose a particular candidate or ballot proposition shall report total contributions and expenditures for the period beginning at the time the person becomes a candidate or when the committee is organized, whichever is earlier, and ending when the candidacy or committee is terminated.

(3) This rule shall not require a report unless such report would otherwise be required by ((~~chapter 42.17A~~)) Title 29B RCW.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-042 Debts and obligations—Contingent liabilities—How to report. (1) ((~~Pursuant to RCW 42.17A.240 and 42.17A.005~~)) As used in chapter 29B.10 RCW and RCW 29B.25.100, "promise," "promise to pay," "debt" and "obligations" mean:

(a) Any oral or written order or agreement placed for goods, services, or anything else of value;

(b) Any offer to purchase advertising space, broadcast time, or other written, broadcast, or digital advertising-related product or service;

(c) Any contractual contingent liability; or

(d) Provided that the amount of the debt or obligation in (a), (b), or (c) of this subsection owed to a vendor is more than $1,000, and the vendor has not been paid in full for the goods received, invoices submitted, or services performed within the time periods specified below:

(i) For reports due within 30 days of an election, debts or obligations of more than $1,000 must be reported if the debt or obligation has been outstanding for more than five business days as of the last day of the reporting period.

(ii) For reports due during any other reporting period, debts or obligations of more than $1,000 must be reported if the debt or obligation has been outstanding for more than 10 business days as of the last day of the reporting period.

(2) A contractual contingent liability (e.g., an additional fee to be paid to a political consultant or other person conditioned upon the candidate winning the election) is reportable as a debt or obligation from the time the contract or agreement is entered into until the liability is voided, paid or otherwise satisfied.

(3) Regularly recurring expenditures, of the same type and same or similar amount that have been reported at least once, need not be reported as debt unless they are past due as of the last day of the reporting period. Examples of recurring obligations that can be reported as recurring expenditures rather than debt include rent, utilities, insurance, cellular phone costs, and payments to campaign staff.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-043 Candidates and political committees—Public inspection of books of account. (1) RCW ((~~42.17A.005~~)) 29B.10.080 defines "books of account" for candidates and political committees as "a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day."

(2) RCW ((~~42.17A.225 and 42.17A.235~~)) 29B.25.070 and 29B.25.090 require that candidates and political committees participating in an election as defined in RCW ((~~42.17A.005~~)) 29B.10.190, must make their books of account available for public inspection. The public inspection of books of account is not intended to be an exhaustive audit of all contributions received and expenditures made.

(3) Any individual who requests to publicly inspect the books of account of a candidate or political committee, must make the request during the period beginning 10 calendar days before a primary, general, or special election, by contacting the filer's email address listed on the C-1 report for a candidate, or the C-1pc report for a political committee.

(4) The inspection of the books of account may occur on weekdays, unless the treasurer for the candidate or committee agrees otherwise, beginning on the eighth day before the election, excluding legal holidays, for at least two consecutive hours between 9:00 a.m. and 5:00 p.m. at a location that is agreed upon by the treasurer and the individual requesting the inspection. If the treasurer and requestor are unable to agree on a location and the treasurer has not provided digital access to the books of account, the default location for an appointment must be a place of public accommodation selected by the treasurer within a reasonable distance from the treasurer's office. However, if the treasurer is located out-of-state, the default location must be within the state of Washington and reasonably accessible to both parties. The inspection must be allowed within 48 hours of the date and time the request was made at the agreed-upon location, provided that if the request is not made by 3:00 p.m. on the third day preceding an election, the candidate or political committee need only make best efforts to accommodate the request.

(5) The treasurer for the candidate or committee may make the books of account available electronically, in lieu of scheduling an in-person inspection, or if a location cannot be agreed upon by both parties. If the campaign's only copy of its books of account is maintained electronically with security protections, the person requesting the inspection must be given sufficient instruction to allow the inspection to proceed.

(6) The books of account, ledger and other supporting documentation must be maintained by the treasurer and kept current within one business day. The books of account of a candidate or political committee include the following: A ledger, spreadsheet, or similar listing of contributions, expenditures, loans, debts and obligations to substantiate the information disclosed on the PDC campaign finance reports. The books of account must include the underlying source documents such as receipts, invoices, copies of contribution checks, copies of canceled checks for expenditures, digital transactions, notes, or other documentation concerning expenditures, orders placed, and loans. The campaign or committee is not required to provide the name and address of contributors who gave $100 or less in the aggregate in total contributions.

(7) The candidate or political committee is not required to make copies of its books of account for the requestor. Videorecording, photographing, or photocopying of the records is not required to be permitted but may be agreed to by both parties during or in advance of the inspection.

(8) At the time of making the appointment, the person requesting to inspect the books of account must provide the name(s) and contact information for all individuals who will be in attendance for the inspection. The requestor(s) must show photo identification prior to the inspection beginning, and the candidate or political committee may deny the inspection from occurring if photo identification is not provided.

(9) The records required by this section must be available for audit or examination by the PDC at any time upon request from the PDC.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-049 Out-of-state political committees. (1) RCW ((~~42.17A.250~~)) 29B.25.110 governs campaign reporting in Washington state by committees located outside of Washington. The committee begins reporting when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) of this subsection must be satisfied:

(a) **Out-of-state.** First, the committee must be located out-of-state. It must maintain its office or headquarters in another U.S. state or the District of Columbia, and have no office, street address or corporate registered agent in Washington state. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington state, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational purpose and campaign activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and

(iii) Have spent less than ((~~twenty~~)) 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria in subsection (2) of this section shall file as an in-state committee under ((~~chapter 42.17A~~)) Title 29B RCW, including RCW ((~~42.17A.205 through 42.17A.240~~)) 29B.25.020 through 29B.25.100.

(4) Out-of-state political committees reporting under RCW ((~~42.17A.250~~)) 29B.25.110 are also subject to reporting pursuant to RCW ((~~42.17A.260~~)) 29B.25.130 (political advertising independent expenditures) and RCW ((~~42.17A.305 through 42.17A.315~~)) 29B.30.020 through 29B.30.040 (electioneering communications).

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees. The official form for the report required by RCW ((~~42.17A.250~~)) 29B.25.110 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state, that is not otherwise required to report under RCW ((~~42.17A.205 through 42.17A.240~~)) 29B.25.010 through 29B.25.100, is designated "C-5."

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-058 Independent expenditure—Definition and application. (1) "Independent expenditure," as that term is used in ((~~chapter 42.17A~~)) Title 29B RCW, other than RCW ((~~42.17A.255~~)) 29B.25.120, and as used in these rules, means an "expenditure" as defined in RCW ((~~42.17A.005~~)) 29B.10.310 that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for public office subject to the filing requirements in ((~~chapter 42.17A~~)) Title 29B RCW, by a person who is not:

(i) A candidate for that office;

(ii) An authorized committee of that candidate for that office;

(iii) A person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office.

(b) It is made in support of any or in opposition to a candidate for office by a person with whom the candidate has not collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(c) The expenditure pays in whole or in part for any political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name;

(d) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of $2,000 or more. A series of expenditures, each of which is under $2,000, constitutes one independent expenditure if their cumulative value is $2,000 or more; and

(e) The expenditure is not a contribution as defined in RCW ((~~42.17A.005~~)) 29B.10.310 and provided in WAC 390-05-210.

(2) Exempt activities. The following activities are not considered independent expenditures for purposes of RCW ((~~42.17A.255, 42.17A.630, or 42.17A.320~~)) 29B.25.120, 29B.50.080, or 29B.30.050:

(a) Ordinary home hospitality;

(b) A news item, feature, commentary, or editorial, or communications with journalists or editorial staff designed to elicit the same, in a regularly scheduled news medium that is of interest to the public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(c) Participation in the creation of a publicly funded voters' pamphlet statement in written or video form;

(d) An internal political communication primarily limited to:

(i) The members of or contributors to a political party organization or political committee;

(ii) The officers, management staff, or stockholders of a corporation or similar enterprise; or

(iii) The members of a labor organization or other membership organization.

(e) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or the property oc-

cupied by a person. However, a facility used for such political advertising for which a rental charge is normally assessed must be reported as an in-kind contribution at its fair market value and counts toward any applicable contribution limit of the person providing the facility; or

(f) The rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of $350 personally paid by the worker.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-059 Electioneering communication reporting threshold. (1) A "sponsor" of an electioneering communication is defined in RCW ((~~42.17A.005~~)) 29B.10.220.

(2) For the purposes of RCW ((~~42.17A.005~~)) 29B.10.220, an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

(a) Identifies the same candidate in one or more communications satisfying RCW ((~~42.17A.005 (21)(a)(i) and (ii)~~)) 29B.10.220 or these rules;

(b) Is made by the same sponsor of one or more of the communications;

(c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the 60 days before an election, has a fair market or aggregate value of $2,000 or more; and

(d) Is not a communication excluded from the meaning of "expenditure" under RCW ((~~42.17A.005~~)) 29B.10.230 or by these rules.

(3) When the communications (including radio, television, electronic, mailings, billboards, newspapers, online, or periodicals) reach the $2,000 threshold, the sponsor must report to the commission as required by RCW ((~~42.17A.305~~)) 29B.30.020 within 24 hours of, or on the first working day after, the date the communication is first broadcast, transmitted electronically, erected, distributed, published online or by other media, or otherwise presented to the public.

(4) Once the $2,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW ((~~42.17A.305~~)) 29B.30.020 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the $2,000 threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of the PDC C-6 Report, a prorated portion of independent expenditure and electioneering communications expenditures must be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration must be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-060 Independent expenditures and electioneering communications—How to report. The official form for reports of independent expenditures and electioneering communications as required by RCW ((~~42.17A.255, 42.17A.260 and 42.17A.305~~)) 29B.25.120, 29B.25.130, and 29B.30.020 is designated "C-6."

AMENDATORY SECTION (Amending WSR 24-12-019, filed 5/24/24, effective 6/24/24)

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW ((~~42.17A.255~~)) 29B.25.120 requires a person not otherwise subject to the disclosure requirements of ((~~chapter 42.17A~~)) Title 29B RCW to disclose an independent expenditure of $1,000 or more that supports or opposes a candidate or ballot measure. RCW ((~~42.17A.260~~)) 29B.25.130 requires the disclosure of political advertising with a fair market value of $2,000 or more that is presented to the public within 21 days of an election, that supports or opposes a ballot proposition, or that qualifies as an independent expenditure and supports or opposes a candidate.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of $3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is $2,400 (75%) and the candidate's pro rata share is $800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs $2,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW ((~~42.17A.260~~)) 29B.25.130 because the sum of the pro rata share for the two candidates who seek the same office is $2,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed, including the amounts attributable

to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a)(i) and (ii) of this section to determine when an independent expenditure as defined in RCW ((~~42.17A.005~~)) 29B.10.310 must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW ((~~42.17A.320~~)) 29B.30.050 and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW ((~~42.17A.225, 42.17A.235 and 42.17A.240~~)) 29B.25.070, 29B.25.090, and 29B.25.100 is exempt from providing on a C-6 form the sources of any funds received by the committee for an electioneering communication, unless the committee received funds that were earmarked or otherwise designated for the communication.

(3) An out-of-state political committee must report pursuant to RCW ((~~42.17A.305~~)) 29B.30.020 if it sponsors an electioneering communication as defined in RCW ((~~42.17A.005~~)) 29B.10.220.

(4) The sponsor of an electioneering communication must report pursuant to RCW ((~~42.17A.305~~)) 29B.30.020 and these rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW ((~~42.17A.005 or 42.17A.255~~)) 29B.10.310 or 29B.25.120. Persons in compliance with this subsection are deemed in compliance with RCW ((~~42.17A.255 or 42.17A.260~~)) 29B.25.120 or 29B.25.130.

(5) Any person making an expenditure that is reportable under RCW ((~~42.17A.640~~)) 29B.50.100, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW ((~~42.17A.005~~)) 29B.10.220, must also file pursuant to RCW ((~~42.17A.305~~)) 29B.30.020 and these rules regarding electioneering communications. The report filed pursuant to RCW ((~~42.17A.305~~)) 29B.30.020 must identify the grass roots campaign.

(6) In addition to any other reporting requirements on the C-6 form, any political advertising that supports or opposes a ballot proposition or that supports or opposes a candidate and qualifies as an independent expenditure, or any electioneering communication, must identify any "synthetic media," as defined under RCW ((~~42.62.020~~)) 29B.35.010, that was used in the advertising or communication, and further report:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising or communication, if any; and

(c) The description of any audience targeting information provided for any digital communication by a digital communication platform, or other vendor.

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

WAC 390-16-071 Annual report of major contributors and persons making independent expenditures. RCW ((~~42.17A.630~~)) 29B.50.080 requires that:

(1) Any person, other than an individual, must file with the commission an annual "Special Political Expenditures" report, if the person:

(a) Made contributions to any state office candidates or statewide ballot proposition committees totaling more than the aggregate amount during the preceding calendar year for contributions referenced in WAC 390-05-400; or

(b) Made independent expenditures regarding state office candidates and statewide ballot propositions totaling more than the aggregate amount during the preceding calendar year for independent expenditures on political advertising, referenced in WAC 390-05-400.

(2) The report is not required of a lobbyist employer filing an annual L-3 report pursuant to RCW ((~~42.17A.630~~)) 29B.50.080 or of a candidate's authorized committee or a political committee, provided the information has been properly reported pursuant to RCW ((~~42.17A.235 and 42.17A.240~~)) 29B.25.090 and 29B.25.100.

(3) The "Special Political Expenditures" report is designated "C-7."

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-105 Mini campaign reporting—Eligibility. (1) A candidate or candidate's authorized committee, as those terms are defined in the act and these rules, is not required to comply with the provisions of RCW ((~~42.17A.225 through 42.17A.240~~)) 29B.25.070 through 29B.25.100, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed $7,000; and

(b) No contribution or contributions from any person other than the candidate exceed $500 in the aggregate. However, a bona fide political party may pay the candidate's filing fee provided by law without that payment disqualifying that candidate from eligibility under this section.

(2) A political committee, as that term is defined in RCW ((~~42.17A.005~~)) 29B.10.420, is not required to comply with the provisions of RCW ((~~42.17A.225 through 42.17A.240~~)) 29B.25.070 through 29B.25.100, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures exceed $7,000; and

(b) No contribution or contributions from any person exceed $500 in the aggregate.

(3) A continuing political committee, as that term is defined in the act and these rules, is not required to comply with the provisions of RCW ((~~42.17A.225 through 42.17A.240~~)) 29B.25.070 through 29B.25.100, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini report-

ing option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures during a calendar year exceed $7,000; and

(b) No contribution or contributions from any person exceed $500 in the aggregate.

(4) A candidate or political committee that exceeds one or both of the thresholds set out in either subsection (1), (2), or (3) of this section after registering as a mini reporting campaign will no longer qualify for the mini reporting option and must comply with the provisions of ((~~chapter 42.17A~~)) Title 29B RCW including, but not limited to, disclosure of contributions and expenditures, disclosure of last minute contributions, applicable contribution limits, false political advertising, sponsor identification, and public inspection of campaign books of account.

(5) Candidates and political committees eligible for mini campaign reporting are required to comply with all applicable provisions of ((~~chapter 42.17A~~)) Title 29B RCW including, but not limited to, false political advertising, sponsor identification, and public inspection of campaign books of account unless specifically exempted under subsections (1) through (3) of this section.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-111 Mini campaign reporting—Special fund-raising events. The term "any person" as used in WAC 390-16-105 does not mean a fund-raising activity conducted pursuant to RCW ((~~42.17A.225~~)) 29B.25.070. Candidates and committees using mini reporting as permitted under WAC 390-16-105 shall not be limited to receiving ((~~five hundred dollars~~)) $500 from a fund-raising event provided that the payments from any person do not exceed ((~~five hundred dollars~~)) $500 from all fund raising conducted during a campaign or calendar year.

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

WAC 390-16-115 Mini campaign reporting—Registration and record-keeping. The exemptions allowed in WAC 390-16-105 will be granted to a candidate or political committee, including a continuing political committee, only upon compliance with the following conditions:

(1) A candidate must file a C-1 registration with the commission within ((~~fourteen~~)) 14 days of first:

(a) Receiving contributions, making expenditures, reserving space or facilities or purchasing commercial advertising space or broadcast time to promote their candidacy;

(b) Giving the candidate's consent to another person to take any of the actions in (a) of this subsection on behalf of the candidate; or

(c) Announcing publicly or filing a declaration of candidacy with the appropriate elections official.

(2) A political committee must file a C-1pc registration with the commission within ((~~fourteen~~)) 14 days after its organization or after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

(3) The statement filed under subsections (1) and (2) of this section must declare that the political committee will not exceed the contribution or expenditure limits set out in WAC 390-16-105.

(4) In addition to complying with subsections (2) and (3) of this section, a continuing political committee must also file a C-1pc between January 1st and January 31st for each year in which the committee intends to use the mini reporting system. Failure to file a new registration statement during January will automatically terminate the committee's entitlement to use the mini reporting system until such time as a new C-1pc is filed.

(5) A candidate or political committee using the mini reporting option must keep current records in sufficient detail to allow the candidate or political committee to make reports otherwise required by RCW ((~~42.17A.205 through 42.17A.240~~)) 29B.25.020 through 29B.25.100 in the event that the filing of such reports becomes necessary as a result of exceeding the contribution or expenditure limitation pursuant to the provisions of WAC 390-16-125.

(6) The candidate or political committee treasurer must comply with the requirements for public inspection of campaign books pursuant to WAC 390-16-043.

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

WAC 390-16-125 Mini campaign reporting—Exceeding limitations. (1) A candidate or political committee wishing to change from mini to full reporting must apply electronically to the PDC for authorization to change reporting options before the limitations specified in WAC 390-16-105 are exceeded. A complete application must include all of the following documents:

(a) An amended registration statement (Form C-1 for candidates, Form C-1pc for political committees) selecting the full reporting option as provided in RCW ((~~42.17A.225 through 42.17A.240~~)) 29B.25.070 through 29B.25.100;

(b) PDC forms C-3 and C-4 with relevant schedules and attachments disclosing all contributions and expenditures to date reportable under RCW ((~~42.17A.240~~)) 29B.25.100 for the election campaign, or in the case of continuing political committees, for the calendar year; and

(c)(i) If the applicant is a candidate, a statement affirming that all candidates registered with the PDC for the office being sought have been notified personally in writing of the application, and the manner and date of such notification;

(ii) If the applicant is the treasurer of a political committee supporting or opposing a ballot proposition, a statement affirming that all treasurers of all political committees registered with the commission as supporting or opposing the proposition have been notified personally in writing of the application, and the manner and date of such notification; or

(iii) If the applicant is the treasurer of a county or legislative district party committee, a statement affirming that the treasur-

er of that party committee's counterpart in any other major political party has been notified personally in writing of the application, and the manner and date of such notification.

(2) An application that is submitted without the required documents described in subsection (1) of this section is incomplete and will not be processed or approved. If the applicant provides the missing documents, the application will be determined to be complete on the date the documents are received by the commission.

(3) If a complete application is received by the PDC on or before August 31st for the general election or ((~~thirty~~)) 30 business days prior to the date of other elections, the executive director will approve the application.

(4) If a complete application is received by the commission after the deadlines set out in subsection (3) of this section, the executive director will approve the application only if one or more of the following factors are present:

(a) The applicant is a candidate and, after the application deadline, a write-in opponent has filed for office in accordance with chapter 29A.24 RCW;

(b) After the application deadline, an independent expenditure as defined in RCW ((~~42.17A.005~~)) 29B.10.310 is made in support of the applicant's opponent or in opposition to the applicant; or

(c) When a candidate or political committee on one side of an election campaign or proposition has been approved to change reporting options under this section, each opponent of that candidate or political committee is approved to change options as of the date that opponent's complete application is received by the PDC.

(5) The executive director may approve an application to change reporting options after the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 have been exceeded only if the applicant:

(a) Meets the deadlines provided in subsection (3) of this section;

(b) Acknowledges the violation and demonstrates compliance with WAC 390-16-105(4); and

(c) Takes any other action required by the PDC to address the violation.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-206 Ratings and endorsements. (1) Any person making a measurable expenditure of funds to communicate a rating, evaluation, endorsement or recommendation for or against a candidate or ballot proposition shall report such expenditure including all costs of preparation and distribution in accordance with ((~~chapter 42.17A~~)) Title 29B RCW. However, rating, endorsement, or recommendation expenditures governed by the following provisions are not reportable: The news media exemptions provided in RCW ((~~42.17A.005 (16)(b)(iv) and (22)(b)(iii)~~)) 29B.10.160 (2)(d) and 29B.10.220 (2)(c), and WAC 390-16-313, and the political advertising exemption in WAC 390-05-290.

(2) A candidate or sponsor of a ballot proposition who, or a political committee which, is the subject of the rating, evaluation, endorsement or recommendation shall not be required to report such expenditure as a contribution unless the candidate, sponsor, committee

or an agent thereof advises, counsels or otherwise encourages the person to make the expenditure.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-16-207 In-kind contributions—Explanation and reporting. (1) An in-kind contribution must be reported on the C-4 report. An in-kind contribution, as that term is used in the act and these rules, occurs when a person provides goods, services or anything of value, other than money or its equivalent, to a candidate or political committee free-of-charge or for less than fair market value, unless the item or service given is not a contribution according to RCW ((~~42.17A.005~~)) 29B.10.160 or WAC 390-17-405.

An in-kind contribution includes an expenditure that:

- Supports or opposes a candidate or a ballot measure;
- Meets the definition of contribution in RCW ((~~42.17A.005~~)) 29B.10.160 or WAC 390-05-210;
- Is an electioneering communication that is a contribution as provided in RCW ((~~42.17A.310~~)) 29B.30.030; and
- Is other than a monetary contribution made directly to a candidate or political committee.

For example, an in-kind contribution occurs when a person, after collaborating with a candidate or a candidate's agent, purchases space in a newspaper for political advertising supporting that candidate or opposing that candidate's opponent.

(2) According to RCW ((~~42.17A.430~~)) 29B.40.090 and WAC 390-16-238, a candidate may not use his or her campaign funds to make a contribution, including an in-kind contribution, to another candidate or a political committee. However, under RCW ((~~42.17A.430~~)) 29B.40.090, a candidate may use surplus funds as defined in RCW ((~~42.17A.005~~)) 29B.10.520 to make a contribution to a political party or caucus political committee.

(3) **Valuing in-kind contributions.**

(a) For purposes of determining the value of goods or services provided as in-kind contributions, refer to WAC 390-05-235 Definition—Fair market value.

(b) If an expenditure that constitutes an in-kind contribution is made, the value of the in-kind contribution to a particular candidate or political committee is the portion of the expense that benefits the candidate or political committee.

(4) **In-kind contributions to recipients who have limits under RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030.**

(a) If a candidate receives in-kind contributions from any person valued at more than $25 in the aggregate for an election, the contribution is reportable by the giver and the recipient pursuant to chapter ((~~42.17A~~)) 29B.25 RCW and is subject to the applicable contribution limit provided in RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030.

(b) If a bona fide political party or legislative caucus committee receives in-kind contributions from any person valued at more than $25 in the aggregate during a calendar year, the contribution is reportable by the giver and the recipient pursuant to chapter ((~~42.17A~~))

29B.25 RCW and is subject to the applicable contribution limit provided in RCW ((~~42.17A.405~~)) 29B.40.020.

(c) If an elected official against whom recall charges have been filed or a political committee supporting the recall of an elected official receives in-kind contributions from any person valued at more than $25 in the aggregate during a recall campaign, the contribution is reportable by the giver and the recipient pursuant to chapter ((~~42.17A~~)) 29B.25 RCW and is subject to the applicable contribution limits provided in RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030.

(5) **Political committees that make in-kind contributions.** Except as provided for in subsection (5) of this section, a political committee that makes in-kind contributions to a candidate or political committee totaling more than $50 in the aggregate during a reporting period must identify the recipient and the amount of the contribution as part of its C-4 report covering that period.

If the in-kind contribution is in the form of an expenditure that has been obligated, but not yet paid, the identity of the recipient candidate or political committee, along with a good faith estimate of the value of the contribution, must be disclosed in part 3 of Schedule B, in addition to the other information required by the C-4 report. When the expense is paid, the recipient's name and the amount of the contribution must be disclosed on Schedule A, in addition to the other information required by the C-4 report.

If a political committee provides equipment, property or anything else of value owned, leased or controlled by it to a candidate or political committee, the contributing committee must attach a statement to its C-4 report showing the name of the candidate or political committee to whom the contribution was made and the date, description and fair market value of the in-kind contribution.

(6) **Reporting by recipients.** Except as provided in subsection (5) of this section, in-kind contributions from one source are not reportable by the recipient candidate or political committee until the aggregate value of all in-kind contributions received from that source during a reporting period is more than $50. If this threshold is met, the in-kind contributions must be reported in part 1 of Schedule B to the C-4 report covering that reporting period.

(7) **Application of RCW ((~~42.17A.420~~)) 29B.40.070—Last-minute contributions.**

(a) If an expenditure that constitutes an in-kind contribution is made no later than 22 days before a general election and written notice of the in-kind contribution is in the possession of the recipient candidate committee or political committee 22 or more days before that general election, the contribution is not subject to the respective $7,500 or $75,000 maximum amounts specified in RCW ((~~42.17A.420~~)) 29B.40.070.

(b) If an in-kind contribution is in the form of personal services donated to a campaign for the duration of the 21 days before a general election, and if written notice of the value of this donation is in the possession of the recipient candidate or political committee 22 or more days before the election, that in-kind contribution is not subject to the respective $7,500 or ((~~$75,0000~~)) $75,000 maximum amounts specified in RCW ((~~42.17A.420~~)) 29B.40.070.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-221 Tangible property—Definition. (1) All contributions received by a political committee or candidate are subject to the requirements of RCW ((~~42.17A.430 and 42.17A.445~~)) 29B.40.090 and 29B.40.130 whether or not the committee converts the contribution to a different form, e.g., the purchase of tangible property from monetary contributions.

(2) For the purpose of this rule, tangible property includes but is not limited to real property and improvements thereto; furniture, office desks, file cabinets, tables and machines, vehicles, printing and duplicating equipment, and computer hardware and software.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-226 Loans. (1) Only loans which are recorded in a written loan agreement executed at the time of the loan and properly reported may be repaid by a candidate or political committee. Surplus campaign funds under RCW ((~~42.17A.005 and 42.17A.430~~)) 29B.10.520 and 29B.40.090 may only be used to return a contribution to the candidate if the contribution was properly reported as a loan from the candidate, as described in subsections (2) and (3).

(2) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. See WAC 390-17-305. Such funds are considered a contribution from the original source of the contribution under chapter ((~~42.17A~~)) 29B.25 RCW *and*, unless the loan meets the exemption provided in RCW ((~~42.17A.465(3)~~)) 29B.40.170(3) and this subsection, the contribution is subject to the contribution limits provided in chapter ((~~42.17A~~)) 29B.40 RCW, as adjusted by WAC 390-05-400.

(a) If a candidate or candidate's own political committee or campaign or authorized committee receives a loan from a commercial lending institution, the loan is exempt from the contribution limits of RCW ((~~42.17A.405~~)) 29B.40.020 and WAC 390-16-310, as adjusted by WAC 390-05-400, only if all the following criteria are met:

(i) The loan is not guaranteed by any other person;

(ii) The loan is made in the regular course of business; and,

(iii) The loan is made on the same terms ordinarily available to the public.

(b) A commercial loan to a candidate's own committee or campaign or authorized committee is presumed to be guaranteed by the candidate. The presumption is rebuttable by clear, cogent and convincing evidence.

(3) The amount of campaign contributions which may be used to repay a loan made by the candidate to the candidate's own political committee or campaign, or to repay a commercial loan to a candidate's own political committee or campaign where the candidate is the borrower or guarantor, is limited to the loan repayment limit in RCW ((~~42.17A.445(3)~~)) 29B.40.130(3) as adjusted by WAC 390-05-400. For purposes of the loan repayment limit, these loans are aggregated for each primary, general, special or recall election and must be designated accordingly by the candidate at the time the loan is made.

(4) If a candidate makes documented out-of-pocket campaign expenditures on behalf of their campaign expecting repayment (not intending to make an in-kind contribution), the campaign committee must repay the candidate within 21 days of the expenditure or the candidate will be deemed to have made a loan to his or her campaign committee which must qualify for repayment under subsections (1) and (2) in order for the candidate to be repaid. Undocumented out-of-pocket campaign expenditures by the candidate are in-kind contributions not eligible for repayment.

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

WAC 390-16-230 Surplus campaign funds—Use in future. (1) If after the last day of the election cycle for candidates as defined in RCW ((~~42.17A.005~~)) 29B.10.210 any contribution is received or an expenditure is made from surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or political committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at the candidate's last election. Within ((~~fourteen~~)) 14 days of the day such contribution is received or expenditure is made, such candidate or political committee must file (a) a final report for the previous campaign as provided in RCW ((~~42.17A.235 and 42.17A.240~~)) 29B.25.090 and 29B.25.100; and (b) a statement of organization and initial report for the new campaign as provided by RCW ((~~42.17A.205, 42.17A.235 and 42.17A.240~~)) 29B.25.020, 29B.25.090, and 29B.25.100. The surplus funds may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." All augmentations to and all expenditures made from the retained surplus funds after the last day of the election cycle must be reported in detail as to source, recipient, purpose, amount and date of each transaction.

(2) For candidates as defined in RCW ((~~42.17A.005~~)) 29B.10.090, if at any time after the last day of the election cycle, any contribution is received or expenditure is made from such surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or authorized committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at the candidate's last election. Within ((~~fourteen~~)) 14 days of the day such contribution is received or expenditure is made, such candidate or authorized committee must file (a) a final report for the previous campaign as provided in RCW ((~~42.17A.235 and 42.17A.240~~)) 29B.25.090 and 29B.25.100; and (b) a statement of organization and initial report for the new campaign as provided by RCW ((~~42.17A.205, 42.17A.235 and 42.17A.240~~)) 29B.25.020, 29B.25.090, and 29B.25.100. The surplus funds as of the last day of the election cycle may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." "Funds from previous campaign" carried forward by a candidate to the

candidate's new campaign are not subject to contribution limits set forth in RCW ((~~42.17A.405~~)) 29B.40.020.

(3) A political committee formed to support or oppose a particular ballot proposition or particular candidates which retains surplus funds to use in support or opposition of other candidates or of other ballot propositions has become a continuing political committee and must thereafter register and report in accordance with chapter ((~~42.17A~~)) 29B.25 RCW.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-232 Same office last sought. A candidate is considered to be seeking the "same office last sought," as that term is used in RCW ((~~42.17A.430~~)) 29B.40.090, when the candidate seeks:

(1) The identical office last sought; or

(2) A different position or seat of the same office last sought within the same jurisdiction; or

(3) The same office, whether a different seat or position, in a revised district or political subdivision whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedure.

AMENDATORY SECTION (Amending WSR 17-01-161, filed 12/21/16, effective 1/21/17)

WAC 390-16-234 Transfers of candidate funds. (1) Candidates are encouraged to directly pay to a vendor their proportionate share of joint campaign expenses. When separate, direct payments are not possible, one candidate may transfer campaign funds to another candidate without violating RCW ((~~42.17A.430(8)~~)) 29B.40.090(8): Provided, That:

(a) The transferred funds are used exclusively for the joint expenditure;

(b) The amount may not exceed the prorated share attributable to the candidate who transfers the funds;

(c) The funds are transferred within two business days of the expenditure;

(d) Any transferred funds not used for the joint expenditure are returned no later than one business day after the expenditure is made; and

(e) The purpose of the transferred funds is timely disclosed as would be required for a direct expenditure.

(2) Candidate surplus funds may be transferred without limit to a bona fide political party or to a caucus political committee.

(3) Except as provided in subsections (1) and (2) of this section, no candidate or candidate's authorized committee may transfer surplus or nonsurplus funds to any other candidate or political committee.

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

WAC 390-16-238 Personal use of contributions—Standard. (1) Except as specifically allowed by ((~~chapter 42.17A~~)) Title 29B RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW ((~~42.17A.445~~)) 29B.40.130.

(2) An expenditure of a candidate's campaign funds will be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.

(3) If an activity or expenditure is both personal and campaign-related, the campaign may pay no more than the fair market value of its share of the activity or expenditure. For example, if a candidate incurs costs for child care, the campaign may reimburse the candidate only for any portion of the expense that occurred directly as a result of the candidate's campaign activities. Also, if a candidate uses a personal vehicle for campaign purposes, the campaign may reimburse the candidate for:

(a) The prorated share of documented gasoline, maintenance and insurance costs directly related to the campaign's usage of the vehicle; or

(b) The standard mileage rate established by the Internal Revenue Service for those documented miles directly related to the campaign's usage.

(4) Examples of expenditures presumed to be for personal use include, but are not limited to:

(a) Mortgage, rent, utility, telephone, or maintenance expenses for personal living accommodations;

(b) Clothing purchases and maintenance expenses not related to the campaign;

(c) Automobile expenses not related to the campaign;

(d) Travel expenses not related to the campaign;

(e) Household food items;

(f) Restaurant expenses except for in-person fund-raising or campaign organizational activities;

(g) Tuition payments not related to the campaign;

(h) Admission to sporting events, concerts, theaters, or other forms of entertainment unless the event is primarily related to the candidate's campaign;

(i) Club membership fees, dues and payments;

(j) Health club or recreational facility membership fees, dues and payments;

(k) Social, civic, or professional membership dues, fees and payments unless the expenditure occurs during an election year and membership is required to gain access to the organization's mailing list for campaign purposes or other facilities for the candidate's campaign;

(l) Home or business internet service provider costs;

(m) Home or business newspaper and periodical subscriptions;

(n) Greeting cards to persons who would customarily receive such cards (e.g., family, friends and business associates).

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-240 Earmarked contributions—Definition and use. (1) Earmarked contributions, as that term is used in RCW ((~~42.17A.270 and 42.17A.460~~)) 29B.25.150 and 29B.40.160, means any contribution given to an intermediary or conduit, either a political committee, candidate or third party, with a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which is intended to result in or which does result in all or any part of the contribution being made to or for the promotion of a certain candidate, state official, or ballot proposition.

(2) For purposes of RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, an earmarked contribution is deemed to be for the promotion of, and attributable to any limit applicable to the candidate, authorized committee, bona fide political party, caucus of the state legislature or political committee designated by the original contributor.

(3) If an earmarked contribution is given to an intermediary or conduit to be spent on behalf of a candidate and the entire amount given is not used for this purpose, the remainder of the contribution shall be given to the designated candidate unless its use is redesignated by the original contributor. If the conduit or intermediary exercises any direction or control over the use of the remainder of the contribution, then the amount of the remainder shall be considered a contribution from the original contributor and the conduit or intermediary to the recipient.

(4) The intermediary or conduit receiving the earmarked contribution shall notify the candidate or political committee for whose use or benefit the contribution is designated within two business days after receipt of the contribution.

(5) If an earmarked contribution is refused by the designated recipient candidate or political committee, the earmarked contribution must be returned by the intermediary or conduit to the original contributor within five business days of refusal.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-245 Pledges. (1) "Pledge," as that term is used in the act and these rules, means a promise to make a future contribution. A pledge shall not be made or redeemed within 21 days of an election specified in RCW ((~~42.17A.420~~)) 29B.40.070 if the amount of the pledge or redemption exceeds the maximum amount provided in RCW ((~~42.17A.420~~)) 29B.40.070, as adjusted by WAC 390-05-400. However, if payment of a pledge is in the possession of the recipient 22 or more days before the election, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW ((~~42.17A.220~~)) 29B.25.060.

(2) If a pledge is made in an election campaign subject to the contribution limits provided in RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, as adjusted by WAC 390-05-400:

(a) Except as provided in WAC 390-17-302, a pledge made with respect to the primary election shall not be made or redeemed after the

date of the primary; however, if the payment of a pledge is made on or before the date of the primary, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW ((~~42.17A.220~~)) 29B.25.060; and

(b) A pledge made with respect to the general election shall not be made or redeemed after the final day of the applicable election cycle; however, if the payment of a pledge is made on or before the final day of the election cycle, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW ((~~42.17A.220~~)) 29B.25.060.

(3) During the time limit specified in RCW ((~~42.17A.560~~)) 29B.45.020, a state official or a person employed by or acting on behalf of a state official shall not solicit or accept a pledge or the redemption of a pledge for any purpose specified in RCW ((~~42.17A.560~~)) 29B.45.020.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-309 Identification of affiliated entities. (1) Two or more entities are treated as a single person and share one contribution limit under RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, as adjusted by WAC 390-05-400, if one of the entities is:

(a) A corporation and the other is a subsidiary, branch or division of the corporation;

(b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;

(c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;

(d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;

(e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization;

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to subsection (1) of this section, two or more entities shall be treated as one entity and share a contribution limit under RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, as adjusted by WAC 390-05-400, if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one or more of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entity has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or members of another entity; or

(c) Whether (i) one entity has a common or overlapping membership with another which indicates either a formal or ongoing relationship between the two organizations or the creation of a successor entity; and (ii) the entity has an active or significant role in the formation of the other entity; and (iii) the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis, through direct or indirect means to the other entity, for less than full consideration. Full consideration includes the payment of membership dues.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-310 Limitations on contributions. The limitations on contributions as provided in RCW ((~~42.17A.420, 42.17A.405, and 42.17A.410~~)) 29B.40.070, 29B.40.020, and 29B.40.030, as adjusted by WAC 390-05-400, are as follows:

(1)(a) The limitation on contributions in RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030, as adjusted by WAC 390-05-400, do not apply to a "candidate" as that term is defined in RCW ((~~42.17A.005~~)) 29B.10.090 when the candidate is contributing to the candidate's own campaign using the candidate's own personal funds as defined in WAC 390-17-305.

(b) The limitation on contributions in RCW ((~~42.17A.420, 42.17A.405, or 42.17A.410~~)) 29B.40.070, 29B.40.020, or 29B.40.030, as adjusted by WAC 390-05-400, apply to contributions to the candidate from the candidate's spouse, domestic partner or other immediate family members.

(2) Contributions by spouses are considered separate contributions. Contributions by domestic partners are considered separate contributions.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions and the contribution is properly attributed to the emancipated minor child if:

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children will be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to that parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship must be aggregated for purposes of determining the limitations of contributions under RCW ((~~42.17A.420, 42.17A.405, or 42.17A.410~~)) 29B.40.070, 29B.40.020, or 29B.40.030, as adjusted by WAC 390-05-400.

(5) The limitations on contributions apply separately to the contributions made by a partnership, limited liability partnership and limited liability corporation from the contributions made by an individual partner or member. However, contributions made from or charged against the capital account of an individual partner, or member of a limited liability partnership or limited liability corporation must be aggregated with the partner's or member's individual contributions for purposes of determining the limitations on contributions under RCW ((~~42.17A.420, 42.17A.405, or 42.17A.410~~)) 29B.40.070, 29B.40.020, or 29B.40.030, as adjusted by WAC 390-05-400.

(6) The limitations on contributions in RCW ((~~42.17A.420, 42.17A.405, and 42.17A.410~~)) 29B.40.070, 29B.40.020, and 29B.40.030, as adjusted by WAC 390-05-400, apply separately to the contributions made by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations and their local units) unless the criteria in RCW ((~~42.17A.455~~)) 29B.40.150 and WAC 390-16-309 are met.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-312 Handling contributions of uncertain origin. No contribution shall be deposited by any candidate or treasurer who believes, from the face of the contribution instrument or for any other reason, the contribution was made in a fictitious name, by one person through an agent, relative, political committee, or any other person so as to conceal the source of the contribution or to exceed the contribution limits provided in RCW ((~~42.17A.420, 42.17A.405, or 42.17A.410~~)) 29B.40.070, 29B.40.020, or 29B.40.030, as adjusted by WAC 390-05-400, or otherwise violate the act. The candidate or treasurer shall return such contributions within 10 days to the original contributor if his or her identity is known. Otherwise, the contribution instrument shall be endorsed and made payable to "Washington state treasurer" and the contribution sent to the commission for deposit in the state's general fund.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-16-320 Candidates in small political subdivisions—Reporting. (1) As provided in RCW ((~~42.17A.200 and 42.17A.135(7)~~)) 29B.25.010 and 29B.20.070(7), a candidate for election in any political subdivision must fully report if the candidate receives $7,000 or more in contributions or expects to receive $7,000 or more in contributions during an election cycle.

(2) It is presumed the candidate "expects to receive" $7,000 or more when any one of the following first occurs:

(a) The candidate or candidate's authorized committee receives at least $7,000 in aggregate contributions, including contributions from the candidate;

(b) The candidate is seeking the same office last sought, the candidate's election is in the current calendar year, and the candidate's campaign contributions in the previous election for the same office were $7,000 or more in the aggregate;

(c) The contributions received on or before March 31st of the election year total $1,250 or more;

(d) The contributions received on or before June 30th of the election year total $2,500 or more;

(e) The contributions received on or before September 30th of the election year total $3,750 or more; or

(f) The candidate otherwise anticipates that $7,000 or more will be received during the election cycle.

(3) Surplus funds carried over from a candidate's previous campaign are not contributions to the candidate's new campaign and do not count toward the $7,000 reporting threshold.

(4) A candidate or candidate's authorized committee that receives, or expects to receive, $7,000 or more must:

(a) Within two weeks of the date the reporting obligation begins under subsection (1) or (2) of this section, file:

(i) A candidate registration, PDC C-1 Report;

(ii) A personal financial affairs statement, PDC F1 Report and, if relevant, the F1 Supplement; and

(iii) Contribution and expenditure reports, PDC C3 and C4 reports with appropriate attachments and schedules; and

(b) Otherwise comply with the campaign finance reporting and other provisions of ((~~chapter 42.17A~~)) Titles 29B RCW and ((~~Title~~)) 390 WAC.

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

WAC 390-16-325 Dissolution of committees. (1) Dissolution is the process by which a committee officially ceases doing business, pursuant to RCW ((~~42.17A.225 and 42.17A.235~~)) 29B.25.070 and 29B.25.090. Dissolution does not relieve the candidate, elected official, or officers from any obligations to address violations that occurred before the committee was dissolved.

(2) To initiate dissolution, the committee must file a notice of intent to dissolve.

(3) The official report for filing a notice of intent to dissolve a committee is designated "D-1." The D-1 must be filed using the electronic filing system provided by the commission. The commission is required to post each committee's notice of intent to dissolve on the commission website upon receipt.

(4) On the D-1 Report, the candidate or authorized committee officer must attest to the following:

(a) The committee has concluded its activities in all respects and has ceased to function and intends to dissolve;

(b) The committee has no outstanding debts or obligations, will not make any expenditure other than those related to the dissolution process, and will not engage in any political activity or any other activity that generates additional reporting requirements;

(c) The committee has filed a final report;

(d) No complaint or court action under ((~~chapter 42.17A~~)) Title 29B RCW is pending against the committee and it has not been informed by the commission of any possible violations or technical corrections which remain unresolved;

(e) The committee has no outstanding penalties under ((~~chapter 42.17A~~)) Title 29B RCW as assessed by the commission or a court;

(f) The committee accepts an ongoing obligation to maintain compliance with these conditions and an affirmative duty to notify the commission of any noncompliance; and

(g) The treasurer is obligated to preserve books of account, bills, receipts, and all other financial records for five years.

(5) If, ((~~sixty~~)) 60 days after a committee has filed its D-1, the committee is in compliance with the above requirements and has not notified the commission in writing that it revokes its intent to dissolve, the committee will be deemed to be dissolved.

(6) The executive director will promptly acknowledge by electronic writing the committee's dissolution. The acknowledgment of dissolution will be posted on the commission's website when sent to the committee.

(7) If the committee has not met the requirements for dissolution, the executive director will promptly notify the committee by electronic writing that it is not eligible to dissolve, and explain the reasons for its ineligibility. The committee may initiate the process again once it has come into compliance with the requirements.

AMENDATORY SECTION (Amending WSR 21-08-047, filed 4/2/21, effective 5/3/21)

WAC 390-16-330 Prohibited financing and involvement by foreign nationals. (1) **Prohibited financing by foreign nationals.**

(a) For purposes of RCW ((~~42.17A.417~~)) 29B.40.050, and throughout ((~~chapter 42.17A~~)) Title 29B RCW, a contribution, expenditure, political advertising, or electioneering communication is "financed in any part by a foreign national" if the funding source includes anything of value greater than a de minimis amount provided by a foreign national for less than full consideration. Such value may include, but is not limited to, a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds, or goods and services.

(b) A contribution, expenditure, political advertising, or electioneering communication is not "financed in any part by a foreign na-

tional" if the person making the contribution or expenditure, or sponsoring the advertisement or communication, is an individual citizen or legal permanent resident using their own personal funds.

(c) A contribution, expenditure, political advertising, or electioneering communication is not "financed in any part by a foreign national" if:

(i) The funding source is the general treasury of a membership organization, such as a trade association or labor union, not otherwise qualifying as a political committee, which includes funding from regular and predetermined membership dues;

(ii) Any additional funding of the general treasury is not from a foreign national, as provided in (a) of this subsection; and

(iii) The organization can demonstrate through a reasonable accounting method that the general treasury has sufficient funds to finance the contribution, expenditure, advertisement, or communication, apart from the aggregate amount of any membership dues received from foreign national members of the organization.

(d) Any funding from a foreign national, as provided in (a) of this subsection, and except as excluded under (b) or (c) of this subsection, must be segregated, using a reasonable accounting method, from the funding source used to finance a contribution, expenditure, advertisement, or communication. Funding from a foreign national may not be used to supplant, replace, or replenish the funding source for the contribution, expenditure, advertisement, or communication.

(2) **Prohibited decision-making involvement by foreign nationals.**

(a) For purposes of RCW ((~~42.17A.417~~)) 29B.40.050, and throughout ((~~chapter 42.17A~~)) Title 29B RCW, a foreign national is "involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way" if the foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process regarding the financing any such contribution, expenditure, advertisement, or communication.

(b) In addition to the criteria under (a) of this subsection, a foreign national is involved in the decision-making regarding a contribution, expenditure, political advertising, or electioneering communication made by an entity that is a subsidiary, branch, unit, or division of a foreign national, or otherwise established, financed, maintained, or controlled by a foreign national, if the foreign national has:

(i) Made an endorsement or recommendation to support or oppose the same candidate or ballot proposition; or

(ii) Directly or indirectly collaborated or consulted with the entity on matters relating to the support of or opposition to the same candidate or ballot proposition.

AMENDATORY SECTION (Amending WSR 21-08-047, filed 4/2/21, effective 5/3/21)

WAC 390-16-335 Certification for contributions from entities—Prohibited activity by foreign nationals. (1) The certification required for a candidate or political committee to accept each contribution from a partnership, association, corporation, organization, or other combination of persons must be received in writing, either:

(a) By the date the report including the contribution is due, or within ((~~ten~~)) 10 business days, whichever is later; or

(b) Within ((~~thirty~~)) 30 days from the date the contribution is received, so long as the candidate or committee separates uncertified contributions using reasonable accounting methods, to prevent commingling with other contributions, until the certification is received.

(2) Any uncertified contribution must be refunded or returned by the applicable deadline in subsection (1) of this section. The failure to timely refund or return an uncertified contribution constitutes a violation of ((~~chapter 42.17A~~)) Title 29B RCW.

(3) A single certification may apply to future contributions within the same election cycle if the certification provides, in addition to the requirements under subsection (5) of this section, a statement that:

(a) Future contributions included in the certification will be part of a regularly scheduled transaction cycle, and funded from the same source as the original contribution; and

(b) The entity will provide a separate certification for any additional contribution that does not meet the criteria of (a) of this subsection.

(4) A candidate or political committee is not required to obtain a certification for:

(a) A contribution from a political committee if the contributing committee is:

(i) Currently registered with the commission at the time the contribution is received, and reporting its contributions received; and

(ii) Entirely funded through contributions received; or

(b) Any in-kind contribution from an entity, that in the aggregate within the same reporting period, does not exceed ((~~fifty dollars~~)) $50.

(5) Candidate or political committees may make certifications available to entities for electronic or other written submission. Certifications may include the suggested format below, or a different format that includes the following information:

(a) The name of the entity making the contribution and the authorized agent;

(b) A statement that the entity is not a foreign national, as defined in RCW ((~~42.17A.005(24)~~)) 29B.10.250;

(c) A statement that the contribution is not financed in any part by a foreign national;

(d) A statement that foreign nationals were not involved in making decisions regarding the contribution in any way;

(e) The amount of the contribution and the date it was made; and

(f) The date the certification was submitted.

Certification that Contribution Is Not From a Foreign National
I certify that the entity _____
(name of entity) making this contribution is not organized under the laws of, and does not have its principal place of business in, a foreign country. This contribution is not financed in any part by a foreign national, and foreign nationals were not involved in making decisions regarding the contribution in any way.
Amount of Contribution:
Date of Contribution:
Name of Authorized Agent:

Date Submitted:

RDS-6738.1

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-015 Conduit—Definition. (1) "Conduit," as that term is used in the act and these rules, is defined as a person, other than an individual, that receives and spends earmarked contributions on behalf of a designated candidate, bona fide political party, caucus of the state legislature or other political committee.

(2) Pursuant to RCW ((~~42.17A.470~~)) 29B.40.180, a conduit may not make or transmit contributions on behalf of another.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-019 Contribution limits to affiliated committees. This rule sets out which committees, excluding ballot measure committees, are affiliated for the purpose of receiving contributions.

Persons subject to contribution limits who establish, maintain, or control multiple political committees may not circumvent those contribution limits through contributions made to the various committees.

(1) The following committees are affiliated for purposes of this rule:

(a) The authorized committee of a candidate subject to contribution limits set out in RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030 and any other political committee established, maintained, or controlled primarily by that candidate are affiliated for the purpose of receiving contributions.

(b) A caucus campaign committee and any other political committee established, maintained, or controlled primarily by the same legislative caucus as a whole or the officers of that caucus are affiliated for the purpose of receiving contributions.

(2) As used in this rule, the terms "established, maintained, or controlled" means the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-030 Sample ballots and slate cards. (1) **Intent.** Under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW ((~~42.17A.405(15)~~)) 29B.40.020(15) and are, therefore, exempt from contribution limits and

eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter ((~~42.17A~~)) 29B.25 RCW and subject to the political advertising provisions of the act.

The purpose of this exemption from the contribution limits is to allow political parties, political committees, and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements.

(2) For purposes of RCW ((~~42.17A.005(22) and 42.17A.405(15)~~)) 29B.10.230 and 29B.40.020(15), **"sample ballots"** means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

Sample ballots constitute political advertising for a slate or list of candidates and must include sponsor identification and otherwise be in compliance with the provisions of RCW ((~~42.17A.320 through 42.17A.340~~)) 29B.30.050 through 29B.30.080.

(3)(a) A bona fide political party may use contributions it receives pursuant to RCW ((~~42.17A.405(15)~~)) 29B.40.020(15) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter ((~~42.17A~~)) 29B.25 RCW and chapter 390-17 WAC.

(4) Any person, as defined by RCW ((~~42.17A.005~~)) 29B.10.400, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(5) An in-state political committee, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter ((~~42.17A~~)) 29B.25 RCW and chapter 390-17 WAC.

(6) An out-of-state committee, when disclosing expenditures for sample ballots on a C-5 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due no later than the 10th day of the month following the month in which the expenditure was made.

(7) If a lobbyist or lobbyist employer makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be attributed to individual candidates listed on the sample ballot.

(8) The candidates listed on a sample ballot are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(9) Qualifying criteria for sample ballots, slate cards and other candidate listings. In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW ((~~42.17A.405(15)~~)) 29B.40.020(15), a sample ballot must satisfy all of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state, or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, websites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-060 Exempt contributions and activities—Definitions, reporting. (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW ((~~42.17A.405~~)) 29B.40.020. Such contributions are required to be reported under RCW ((~~42.17A.240~~)) 29B.25.100, are subject to the restrictions in RCW ((~~42.17A.420~~)) 29B.40.070, but are not subject to the contribution limits in RCW ((~~42.17A.405~~)) 29B.40.020. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, or sample ballots are presumed to be for the purpose of pro-

moting individual candidates and therefore not exempt contributions and are subject to the contribution limits in RCW ((~~42.17A.405~~)) 29B.40.020.

(c) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fund-raising are presumed to be with direct association with individual candidates and therefore not exempt contributions and are subject to the contribution limits in RCW ((~~42.17A.405~~)) 29B.40.020.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities referenced in RCW ((~~42.17A.405~~)) 29B.40.020 as further clarified by subsections (4), (5), and (6) of this section. Only exempt activities are eligible for payment with exempt contributions.

(4)(a) Activities referenced in RCW ((~~42.17A.405~~)) 29B.40.020 (15)(a) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message. Expenditures or contributions for electioneering communications made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent do not qualify as exempt activities, under WAC 390-05-210.

(b) Except as permitted under WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW ((~~42.17A.405~~)) 29B.40.020 (15)(a) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(c) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.

(5)(a) "Internal organization expenditures" referenced in RCW ((~~42.17A.405~~)) 29B.40.020 (15)(b) are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fund-raising expenditures" referenced in RCW ((~~42.17A.405~~)) 29B.40.020 (15)(b)are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to (a) and (b) of this subsection are made in direct association with individual candidates, they shall not be paid with exempt contributions.

(6) For purposes of RCW ((~~42.17A.405~~)) 29B.40.020 and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-065 Recordkeeping and reporting of exempt contributions accounts. (1) Any political committee that receives exempt contributions as defined by RCW ((~~42.17A.405~~)) 29B.40.020 and WAC 390-17-060 shall keep the contributions in a separate bank account. Exempt contributions commingled with contributions subject to contribution limits are presumed to be subject to the limits. Expenditures to promote candidates or which are made for purposes other than those specified in RCW ((~~42.17A.405~~)) 29B.40.020 shall not be made with funds from the exempt contributions account.

(2)(a) Separate campaign disclosure reports shall be completed and filed for an exempt contributions account.

(b) Political committees maintaining an exempt contributions account shall make known the existence of the account by filing a statement of organization for the account pursuant to RCW ((~~42.17A.205~~)) 29B.25.020.

(c) Political committees maintaining an exempt contributions account shall be subject to the provisions of chapter ((~~42.17A~~)) 29B.25 RCW and file the disclosure reports required by this chapter for the account pursuant to RCW ((~~42.17A.235~~)) 29B.25.090.

(3) Contributors shall not use a single written instrument to make simultaneous contributions to an exempt contributions account and any other committee account; separate written instruments must be used to make contributions to an exempt contributions account.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-070 Trade association—Definition. "Trade association," as that term is used in RCW ((~~42.17A.455~~)) 29B.40.150 and in these rules, means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and for which no part of net earnings inures to the benefit of any member.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-071 Collective bargaining association—Definition. "Collective bargaining association" and "collective bargaining organization" as those terms are used in RCW ((~~42.17A.455~~)) 29B.40.150 and in these rules means any organization which negotiates, on behalf of labor or management, with respect to wages, hours or conditions of employment.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-100 Contribution withholding authorizations for payroll deductions. (1) Each employer or other person who withholds or otherwise diverts a portion of wages or salary of a Washington resident or a nonresident whose primary place of work is in the state of Washington shall have on file the individual's written authorization before withholding or diverting the individual's wages or salary for:

(a) The purpose of making one or more contributions to any political committee required to report pursuant to RCW ((~~42.17A.205, 42.17A.215, 42.17A.225, 42.17A.235 or 42.17A.240~~)) 29B.25.020, 29B.25.050, 29B.25.070, 29B.25.090, or 29B.25.100; or

(b) Use, specifically designated by the contributing employee, for political contributions to candidates for state or local office.

(2) Forms used for payroll deduction may either conform to the suggested format below or be in a different format including an electronic format if it provides the following information:

(a) The name of the individual authorizing the withholding or diversion;

(b) The name of the individual's employer;

(c) The name of each political committee or candidate for which contributions are to be withheld;

(d) If more than one political committee or candidate is specified, the total dollar amount per pay period (or per week, month or year) to be withheld for each committee or candidate;

(e) A statement specifying that the authorization may be revoked at any time and such revocation shall be in writing;

(f) A statement that reads: "No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee"; or a statement that informs the employee of the prohibition against employer and labor organization discrimination described in RCW ((~~42.17A.495~~)) 29B.40.230;

(g) The individual's signature or other reliable and secure verification that the individual is authorizing the withholding or diversion; and

(h) The date on which the form was completed.

(3) Forms used for payroll deduction may have information in addition to that listed in subsection (2) of this section. A form that satisfies subsection (2) of this section constitutes the written authorization of the individual authorizing the withholding or diversion.

(4) Employers and other persons who withhold or divert wages or salaries must:

(a) Maintain the completed forms, with the individual's signature or verification, for as long as the withholding or diversion continues;

(b) Keep the forms and other documents described in RCW ((~~42.17A.495(4)~~)) 29B.40.230(4) open for public inspection for three years after the last disbursement of wages or salaries; and

(c) Provide the forms and other documents described in RCW ((~~42.17A.495(4)~~)) 29B.40.230(4) to the commission upon request.

Political Contribution Withholding Authorization

No employer or other person may withhold a portion of a Washington State resident's earnings (or that of a nonresident whose primary place of work is in Washington) in order to make contributions to a political committee that must report to the Public Disclosure Commission or to a candidate for state or local office without written permission from that individual. Completion of this form entitles the entity specified to make such a withholding. This authorization form remains in effect until revoked in writing by the employee.

I, _____, authorize _____
First Name Middle Initial Last Name Name of Employer or Other Person

_____ to withhold $ _____ per/pay period/week/month/year/
Amount Circle One

from my earnings in order to make political contributions to _____
Name of

_____
political committee(s) and/or candidate(s) to receive deductions

If more than one recipient is indicated, each is to receive the following portion of the deduction made: _____.

Signature: _____ **Date:** _____

According to state law, no employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-105 Payroll deductions for small contributors of ((~~twenty-five dollars~~)) $25 or less. (1) To comply with RCW ((~~42.17A.495(4)~~)) 29B.40.230(4), each person or entity who withholds contributions of individuals shall, in lieu of disclosing the names and signatures, substitute unique numerical identifiers for persons making contributions in the amount of ((~~twenty-five dollars~~)) $25 or less during a calendar or fiscal year on the signed withholding authorization form or on other documents (such as payroll deductions) subject to RCW ((~~42.17A.495(4)~~)) 29B.40.230(4).

(2) Contribution withholding authorization forms or payroll deduction documentation of contributors whose annual aggregate contribution is ((~~twenty-five dollars~~)) $25 or less during any calendar or fiscal year are not required by the commission to be made available for public inspection or copying when such records display the names, signatures, home addresses, Social Security numbers, or other information capable of personally identifying those contributors.

(3) The names, signatures, home addresses, Social Security numbers or other information capable of personally identifying contributors whose annual aggregate contribution to a person or entity is ((~~twenty-five dollars~~)) $25 or less during any calendar or fiscal year shall not be provided by the PDC.

(4) Each person or entity who withholds contributions under RCW ((~~42.17A.495~~)) 29B.40.230 shall, upon request, deliver to the PDC documents of books and accounts described in RCW ((~~42.17A.495(4)~~)) 29B.40.230(4).

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-110 Employee notification of payroll deduction withholding provisions. (1)(a) By June 30, 2003, and at least annually by June 30 thereafter, employees from whom funds are being withheld for contributions to a candidate or political committee under RCW ((~~42.17A.495~~)) 29B.40.230 shall be notified, in writing, of the nondiscriminatory provisions of RCW ((~~42.17A.495(2)~~)) 29B.40.230(2). Employee notification shall include the following language:

"No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for:

(i) The failure to contribute to;

(ii) The failure in any way to support or oppose; or

(iii) In any way supporting or opposing a candidate, ballot proposition, political party, or political committee."

(b) The written notification shall be provided by the employer or labor organization. The employer or labor organization may agree on which entity shall send the notification.

(2)(a) Pursuant to RCW ((~~42.17A.495(3)~~)) 29B.40.230(3), at least annually by June 30th, each employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries shall ensure written notification is directly provided to the employees from whom funds are being withheld for contributions to a candidate or political committee stating that the employee authorization for withholding of wages or salary for such contributions may be revoked at any time. The employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries and the candidate, political committee, or sponsor of the political committee may agree on which of them shall send the notification.

(b) The written notification shall identify where an employee can submit the revocation, which shall be either:

(i) The name and address of employer's contact; or

(ii) The name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries.

(c) The employee withholding authorization is revoked as of:

(i) The date specified in the revocation; or

(ii) If no date is specified, as of the date the written notification is received by the employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries pursuant to RCW ((~~42.17A.495~~)) 29B.40.230.

(3) "Written notification" means notice provided by mail, email, newsletter, payroll insert or other similar direct communication in writing that is addressed to the employee. Posting information on websites, bulletin boards and other passive communication vehicles shall not constitute notification under RCW ((~~42.17A.495~~)) 29B.40.230. If the written notification appears in a newsletter or similar publication, the notice shall be prominently displayed or announced on the first page of the written communication.

(4) Each employer or other person who provides notice pursuant to subsection (1) or (2) of this section shall maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-300 Contribution designation for primary and general election. (1) Pursuant to RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, if a contribution is designated in writing by the contributor for a specific election, the contribution will be attributed to the contributor's limit for that designated election.

(2) An undesignated contribution made prior to the date of a primary election shall be attributed to the contributor's limit for the primary election. Undesignated contributions made after the date of the primary shall be attributed to the contributor's limit for the general election.

(3) Any portion of an undesignated contribution made prior to the date of the primary which exceeds the contributor's primary election contribution limit shall be attributed to the contributor's limit for the general election.

(4) Contributions for the primary election shall be accounted for separately from those for the general election, such that campaign records reflect one aggregate contribution total for each contributor giving in the primary election as well as one aggregate contribution total for each contributor giving in the general election.

(5) General election contributions shall not be spent for the primary election if to do so would cause the contributor of the general election contribution to exceed that contributor's contribution limit for the primary election.

(6) If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all contributions attributed to the primary election remaining after repayment of outstanding campaign obligations shall be considered surplus funds, disposal of which is governed by RCW ((~~42.17A.430~~)) 29B.40.090. If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all contributions attributed to the general election shall be returned to the contributors of the funds in an amount equal to the contributor's general election aggregate total. If a portion of a contributor's general election contribution was spent on the primary election consistent with subsection (5) of this section, the amount returned to the contributor may be reduced by the amount of the contribution spent on the primary election.

AMENDATORY SECTION (Amending WSR 14-12-013, filed 5/22/14, effective 6/22/14)

WAC 390-17-301 Eligibility to receive primary election contributions. (1) Candidates for state and certain local offices are subject to the contribution limits in RCW ((~~42.17A.405~~)) 29B.40.020. Judicial candidates are subject to the contribution limits in RCW ((~~42.17A.410~~)) 29B.40.030. Only candidates who appear on the primary

election ballot or as write-in candidates in the primary election may receive primary election contributions.

(2) Once the appropriate elections official determines that no primary election for a particular office will be held, a declared candidate for that office must refund any contributions received in excess of the general election contribution limit. The candidate or the candidate's authorized committee must make the refunds within two weeks of the election's official's determination, and must disclose the refunds on the appropriate report.

(3) Failure by a candidate or a candidate's authorized committee to make refunds as required by subsection (2) of this section is a violation of RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030 by the candidate, but not by the contributors who made primary election contributions before a determination was made that no primary election would be held.

(4) WAC 390-17-303 sets out additional eligibility criteria for superior court candidates.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-302 Contributions after the primary election. (1) Pursuant to RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, the date of the primary is the last day for making primary-related contributions unless a candidate subject to contribution limits loses in the primary, that candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary, and the contributions are used to satisfy this outstanding debt.

(2) For purposes of the contribution limit in RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, any contribution made up to ((~~thirty~~)) 30 days after the primary election pursuant to RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030 is aggregated with contributions made on or before the date of the primary from the same contributor and any person with whom that contributor shares a limit under RCW ((~~42.17A.455~~)) 29B.40.150 and WAC 390-16-309.

(3) The day following the primary election is considered the first day of the ((~~thirty~~)) 30-day period during which contributions may be made to candidates subject to contribution limits who lose in the primary election and who have outstanding primary debts.

(4) For purposes of RCW ((~~42.17A.405 and 42.17A.410~~)) 29B.40.020 and 29B.40.030, "outstanding primary debts," "outstanding debts" and "debts outstanding" all mean:

(a) Unpaid primary-election-related debts incurred on or before the date of the primary by the authorized committee of a candidate who lost the primary election for an office subject to contribution limits; and

(b) Reasonable costs associated with activities of the losing candidate's authorized committee necessary to retire the primary-election-related debts it incurred on or before the date of the primary. Examples of such reasonable costs include:

(i) Necessary administrative expenses (office space rental, staff wages, taxes, supplies, telephone and computer costs, postage, and the like) for activities actually and directly related to retiring the committee's debt; and

(ii) Necessary expenses actually and directly related to the fund-raising activities undertaken to retire the debt, as long as all persons solicited for contributions are notified that the contributions are subject to that contributor's primary election limit for that losing candidate.

(5) Nothing in this section is to be construed as authorizing contributors to make, or candidates subject to contribution limits who lose the primary to receive, contributions that are used for a purpose not specifically authorized by RCW ((~~42.17A.405 or 42.17A.410~~)) 29B.40.020 or 29B.40.030, including use for some future election or as surplus funds.

(6) All contributions received in excess of the sum needed to satisfy outstanding primary debts shall be returned to the original contributors in an amount not to exceed the amount contributed in accordance with the first in, first out accounting principle wherein the most recent contribution received is the first to be returned until all excess funds are returned to contributors.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-303 Superior court candidates—Eligibility to receive contributions. (1) Candidates for judicial office are subject to the contribution limits in RCW ((~~42.17A.410~~)) 29B.40.030 and the timing restriction on contributions of a candidate's personal funds in RCW ((~~42.17A.420~~)) 29B.40.070. Pursuant to Article 4, Section 29, Amendment 41 of the state Constitution and RCW ((~~42.17A.410~~)) 29B.40.030, candidates for the office of judge of the superior court may only receive contributions for each election in which the candidate is on the ballot or appears as a write-in candidate.

(2) For purposes of RCW ((~~42.17A.410~~)) 29B.40.030:

(a) Only superior court candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive contributions with respect to that primary; and

(b) Only superior court candidates who appear on the general election ballot or as write-in candidates in the general election may receive contributions with respect to that general election.

(3)(a) A superior court candidate who is issued a certificate of election before the primary election and whose name does not appear on either the primary or general election ballot may receive contributions pursuant to RCW ((~~42.17A.410~~)) 29B.40.030:

(i) Through the last day for withdrawal of declarations of candidacy pursuant to RCW 29A.24.131; or

(ii) If there is a reopening of filing for the position and no other candidate files, the last day for reopening of filing pursuant to RCW 29A.24.171 and 29A.24.181.

(b) Contributions remaining in the account of such a superior court candidate who is issued a certificate of election must be returned to contributors within two weeks of certification. Primary-election-related contributions are to be returned using the first-in, first-out accounting method. Any contributions received with respect to the general election must be returned in full to contributors.

(4) A superior court candidate who is issued a certificate of election after the primary election and whose name does not appear on

the general election ballot may receive contributions pursuant to RCW ((~~42.17A.410~~)) 29B.40.030. However, contributions received with respect to the general election must be returned in full to contributors within two weeks of certification.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-305 Personal funds of a candidate. (1) The personal funds of a candidate include:

(a) Assets which the candidate has legal access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(b) Income from employment;

(c) Dividends and proceeds from stocks and other investments;

(d) Income from trusts, if established before candidacy;

(e) Income from trusts established from bequests, even if established after candidacy;

(f) Personal gifts, if customarily received; and

(g) Proceeds from lotteries and similar games of chance.

(2) A candidate may also use, as personal funds, his or her portion of assets owned jointly with a spouse or domestic partner. If the candidate's financial interest is not specified, then the candidate's share is deemed to be half the value of the asset.

(3) If any person gives or loans the candidate funds in connection with their campaign, the funds are not considered personal funds of the candidate. Such funds are considered a contribution under ((~~chapter 42.17A~~)) Title 29B RCW unless the loan meets the exemption provided in RCW ((~~42.17A.465(3)~~)) 29B.40.170(3).

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-310 Definition—Doing business in Washington. A corporation or business entity is "doing business in Washington state" for purposes of RCW ((~~42.17A.405~~)) 29B.40.020 if it conducts continuous or substantial activities in Washington state of such character as to give rise to a legal obligation.

In determining whether a corporation or business entity is doing business in Washington state, the commission will take into consideration the following nonexclusive list of indicators:

- Purposefully availing itself of the privilege of conducting business in the state by invoking both benefits and protections of state law.
- Appointing an agent for service of process in Washington state.
- Registering as a corporation in Washington.
- Operating business locations in Washington.
- Hiring employees to work in Washington.
- Purchasing or selling goods or services in Washington.
- Operating an interactive internet website for the purpose of conducting business.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-320 Contributions from corporations, businesses, unions and political committees. Pursuant to RCW ((~~42.17A.405~~)) 29B.40.020, entities prohibited from contributing to a candidate for state office, a state official against whom recall charges have been filed or a political committee having the expectation of making expenditures in support of the recall of the official shall not earmark or otherwise direct a contribution to one of these recipients through a political committee.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-400 Time limit to solicit or accept contributions. The purpose of this rule is to clarify and implement the restriction period set forth in RCW ((~~42.17A.560~~)) 29B.45.020.

(1) "Campaign debt," as used in RCW ((~~42.17A.560~~)) 29B.45.020 and these rules, means any debt incurred by a candidate seeking election to a Washington state nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) "Known candidates" means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) "Legislative session freeze period" means the period of time in RCW ((~~42.17A.560~~)) 29B.45.020 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends at 11:59 p.m. on the day the special session adjourns.

(c) If a special session is held other than within ((~~thirty~~)) 30 days before a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW ((~~42.17A.560~~)) 29B.45.020 until sworn into office.

(5) A state official must comply with RCW ((~~42.17A.560~~)) 29B.45.020 until he or she no longer holds state office.

(6) Activities allowed during a freeze period. During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist their own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,

- A contribution to a public office fund,
- Used to pay a nonreimbursed public office related expense, or
- Used to retire a campaign debt;

(c) Attending and speaking at a fund-raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Attending a fund-raiser held by a candidate who is not subject to RCW ((~~42.17A.560~~)) 29B.45.020, provided the state official does not solicit or accept any contributions in connection with the fund-raiser.

(i) The state official's planned attendance may be included in publicity for the fund-raiser.

(ii) The state official may receive complimentary admission from the candidate so long as the official attends to show support for the candidate and the attendance does not assist the official's own campaign.

(e) Transferring their own personal funds, as defined in WAC 390-17-305, or their own "surplus funds," as defined in RCW ((~~42.17A.005~~)) 29B.10.520, to their own campaign account, so long as the funds are properly reported;

(f) Soliciting or accepting contributions on behalf of a nonprofit charity; or

(g) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

(7) Activities not allowed during a freeze period. During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

(a) Go to an incumbent state official or known candidate;

(b) Go to a public office fund;

(c) Are used to pay a nonreimbursed public office related expense;

(d) Are used to retire a campaign debt;

(e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(8) "Person employed by or acting on behalf of a state official" includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(a) During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (7) of this section.

(b) During a legislative session freeze period, a caucus political committee may solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own "surplus funds," as defined in RCW ((~~42.17A.005~~)) 29B.10.520.

(c) During a legislative session freeze period, a caucus political committee may not solicit or accept contributions for any of the purposes specified in subsection (7) of this rule.

(9) Bona fide political parties. During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund-raising purposes.

(10) Segregating session freeze funds. During a legislative session freeze period, if a state official, a caucus political committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
- Any political committee that supports or opposes state or local office candidates, the contributions are presumed to violate RCW ((~~42.17A.560~~)) 29B.45.020, unless the contributions are deposited into a separate bank account and not spent for the benefit of incumbent state officials or known candidates.

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsection (7) or (8)(c) of this section.

(11) Session freeze solicitations. If a person is solicited for a contribution during the legislative session freeze period by a state official, a caucus political committee, or another person employed by or acting on behalf of a state official; and the contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office; and the person makes a contribution during or after the freeze period in response to this solicitation; then the contribution is subject to RCW ((~~42.17A.560~~)) 29B.45.020 and subsection (12) of this section.

(12) Spending contributions to benefit incumbents or known candidates. For purposes of complying with subsections (6)(g), (7)(e) and (f), and (10) of this section, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes:

(a) Contributions to incumbent state officials or known candidates;

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period;

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates; or

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or their agents.

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll or survey does not constitute a contribution to the individual or does not otherwise support or promote his or her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference;
- The level of support the incumbent currently has and how strong that support is, but not why he or she has that support;
- Whether respondents recognize the names of individuals who may decide to seek that elective office;
- Whether respondents currently hold a favorable opinion about these individuals, their abilities or fitness for elective office, but not why such opinions are held;
- Whether respondents would likely vote for one or more of these individuals were they to seek office, but not why respondents would vote in the manner they indicated or whether they could be persuaded to change their vote; and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

(13) For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW ((~~42.17A.560~~)) 29B.45.020, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.

(a) Any such contributions should be reported as received on the date the transfer is made from the merchant account to a candidate or political committee account.

(b) The PDC may request that the state official or legislator document that the contribution was received by the merchant account outside the restriction period.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-405 Volunteer services. (1) In accordance with RCW ((~~42.17A.005 (16)(b)(vi)~~)) 29B.10.160 (2)(f), an individual may perform services or labor for a candidate or political committee without it constituting a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include:

(a) Office staffing;

(b) Doorbelling or leaflet drops;

(c) Mail handling (folding, stuffing, sorting and postal preparation, processing emails to and from the campaign);

(d) Political or fund-raising event staffing;

(e) Telephone bank activity (conducting voter identification, surveys or polling, and get-out-the-vote campaigns);

(f) Construction and placement of yard signs, hand-held signs or in-door signs;

(g) Acting as a driver for candidate or candidate or committee staff;

(h) Scheduling of campaign appointments and events;

(i) Transporting voters to polling places on election day;

(j) Except as provided in subsection (2) of this section, preparing campaign disclosure reports required by chapter ((~~42.17A~~)) 29B.25 RCW and otherwise helping to ensure compliance with state election or public disclosure laws;

(k) Campaign consulting and management services, polling and survey design, public relations and advertising (including online advertising), or fund-raising performed by any individual, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service;

(l) Creating, designing, posting to and maintaining a candidate or political committee's official campaign website or online forum, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service; and

(m) All similar activities as determined by the PDC.

(2) An attorney or accountant may donate their professional services to a candidate, a candidate's authorized committee, a political party or a caucus political committee, without it constituting a contribution in accordance with RCW ((~~42.17A.005 (16)(b)(viii)~~)) 29B.10.160 (2)(h), if the attorney or accountant is:

(a) Employed and their employer is paying for the services rendered;

(b) Self-employed; or

(c) Performing services for which no compensation is paid by any person.

However, neither RCW ((~~42.17A.005 (16)(b)(viii)~~)) 29B.10.160 (2)(h) nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a candidate's authorized committee, political party or caucus political committee and the conditions of RCW ((~~42.17A.005 (16)(b)(viii)~~)) 29B.10.160 (2)(h) and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-17-410 Electioneering communications may constitute contributions and be subject to limit. (1) Electioneering communications are contributions when they satisfy the definition of "contribution" in RCW ((~~42.17A.005(16) or 42.17A.310~~)) 29B.10.160 or 29B.30.030.

(2) Contributions are subject to all applicable provisions of ((~~chapter 42.17A~~)) Titles 29B RCW and ((~~Title~~)) 390 WAC, including RCW ((~~42.17A.405, 42.17A.410 and 42.17A.420~~)) 29B.40.020, 29B.40.030, and 29B.40.070.

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AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-18-010 Sponsor identification of advertising, political advertising, electioneering communications, and independent expenditures. (1) For the purposes of ((~~chapter 42.17A~~)) Titles 29B RCW and ((~~Title~~)) 390 WAC:

(a) "Sponsor of political advertising, electioneering communication, or independent expenditure" is, as used in the act and in these rules, and defined in chapter 29B.10 RCW ((~~42.17A.005~~)).

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, independent expenditures that are for political advertising, or electioneering communications, subject to the provisions of ((~~chapter 42.17A~~)) Title 29B RCW and as defined in chapter 29B.10 RCW ((~~42.17A.005 or 42.17A.255~~)) or RCW 29B.25.120.

(2) All advertising must clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). Additional requirements apply for the following:

(a) Political committees that sponsor political advertising costing or having a fair market value of $2,000 or more supporting or opposing a ballot proposition must clearly identify the "top five contributors" to that political committee, as well as the "top three donors" of all political committees identified as a "top five contributor," pursuant to WAC 390-18-025.

(b) Advertising undertaken as an independent expenditure or electioneering communication must comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors," as well as the "top three donors" to political committee contributors, and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW ((~~42.17A.320~~)) 29B.30.050.

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to identify the "top five contributors" to that political committee, as well

as the "top three donors" to political committee contributors. This requirement does not apply to bona fide political parties sponsoring independent expenditures.

(3) Required sponsor identification must be displayed in printed advertisements:

(a) In an area set apart from other printed matter;

(b) On the first page or fold of advertising consisting of more than one page that is intended to be presented as a single item (e.g., 3-page letter with return envelope). Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient;

(c) By respective sponsor on advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously.

(4) Required sponsor identification must be clearly identified or spoken in advertising on radio, by telephone, or on television.

(5) Required sponsor identification must be clearly identified, spoken or displayed on advertising on websites, social media and other digital communication. Political committee websites and other online forums created by a political committee must include sponsor identification.

(6) With advertising for which no payment is demanded or for which a cost or fair market value is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed, disseminated or broadcast.

(7) If more than one person sponsors specific advertising, the identity of each sponsor must be identified. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor, provided the contribution is not earmarked for the advertising and is reported in accordance with applicable provisions of ((~~chapter 42.17A~~)) Titles 29B RCW and ((~~Title~~)) 390 WAC.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-18-020 Advertising—Political party identification. (1) RCW ((~~42.17A.320~~)) 29B.30.050 requires sponsors of electioneering communications identifying a candidate or advertising supporting or opposing a candidate to clearly identify the candidate's political party or independent status in the advertising when the candidate has expressed a party or independent preference on the declaration of candidacy.

(2) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors to identify a candidate's political party.

AMENDATORY SECTION (Amending WSR 23-12-036, filed 5/30/23, effective 6/30/23)

WAC 390-18-025 Advertising—Identification of "top five contributors" and "top three donors to PAC contributors." Sponsors must identify the "top five contributors" when required to be included in political advertising, as provided in WAC 390-18-010. When the "top five contributor" list includes one or more political committees, the sponsor must further identify and separately include in the advertisement the collective "top three donors to PAC contributors" to all such political committees. This section explains how the sponsor should identify such "top three donors to PAC contributors."

(1) For purposes of RCW ((~~42.17A.320~~)) 29B.30.050, "top five contributors" means the five "persons," as defined in RCW ((~~42.17A.005~~)) 29B.10.400, giving the largest aggregate contributions of $2,000 or more during the 12-month period preceding the date on which the advertisement is published or otherwise presented to the public. The sponsor may calculate the 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation. If more than five contributors give an amount equal to the largest aggregate contribution exceeding the threshold value and the funds are received during the relevant 12-month period, the political committee sponsoring the advertisement must select five of these contributors to identify as the top five contributors.

(2)(a) If a political committee keeps records necessary to track contributions used according to the use intended by its contributors, that committee may identify the top contributions to the advertisement, as opposed to identifying the overall top five contributors to the committee, if such identified contributors made contributions that were intended and actually used to pay for the advertisement.

(b) For purposes for identifying the top five contributors, the sponsor should not include contributions earmarked, tracked, and used for purposes other than paying for the advertisement. However, if a sponsor uses a contributor's contributions earmarked for advertising for a different candidate or slate of candidates than the candidate or candidates intended by the contributor, the sponsor must include such contribution in determining the "top five contributors" of the actual advertisement for which the contribution was used.

(3) For purposes of RCW ((~~42.17A.350~~)) 29B.30.100 "top three donors to PAC contributors" means the three individuals or entities, other than political committees, who gave the largest aggregate contributions to one or more political committee listed as a "top five contributor," totaling $2,000 or more during the 12-month period preceding the date on which the advertisement was published or otherwise presented to the public. The sponsor may calculate the 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation.

(a) If any of the contributors to a "top five" political committee is itself a political committee, the sponsor must identify the top three contributors to that political committee. Such process continues until the sponsor has identified the top three nonpolitical committee contributors for each "top five" political committees. If more than three contributors to a "top five" political committee have given an

amount equal to the largest aggregate contribution, the sponsor may select three of these contributors to identify as the "top three donors to PAC contributors."

(b) If there is more than one political committee identified as a "top five contributor," the sponsor must identify the top three nonpolitical committee contributors to each "top five" political committee, and then determine the "top three donors to PAC contributors" collectively from that list.

(c) The sponsor should not include contributions to a "top five" political committee contributor for purposes of identifying the "top three donors to PAC contributors" if both:

(i) The contribution to the "top five" committee was reported as an earmarked contribution for a purpose other than the advertisement in question; and

(ii) The "top five" committee has provided written verification to the sponsor before the initial publication or public presentation of the advertisement, confirming that such contribution was tracked and used for such other purpose.

(4) For purposes of determining the "top three donors to PAC contributors," the sponsor must make reasonable efforts to identify the contributions made to a political committee. Reasonable efforts include searching through reports of contributions filed with the commission or any other state, as well as requests made to any political committee that has not disclosed its contributions to the commission or in any other state. After making reasonable efforts, the sponsor may reasonably rely on the information reported to the commission, and will not be liable for any omission or miscalculation because a contribution to any "top five" political committee has not been reported to the commission.

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

WAC 390-18-027 Definition—Medium that does not include a visual image. (1) For electioneering communications identifying sponsors and top five contributors as required by RCW ((~~42.17A.320~~)) 29B.30.050, a "medium that does not include a visual image" means audio only, such as radio, which is transmitted without a visual component.

(2) For independent expenditures identifying sponsors and top five contributors as required by RCW ((~~42.17A.320~~)) 29B.30.050, a "medium that does not include a visual image" means audio only, such as radio or telephone transmissions, without a visual component.

AMENDATORY SECTION (Amending WSR 25-01-116, filed 12/16/24, effective 1/16/25)

WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising. (1) RCW ((~~42.17A.320~~)) 29B.30.050 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW ((~~42.17A.320~~)) 29B.30.050 (1) and (2) are impractical. In addition, other political

advertising is exempt from providing certain disclosures. Political advertising may not include incorrect, false, or misleading sponsor identification whether or not sponsor identification is exempt under this section.

(2)(a) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," "top three donors to PAC contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW ((~~42.17A.320~~)) 29B.30.050 (1) and (2) and ((~~42.17A.350~~)) 29B.30.100:

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

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

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

(iv) State or local voter's pamphlets published pursuant to law.

(b) Yard signs must include sponsor identification, but need not include "top five contributors" or "top three donors to PAC contributors."

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

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

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW ((~~42.17A.320~~)) 29B.30.050 in a manner that is compatible with the device and technology used to display the advertising.

(4) Political advertising created and distributed by an individual using their own modest resources is not required to provide the disclosures in RCW ((~~42.17A.320~~)) 29B.30.050, when all of the following criteria are satisfied:

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

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

(c) The advertising is not a contribution under RCW ((~~42.17A.005 (16)(a)(ii) or (iii)~~)) 29B.10.160 (1)(b) or (c) or WAC 390-05-210;

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

(e) The advertising is either:

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

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

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW ((~~42.17A.320~~)) 29B.30.050 where the sponsor's name is otherwise apparent on the face of the communication.

AMENDATORY SECTION (Amending WSR 24-12-019, filed 5/24/24, effective 6/24/24)

WAC 390-18-035 Synthetic media—Application of disclosure statements in electioneering communications. For purposes of chapter ((~~42.62~~)) 29B.35 RCW, any disclosure statement regarding the use of "synthetic media" in an electioneering communication is in addition to any required disclosure statements under chapter ((~~42.17A~~)) 29B.30 RCW and Title 390 RCW, and may not substitute, replace, or otherwise interfere with such disclaimer requirements.

AMENDATORY SECTION (Amending WSR 24-12-019, filed 5/24/24, effective 6/24/24)

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) "Commercial advertiser" as that term is used in the act and these rules is defined under RCW ((~~42.17A.005~~)) 29B.10.110.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when selling digital media services to be hosted on another platform or other media, the advertiser must include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries, a link to a portal for processing requests, or a link to a website where the required information is maintained.

(3) Pursuant to RCW ((~~42.17A.345~~)) 29B.30.090, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, must maintain current books of account and related materials as required by this section. Information con-

tained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours; or

(b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request, but no later than two business days; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

(5) A commercial advertiser may have, to the extent necessary, up to three business days to update its books of account upon receiving notice regarding any missing political advertising or electioneering communication, if:

(a) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication;

(b) The purchaser did not provide such information; and

(c) The order was not reasonably identifiable to the commercial advertiser as political advertising or an electioneering communication.

(6) The information and books of account that must be maintained open for public inspection pursuant to RCW ((~~42.17A.345~~)) 29B.30.090 are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;

(c) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employer identification number, or other verifiable identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;

(d) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used; and

(e) Date(s) the commercial advertiser rendered service, including the dates, where applicable, that the advertising or communication was presented to the public.

(7) In addition to subsection (6) of this section and pursuant to RCW ((~~42.17A.345~~)) 29B.30.090, the materials and books of account open

for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For digital communication platforms:

(i) A description of the demographic information;

(ii) The statistical characteristics of a population (e.g., age, gender, race, location, etc.), of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business;

(iii) The total number of impressions generated by the advertisement or communication; and

(iv) Any generative adversarial network techniques, artificial intelligence, or other digital technology, provided by the commercial advertiser to produce any "synthetic media," as defined under RCW ((~~42.62.020~~)) 29B.30.010, for the advertisement or communication.

(8) At the request of the PDC, each commercial advertiser required to comply with this section must provide to the PDC copies of the information described above.

RDS-6740.1

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

WAC 390-19-010 Submission of required materials electronically.

(1) The public disclosure commission (PDC) was created and empowered by initiative of the people to provide timely and meaningful public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with this chapter.

(2) Full and prompt access to the information required by persons subject to the law is best realized through use of electronic reporting. For this reason, the Washington state legislature and the commis-

sion have mandated the use of electronic reporting, and the commission also requires that other materials, such as applications, statements, notices, payments, or other items required under the provisions of ((~~chapter 42.17A~~)) Title 29B RCW be submitted to the PDC electronically, where the PDC has made an electronic method available.

(3) Persons subject to reporting requirements under this chapter must file reports using the electronic reporting method provided or approved by the PDC.

(4) Persons required to provide the PDC with electronic contact information must provide an email address or other electronic format, if such alternate format has been approved by the PDC.

(5) Any person required to provide information electronically, or required to provide electronic contact information, but who does not do so, is in violation of RCW ((~~42.17A.055~~)) 29B.15.010 and may be subject to enforcement action unless the person has sought and been granted an exception under WAC 390-19-050.

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

WAC 390-19-040 Electronic submission of required materials—Date of receipt, verification, and amendments. (1) An electronic report is filed when it is received and validated by the PDC computer system. The PDC will notify the person reporting that the electronic report has been received.

(2) An electronic report is timely filed if received on or before 11:59 p.m. Pacific Time on the prescribed reporting date.

(3) An electronic report that is infected with a virus, damaged, or is improperly formatted is not properly filed with the PDC and will be rejected.

(4) To amend an electronically filed report, the entire report must be electronically refiled.

(5) Where no electronic method has been provided, or where the executive director has approved a hardship exemption to the electronic requirement, the date of receipt of any properly addressed mailed application, report, statement, notice, payment, or other item required under the provisions of ((~~chapter 42.17A~~)) Title 29B RCW is the date shown by the post office cancellation mark on the envelope. Any item mailed to the PDC under the provisions of ((~~chapter 42.17A~~)) Title 29B RCW that does not include a post office cancellation mark is presumed to be provided timely if received by the PDC within five business days of the due date.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-045 Electronic filing system—Inoperable. (1) For the purpose of RCW ((~~42.17A.055~~)) 29B.15.010, "electronic filing system" means the specific PDC-provided application or functionality necessary to file a specific report and does not include software provided by third parties;

(2) For the purpose of RCW ((~~42.17A.055~~)) 29B.15.010, "inoperable" means the electronic filing system used by the filer is unable to prepare or receive the required report except as provided in subsection (3) of this section;

(3) The electronic filing system is not considered inoperable during regular maintenance periods lasting less than ((~~thirty~~)) 30 minutes between the hours of 11:00 p.m. and 5:00 a.m. Pacific Time or unscheduled events lasting less than ((~~fifteen~~)) 15 minutes in any ((~~twenty-four~~)) 24-hour period;

(4) The PDC will provide notification for all periods of inoperability on its website and will provide an option for individuals to also be notified by electronic notification upon request.

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

WAC 390-19-050 Electronic submission of required materials—Exceptions. The PDC executive director may make exceptions on a case-by-case basis for persons who lack the technological ability to submit required materials electronically.

A person seeking an exception must electronically file with the executive director of the PDC a written statement of reasons why the person lacks the ability to submit required materials electronically. For required reports, the request should be submitted by the ((~~tenth~~)) 10th day of the month preceding the month in which the report is due so that action on the request can be completed before the filing deadline. The request does not suspend the reporting requirement of any portion of ((~~chapter 42.17A~~)) Title 29B RCW. Upon receipt of a filed request, the executive director may request further information from the applicant in consideration of the request. The executive director will issue a decision to approve or deny a request for an exception to an electronic submittal requirement within thirty days of receiving a filed request, which may be extended if further information is provided upon request by the executive director.

RDS-6741.1

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

WAC 390-20-0101 Lobbyist registration. The rules in this chapter set forth the reporting requirements for lobbying activities and legislative activities of governmental units, as required under chapter ((~~42.17A~~)) 29B.50 RCW.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-015 Lobbyists registration—Termination. A lobbyist who ceases lobbying activity may terminate his or her registration at any time by filing with the commission a signed statement, consistent with RCW ((~~42.17A.600(3)~~)) 29B.50.010(3), indicating that he or she is not lobbying or being compensated to lobby. This notice of termination may be provided on an L-2 report for the month in which termination has taken place. A lobbyist who terminates his or her registration shall file all reports required by chapter ((~~42.17A~~)) 29B.50 RCW for the period during which he or she was registered as a lobbyist. The employer of a lobbyist who terminates his or her registration shall not be relieved of any duty to file the reports otherwise required by ((~~chapter 42.17A~~)) Title 29B RCW.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-20-017 Suspension of registration. Lobbyists may temporarily suspend their registration by amending the registration to indicate the months in which no lobbying will be done, no expenditures will be made for lobbying, and no compensation will be received for lobbying. The amendment must be made before the beginning of the suspension period.

(1) During the period when the suspension is effective, the PDC will not require L-2 Reports to be filed.

(2) The registration shall be reinstated upon the expiration of the suspension period indicated on the amended registration, or if the lobbyist further amends the registration in advance to indicate a new date of reinstatement. The lobbyist must update any information on the registration upon reinstatement.

(3) Notification under this rule does not suspend or modify the requirement in RCW ((~~42.17A.600(4)~~)) 29B.50.010(4) for a new registration each odd-numbered year.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-018 Lobbyist voluntary registration. A person, exempt from registration under RCW ((~~42.17A.600~~)) 29B.50.010, who voluntarily registers as a lobbyist, shall not be required to file the reports required by RCW ((~~42.17A.615~~)) 29B.50.050.

The employer of any voluntarily registered lobbyist shall not be required to file the reports provided in RCW ((~~42.17A.630~~)) 29B.50.080.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-024 Lobbyist nonreportable expenses. A registered lobbyist who is not compensated for lobbying and, who in advance, informs the commission that the only expenses to be incurred are those exempt from reporting as provided in RCW ((~~42.17A.615~~)) 29B.50.050 (3)(a) through (d) shall not be required to file an L-2 report.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-20-025 Lobbyists expenditures—Apportionment of expenses. ((~~(1)~~)) For the purposes of compliance with RCW ((~~42.17A.615~~)) 29B.50.050 (2)(a) requiring reporting of expenditures by lobbyists, a person registered and reporting as a lobbyist need only report those expenditures made or incurred for lobbying. Each expenditure must be reported in sufficient itemized detail to identify the person and agency being lobbied, and the subject matter of the proposed legislation (or other legislative activity) or rule making that the lobbyist has been engaged in supporting or opposing. Such detail must include the identification of legislation or rule by number or citation, or title of draft if no number has been assigned. If a lobbyist is reporting expenditure activity of a grass roots (indirect) lobbying campaign, pursuant to RCW ((~~42.17A.640~~)) 29B.50.100 and WAC 390-20-125, such activity must be reported separately from other direct lobbying expenditures.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-026 Definition of term "other expenses." The term "other expenses" in RCW ((~~42.17A.615~~)) 29B.50.050 shall be deemed to include only expenses or services paid or incurred or performed in connection with lobbying.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-027 Definition—State elected official, candidate for state office. For the purposes of reporting by employers of registered lobbyists pursuant to RCW ((~~42.17A.630~~)) 29B.50.080, the terms "state elected official" and "candidate for state office" shall include governor, lieutenant governor, attorney general, state auditor, commissioner of public lands, insurance commissioner, secretary of state, superintendent of public instruction, state treasurer, state senator and state representative.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-20-052 Application of RCW ((~~42.17A.635~~)) 29B.50.090—Reports of agency lobbying. Regarding the reporting of lobbying by public agencies pursuant to RCW ((~~42.17A.635~~)) 29B.50.090:

(1) The phrase "in-person lobbying" contained in RCW ((~~42.17A.635~~)) 29B.50.090 (5)(d)(v)(B) includes activity which is intended to influence the passage or defeat of legislation, such as testifying at public hearings, but does not include activity which is not intended to influence legislation, such as attending a hearing merely to monitor or observe testimony and debate. "In-person" lobbying also includes meetings through video conferencing or other remote access through an online platform or other digital medium with visual capability.

(2) The phrase "a legislative request" contained in RCW ((~~42.17A.635~~)) 29B.50.090 (5)(d)(ii) includes an oral request from a member of the legislature or its staff.

(3)(a) When any subagency (i.e., department, bureau, board, commission or agency) within a state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district (i.e., primary agency) has independent authority to expend public funds for lobbying, that subagency may file a separate L-5 reporting the information required by RCW ((~~42.17A.635(5)~~)) 29B.50.090(5).

(b) When a subagency elects to file its own, separate L-5, it must notify the PDC and the administrative head of the primary agency of its intentions electronically. The primary agency does not thereafter need to include information for the subagency in its L-5, and will have no legal obligation for the filings of the subagency.

(4) Pursuant to RCW ((~~42.17A.635(6)~~)) 29B.50.090(6), certain local agencies may elect to have lobbying activity on their behalf reported by their elected officials, officers and employees in the same manner as lobbyists who register and report under RCW ((~~42.17A.600 and 42.17A.615~~)) 29B.50.010 and 29B.50.050:

(a) Whenever such a local agency makes such an election, it shall provide the PDC with a notice electronically.

(b) After such an election, those who lobby on behalf of such local agency must register and report all lobbying activity reportable under RCW ((~~42.17A.635(5)~~)) 29B.50.090(5) in the same manner as lobbyists who are required to register and report under RCW ((~~42.17A.600 and 42.17A.615~~)) 29B.50.010 and 29B.50.050. Such a local agency shall report pursuant to RCW ((~~42.17A.630~~)) 29B.50.080.

(c) In order to terminate such an election, such a local agency must provide the PDC with notice electronically, and report pursuant to RCW ((~~42.17A.635(5)~~)) 29B.50.090(5) thereafter.

(d) The exemptions from reportable lobbying activity contained in RCW ((~~42.17A.635~~)) 29B.50.090 (5)(d) apply to all agencies, whether or not they have exercised the election to report in the same manner as lobbyists who report under RCW ((~~42.17A.600, 42.17A.615, and 42.17A.630~~)) 29B.50.010, 29B.50.050, and 29B.50.080. The exemptions contained in RCW ((~~42.17A.610~~)) 29B.50.040 (1), (4), and (5) do not apply to any agency.

(5) Unless an agency has elected to report its lobbying pursuant to RCW ((~~42.17A.635(6)~~)) 29B.50.090(6) and subsection (3) of this section, an agency must include the reportable lobbying activity on its

behalf by an elected official in its quarterly report. Such an elected official does not file any separate report of that activity.

(6) In-person lobbying by elected officials, officers and employees of an agency is not reportable unless and until:

(a) An elected official has expended in excess of $100 of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington during any three-month period as provided in RCW ((~~42.17A.635~~)) 29B.50.090 (5)(d)(v)(B).

(b) Other officers and employees have, in the aggregate:

(i) Expended in excess of $100 of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington; and

(ii) Engaged in such lobbying for more than four days or parts thereof during any three-month period as provided in RCW ((~~42.17A.635~~)) 29B.50.090 (5)(d)(v)(B).

(c) When limits in (a) or (b) of this subsection have been exceeded, the agency must report such elected official, officer, or employee as a "person who lobbied this quarter" on the front of L-5 Report and include a listing of those excess expenditures as noted on that report.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-054 Agency lobbying—Reporting of lobbying by independent contractors. (1) An independent contractor who is retained to lobby on behalf of an agency shall register and report as a lobbyist pursuant to RCW ((~~42.17A.600 and 42.17A.615~~)) 29B.50.010 and 29B.50.050.

(2) An agency which retains an independent contractor as a lobbyist and reports all of its expenditures in connection therewith pursuant to RCW ((~~42.17A.635~~)) 29B.50.090 shall not be obligated to file a report pursuant to RCW ((~~42.17A.630~~)) 29B.50.080 with regard to that lobbyist.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-20-110 Reporting for lobbyist employers. The official report for statement by employers of registered lobbyists as required by RCW ((~~42.17A.630~~)) 29B.50.080 is designated "L-3." Electronic filing is required by RCW ((~~42.17A.055~~)) 29B.15.010 unless the PDC executive director has granted a hardship exemption for lack of technological ability.

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

WAC 390-20-111 Lobbyist employers reporting of political contributions. The official report entitled "Employer of Lobbyist Monthly Political Contribution Report" as required by RCW ((~~42.17A.630~~)) 29B.50.080 (2)(a) is designated "L-3c." Hard copies of this report are available for download on the PDC's website, www.pdc.wa.gov, and at the PDC Office, Olympia, Washington. Any attachments must be on 8-1/2" x 11" white paper.

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

WAC 390-20-120 Reporting legislative activity by public agencies. The official report for legislative activity by public agencies as required by RCW ((~~42.17A.635~~)) 29B.50.090 is designated "L-5." This report is available on the PDC's website, www.pdc.wa.gov, and at the PDC Office, Olympia, Washington.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-20-125 Registration and reporting by sponsors of grass roots lobbying campaigns. The official report for registration and reporting by sponsors of grass roots lobbying campaigns as required by RCW ((~~42.17A.640~~)) 29B.50.100 is designated "L-6." Hard copies of this report are available for download on the PDC's website, pdc.wa.gov, and at the PDC Office, Olympia, Washington. Any attachments shall be on 8-1/2" x 11" white paper.

(1) Grass roots lobbying, also known as indirect lobbying, as set forth in RCW ((~~42.17A.640~~)) 29B.50.100, involves an appeal to the public to solicit, urge, or encourage the public to influence legislation. Grass roots (indirect) lobbying is distinguished from direct lobbying of a legislator, state official, or state agency, which may require registration and reporting separately, pursuant to RCW ((~~42.17A.600 and 42.17A.615~~)) 29B.50.010 and 29B.50.050.

(2) The presentation of a campaign may include any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, digital communication, or other means of mass communication to the public. The commission will consider the definition of "mass communication," as set forth in WAC 390-05-290, as guidance in application to this section.

(a) Internal communications by a membership organization that are directed and limited to the members of that organization do not constitute "lobbying," as defined under RCW ((~~42.17A.005~~)) 29B.10.350. The commission will use the criteria set forth under WAC 390-05-515 to assist in determining whether a communication is primarily limited to the members within an organization.

(b) The publication or dissemination of news reporting activities by working members of the press, radio, digital media, or television, where no payment for the content has been received and where payment

for the space or time of such content is not normally required, is exempt from registration and reporting as provided under RCW ((~~42.17A.610(3)~~)) 29B.50.040(3).

(3) The sponsor of a grass roots lobbying campaign is the person or persons making expenditures for the presentation of the campaign to the public.

(a) A lobbyist may report the campaign activities of a sponsor, who is a registered lobbyist employer, on the L-2 Report, including the same details as required pursuant to RCW ((~~42.17A.640~~)) 29B.50.100, and this section, only if:

(i) The sponsor did not receive any contributions for the campaign other than the sponsor's own funds, including general treasury funds;

(ii) The sponsor timely registered for the campaign pursuant to RCW ((~~42.17A.640~~)) 29B.50.100; and

(iii) The campaign is identified on the L-2 Report.

(b) If the campaign has more than one sponsor (for example a group or coalition of persons with each member making expenditures separately for the campaign), the sponsors must register collectively as a grass roots lobbying campaign on the L-6 Report. All activity must be reported on the L-6 Report, or in accordance with (a) of this subsection.

(4) Expenditures made on behalf of a grass roots lobbying campaign must be reported by financial category, pursuant to RCW ((~~42.17A.640(2)~~)) 29B.50.100(2), with sufficient detail and itemization to provide the public a reasonable understanding of the nature and scope of the expenditure, including:

(a) Advertising - Any advertising or other form of mass communication must be segregated by media type, including:

(i) The name and address of any commercial advertiser that sold the advertising;

(ii) The quantity of each printed media distributed, or the name and location of each publication, outlet, or platform where the advertisement or communication appeared;

(iii) The date or dates that the advertising or communication was broadcast, distributed, published, or otherwise presented to the public; and

(iv) A description of the major work components or tasks that were provided by media type, in such detail as incorporated from WAC 390-18-050(7).

(b) Entertainment - Any expenditures on entertainment made in furtherance of the campaign must be reported. However, entertainment provided to or on behalf of a legislator or state official may need to be reported as direct lobbying, pursuant to RCW ((~~42.17A.615~~)) 29B.50.050.

(c) Office expenses - Any equipment, office space, staffing or other services purchased with campaign contributions, or used exclusively for the grass roots lobbying campaign, must be reported and itemized. If office expenses are provided exclusively by an organizational sponsor's general treasury funds, only the proportional campaign use of such office expenses must be reported as follows:

(i) The proportional amount paid or incurred by the sponsor for any employee or contractor who provides the campaign with:

(A) More than 20 hours a month on any administrative, secretarial, or other supportive staffing services; or

(B) More than five hours a month on any professional services, such as legal, accounting, management, or production; and

(ii) The purchase or rental value of any equipment or property used primarily for campaign purposes.

(d) Consultants - Any contractual or other payments made to any professional service provider, or other third party, for campaign purposes must be reported, including the name and address of the provider and a description of the services provided.

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

WAC 390-20-130 Statement of employment of legislators, state officers, and state employees. The official report for statement of employment of legislators, state officers, and state employees as required by RCW ((~~42.17A.645~~)) 29B.50.110 is designated "L-7." Hard copies of this form are available for download on the PDC's website, www.pdc.wa.gov, and at the PDC Office, Olympia, Washington. Any paper attachments shall be on 8-1/2" x 11" white paper.

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

WAC 390-20-140 Loss of exemption from registering and reporting lobbying activities. (1) For the purpose of determining compliance with RCW ((~~42.17A.650~~)) 29B.50.120, a lobbyist's employer is responsible for the applicability of all of the exemptions provided in RCW ((~~42.17A.610~~)) 29B.50.040 to any lobbyist the employer employs, pays, or agrees to pay.

(2) The commission recognizes that a lobbyist who initially intends in good faith to utilize the "casual lobbying" exemption from registration and reporting which is provided in RCW ((~~42.17A.610(4)~~)) 29B.50.040(4) may thereafter become ineligible for that exemption, thus violating RCW ((~~42.17A.600 or 42.17A.615~~)) 29B.50.010 or 29B.50.050 by not having registered or reported within the prescribed time periods.

(3) The commission will not commence enforcement proceedings against a lobbyist or their employer in circumstances described in subsection (2) of this section if the lobbyist:

(a) Registers pursuant to RCW ((~~42.17A.600~~)) 29B.50.010 before doing any lobbying in excess of the exemption limitations in RCW ((~~42.17A.610(4)~~)) 29B.50.040(4); and

(b) Files a report on the L-2 Report when next due under RCW ((~~42.17A.615~~)) 29B.50.050, including all reportable information for the lobbying activities cumulatively causing the exemption limitations to be reached.

(4) The duty under RCW ((~~42.17A.655(1)~~)) 29B.50.130(1) of a person required to register as a lobbyist to obtain and preserve all records necessary to substantiate required financial reports includes such records of all activities which cumulatively cause the RCW ((~~42.17A.610(4)~~)) 29B.50.040(4) exemption limitations to be reached and exceeded.

(5) A lobbyist whose only compensation or other consideration for lobbying is payment of or reimbursement for expenditures not required to be reported per RCW ((~~42.17A.615~~)) 29B.50.050 (3)(a) through (d),

does not qualify for exemption from registration and reporting per RCW ((~~42.17A.610(4)~~)) 29B.50.040(4).

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-141 Registration and reporting required when a lobbyist employs another lobbyist. (1) If a registered lobbyist employs another lobbyist to perform lobbying activities in excess of the exemptions specified in RCW ((~~42.17A.600(2) or 42.17A.610~~)) 29B.50.010(2) or 29B.50.040 then such registered lobbyist is also an employer of a registered lobbyist.

(2) Any person who becomes an employer of a registered lobbyist under such circumstances must (a) confirm such employment on the employee's L-1 registration statement; (b) in a written instrument filed with such employee's L-1 registration statement identify which clients the employee is authorized to represent; (c) file an annual L-3 report as an employer of a registered lobbyist; and (d) continue to file monthly L-2 reports as a registered lobbyist.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-20-143 Application of lobbying provisions to organizations. (1) A lobbyist other than an individual will be considered to have properly restricted its lobbying activities and is eligible for the RCW ((~~42.17A.610(5)~~)) 29B.50.040(5) "casual lobbying" exemption during any three-month period in which its agents or employees do not make an expenditure of more than $100 for or on behalf of legislators, state elected officials, public officers or employees of the state of Washington.

(2) A lobbyist other than an individual which does sponsor or coordinate or directly make unreported expenditures exceeding $100 during a three-month period, as fully described in subsection (1) of this section, must register and report as required by RCW ((~~42.17A.600 and 42.17A.615~~)) 29B.50.010 and 29B.50.050: Provided, that it can satisfy these requirements by having an individual agent (a) register and report as a lobbyist, and (b) include a report of these and all other lobbying expenditures made on behalf of the individual during that three-month period as part of the L-2 Report.

(3) An entity including, but not limited to, a law firm, consulting firm, advertising agency, or other similar organization, which receives or expects to receive compensation for lobbying from any person, must register and report as a lobbyist pursuant to RCW ((~~42.17A.600 and 42.17A.615~~)) 29B.50.010 and 29B.50.050: Provided, that membership dues or contributions to a nonprofit organization made for the purpose of promoting a general interest and not in return for lobbying on behalf of any specific member or contributor will not be regarded as compensation for this purpose. Registration statements and reports must list as the lobbyists both the firm or organization and each individual acting on its behalf. The person paying the compensation must report under RCW ((~~42.17A.630~~)) 29B.50.080 as a lobbyist's employer.

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

WAC 390-20-144 Registration and reporting by lobbyist organizations. (1) Any firm, company, association, or similar organization required to register as a lobbyist must file one registration statement (L-1 Report) for each employer for which the organization will lobby.

(a) The lobbying organization will include with the registration statement a photo and the biographical information required by RCW ((~~42.17A.605~~)) 29B.50.030 for each individual agent of the organization who is authorized to lobby for that particular employer.

(b) If the agent is authorized to lobby for several employers, only one photo and biographical sheet need be submitted.

(c) The organization must notify the PDC electronically when there is any change in the employment or assignment of agents who lobby.

(2) One monthly expenditure report (L-2 Report) must be submitted showing all expenditures made by the organization and its agents. It is unnecessary to prorate or attribute expenditures to individual agents of the organization. However, expenditures for entertainment exceeding ((~~fifty dollars~~)) $50 per occasion must identify the individual agent(s) who were present at the occasion. The L-2 Report must be signed by the president or chief executive officer of the lobbying organization.

(3) If any individual agent of the organization ceases to lobby or the organization terminates that agent's authority to lobby, the organization must make such notation electronically on the L-2 Report of the termination.

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

WAC 390-20-146 Reporting of field trips and other excursions. (1) All persons required to file reports pursuant to RCW ((~~42.17A.615~~)) 29B.50.050 who provide field trips or other excursions to elected and appointed officials, and other individuals required to file the Personal Financial Affairs Statement (F-1 Report) must file, on the appropriate monthly L-2 or L-2 Memo Report, the identity of persons attending the field trip or other excursion along with the date, pro rata cost, and a brief description of the field trip or other excursion.

(2) All persons required to file pursuant to RCW ((~~42.17A.710~~)) 29B.55.030 who attend a field trip or other excursion paid for or provided by a lobbyist, lobbyist employer, or other person paying for or providing field trips or other excursions must report the date, name of the person paying for or providing the field trip or excursion, pro rata cost attributable to the filer, applicable code value, and a brief description of the field trip or other excursion as part of the F-1 statement that covers the date of the field trip or other excursion.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-148 Lobbyist direction or control of employer contributions. For purposes of RCW ((~~42.17A.460~~)) 29B.40.160, a lobbyist shall be deemed to be exercising direction or control over the choice of the recipient state office candidate, state official against whom recall charges have been filed or a political committee if the lobbyist:

(1) Officially decides to which state office candidates, state officials against whom recall charges have been filed or political committees the lobbyist employer or the employer's political committee contributes; or

(2) Has the ability, on his or her own initiative, to execute or authorize payment of a contribution by the lobbyist employer or the employer's political committee to a state office candidate, a state official against whom recall charges have been filed or a political committee.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-20-150 Changes in dollar amounts. Pursuant to the commission's authority in RCW ((~~42.17A.125~~)) 29B.20.050 to revise the monetary reporting thresholds found in ((~~chapter 42.17A~~)) Title 29B RCW to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject	Value Set in Statute (and last changed)	Previous Adjusted Value in Rule (last changed in 2014)	Current Adjusted Value (effective ...2023)
((~~42.17A.600(1)~~)) 29B.50.010(1)	Threshold for reporting members of a lobbyist employer entity who pay dues or fees	$500 (1973)	$1,450	$4,000
((~~42.17A.610(5)~~)) 29B.50.040(5)	Limit for "casual lobbying" exemption from registration for lobbying expenses in a three-month period	$25 (1982)	$35	$100
((~~42.17A.615(2)~~)) 29B.50.050(2)	Threshold for itemizing expenditures on entertainment and food or beverage for public officials	$25 (entertainment) (1982) $50 (food & beverage) (1995)	$50 n/a	$100 $100
((~~42.17A.630(2)~~)) 29B.50.080(2)	Threshold for reporting monthly contributions by lobbyist employer	$100 (1990)	$110	$250
((~~42.17A.635 (5)(d)(v)(B)~~)) 29B.50.090 (5)(d)(v)(B)	Limit on expenditure of nonpublic funds on behalf of any public officer in connection with agency lobbying	$15 (1979)	$25	$100

Code Section	Subject	Value Set in Statute (and last changed)	Previous Adjusted Value in Rule (last changed in 2014)	Current Adjusted Value (effective ...2023)
((~~42.17A.640(1)~~)) 29B.50.100(1)	Threshold of expenditure activity for registration as a grassroots lobbying campaign	$500 per month (1985) $1,000 per three-month period (1985)	$700 $1,400	$1,500 $3,000
((~~42.17A.640(2)~~)) 29B.50.100(2)	Threshold for reporting the identity of contributors to a grassroots campaign	$25 (1985)	n/a	$100

RDS-6742.1

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

WAC 390-24-010 Submissions for statement of financial affairs. The official statement of financial affairs as required by RCW ((~~42.17A.700~~)) 29B.55.010 is designated "F-1," and is available on the commission's website, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-24-025 Time for filing statement of financial affairs. (1) Any person holding elected public office, except as exempted by the terms of RCW ((~~42.17A.700~~)) 29B.55.010, and any appointed official and professional staff member listed or referenced in RCW ((~~42.17A.700~~)) 29B.55.010, and any appointed official required to comply with the reporting requirements of RCW ((~~42.17A.700~~)) 29B.55.010 by any other statute are required to file the F-1 for each partial or full calendar year that such person has served.

(a) For any elected official or officer continuing service from the prior year, the reporting period covers the entire preceding calendar year.

(b) For any officer or official who leaves public office prior to January 1st, the reporting period covers only the portion of the previous year that such person was in office.

(c) For any officer or official appointed to office between January through November, or any person who becomes a candidate within the same time period, the reporting period covers the immediately preceding ((~~twelve~~)) 12-month period from the time of appointment or candidacy (or "from the time the F-1 was filed"). However, if the appointee or candidate files between January 1st and April 15th and also has a prior obligation to file as an officer or official under (a) of this subsection, then the reporting period covers the period from January 1st of the preceding year through the time of appointment or candidacy in the current year. For any officer or official appointed to office

in December, the reporting period covers the preceding ((~~twelve~~)) 12-month period ending December 31st of the same year.

(2) Any person required to file an F-1 must electronically file the F-1 with the commission under the relevant periods as follows:

(a) For any officer or official continuing service from the prior year, between January 1st and April 15th of each year immediately following the year, or portion of the year served;

(b) For any officer or official who leaves office before January 1st of the following year, either:

(i) Within ((~~sixty~~)) 60 days of leaving public office; or

(ii) Between January 1st and April 15th of the year immediately following the portion of the year served; or

(c) For any person appointed to a vacancy in office, or becoming a candidate, as follows:

(i) Within two weeks of appointment for appointment of candidacy beginning during the months of January through November; or

(ii) Between January 1st and January 15th for appointment or candidacy beginning in December.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-24-100 Definition—Direct financial interest. (1) For the purpose of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(b), the phrase "direct financial interest" means and includes any direct ownership interest in a bank or savings account, in the cash surrender value of an insurance policy, in stocks, bonds, other securities, evidences of indebtedness, judgments, accounts receivable, and other monetary claims in liquidated amounts.

The term "direct financial interest" as used in that subsection, shall not be deemed to include:

(a) Any direct financial interest which is required to be reported by such elected official or candidate under any other provision of ((~~chapter 42.17A~~)) Title 29B RCW; and

(b) An account receivable by a business entity in the ordinary course of such entity's business.

(2) A direct financial interest in stocks, bonds, or other securities held in an account managed by a commercial broker, where a third party solely (or independently) has decision-making authority of the investment, may be reported under the name and value of the account, rather than the individual properties of the portfolio.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-24-110 Definition—Debt. (1) For the purpose of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(c), the term "debt" means and includes a personal obligation or liability to pay or return something of value.

(2) The term "debt" as used in RCW ((~~42.17A.710~~)) 29B.55.030 (1)(c) shall not be deemed to include:

(a) An account payable of a business entity in the ordinary course of such entity's business; or

(b) A contractual promise as guarantor of a debt.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-24-150 Definition—Officer. (1) For the purposes of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g), the term "officer" or "office held" means and includes:

(a) President, vice president, secretary, treasurer, or some derivation thereof;

(b) One who holds a corporate office; or

(c) An individual who holds a position described as an officer in a corporation's bylaws or who is appointed by the board of directors in accordance with the bylaws, or an individual who acts in such capacity without the title or appointment.

(2) An individual who has been given the title of "officer" to denote a managerial job classification is not an officer for the purposes of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g).

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

WAC 390-24-160 Definition—Professional staff member. (1) A professional staff member of the office of the governor and of the legislature includes all individuals retained on a full or part-time basis whose primary responsibilities require the exercise of judgment and discretion in policy related matters including, but not limited to, such individuals who are involved in the development of legislation. A professional staff member does not include individuals retained primarily for clerical, ministerial, or internal accounting and bookkeeping purposes.

(2) The commission needs a complete and accurate list of professional staff members of the governor, the senate, and the house of representatives, in order to properly and fairly administer the personal financial affairs disclosure requirements applicable to executive state officers as defined in RCW ((~~42.17A.705~~)) 29B.55.020. Each December, the executive director will ask the governor, the secretary of the senate, and the clerk of the house to provide the commission by January 15th, the names and positions of the professional staff members meeting the criteria set forth in subsection (1) of this section, who are expected to be retained during the ensuing year, and to provide periodic updates throughout the year as necessary to reflect changes in professional staff.

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

WAC 390-24-200 Descriptions of real property. (1) For the purposes of reporting real property as required by RCW ((~~42.17A.710~~)) 29B.55.030 (1)(h) through (k), the filer must list the street address

of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description must be followed by the name of the county in which the property is located.

(2) Pursuant to RCW ((~~42.17A.710(2)~~)) 29B.55.030(2), a judge, prosecutor, sheriff, or their immediate family member who is required under RCW ((~~42.17A.710~~)) 29B.55.030 (1)(h) through (k) to disclose the personal residence of the judge, prosecutor, or sheriff, may satisfy that reporting requirement by instead reporting:

(a) The city or town; and

(b) The type of residence, such as a single-family or multifamily residence, and the nature of ownership.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-24-201 Report of compensation by limited partnerships, limited liability partnerships, limited liability companies, and similar entities. For the purposes of filing financial disclosures required by RCW ((~~42.17A.710~~)) 29B.55.030:

(1) The terms partnership, general partnership, limited partnership, limited liability partnership, and limited liability company as defined in Title 25 RCW will apply.

(2) A person filing a personal financial affairs statement shall report the name of any limited partnership, limited liability partnership, limited liability company, professional limited liability company, and similar entity in which the person or member of the person's immediate family holds:

(a) Any office, directorship, or any general partnership interest, including the title held; and

(b) Any ownership interest of ((~~ten~~)) 10 percent or more.

(3) In addition to the requirements under subsection (2) of this section, the person shall also report the following:

(a) Regarding a governmental unit in which the filer seeks or holds any office or position, if the entity has received compensation during the reporting period from the governmental unit, the value of the compensation and the consideration given or performed in exchange for the compensation; and

(b) The name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which the entity has received compensation in the amount equal to or greater than the amount specified in WAC 390-24-010 and 390-24-020 (the F-1 reporting forms) during the reporting period and the consideration given or performed in exchange for the compensation.

AMENDATORY SECTION (Amending WSR 15-01-066, filed 12/11/14, effective 1/11/15)

WAC 390-24-202 Report of compensation from sales commissions. When a person receives compensation in the form of a commission on sales, the reporting of the compensation, required in RCW ((~~42.17A.710~~)) 29B.55.030, shall include:

(1) The name and address of the person or persons through whom a commission was paid;

(2) For purposes of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(f), the name and address of each person (other than an individual) for whom a service was rendered or to whom a product was sold that resulted in a commission of $2,400 or more in the aggregate;

(3) For purposes of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g)(i), the name and address of each governmental unit for whom a service was rendered or to whom a product was sold that resulted in a commission;

(4) For purposes of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g)(ii), the name and address of each person (other than an individual) for whom a service was rendered or to whom a product was sold that resulted in a commission of $12,000 or more in the aggregate.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-203 Reporting of field trips and other excursions. (1) All persons required to file reports pursuant to RCW ((~~42.17A.615~~)) 29B.50.050 who provide field trips or other excursions to elected and appointed officials, and other individuals required to file the Personal Financial Affairs Statement (PDC Form F-1) shall file, on the appropriate monthly L-2 or L-2 Memo Report, the identity of persons attending the field trip or other excursion along with the date, pro rata cost, and a brief description of the field trip or other excursion.

(2) All persons required to file pursuant to RCW ((~~42.17A.710~~)) 29B.55.030 who attend a field trip or other excursion paid for or provided by a lobbyist, lobbyist employer, or other person paying for or providing field trips or other excursions shall report the date, name of the person paying for or providing the field trip or excursion, pro rata cost attributable to the filer, applicable code value, and a brief description of the field trip or other excursion as part of the F-1 statement that covers the date of the field trip or other excursion.

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

WAC 390-24-205 Reporting on compensation received for legislation prepared, promoted or opposed, for the statement of financial affairs (F-1). Pursuant to RCW ((~~42.17A.710~~)) 29B.55.030 (1)(e), as part of the F-1, unless part of their duties as an elected official, state executive officer, or professional staff member of a governmental entity, if an official has prepared, provided, or opposed any legislation, rule, rate, or standard for compensation, the official must provide information regarding:

(1) Each person for whom such services have been provided and the subject area about which the reporting official has prepared, promoted or opposed legislation, rule, rate, or standard; and

(2) The current or deferred compensation received or promised for said service for each person.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-210 Report of officers and directors of financial institutions. An elected official or candidate who is an officer or director of a financial institution may comply in part with RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g)(ii) by incorporating by reference a list of the financial institution's officers and directors if such a list has been filed with the commission by the financial institution in the current year.

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

WAC 390-24-301 Changes in dollar amounts of reporting thresholds and code values for the statement of financial affairs (F-1). Pursuant to the commission's authority in RCW ((~~42.17A.125~~)) 29B.20.050 to revise the monetary reporting thresholds and code values found in ((~~chapter 42.17A~~)) Title 29B RCW to reflect changes in economic conditions, the following revisions are made:

Statutory ((~~Section~~)) chapter 29B.55 RCW	Subject Matter	Amount Enacted or Last Revised	Revision Effective January 12, 2015
((~~.710~~)) .030 (1)(b)	Bank Accounts	$20,000	$24,000
((~~.710~~)) .030 (1)(b)	Other Intangibles	$2,000	$2,400
((~~.710~~)) .030 (1)(c)	Creditors	$2,000	$2,400
((~~.710~~)) .030 (1)(f)	Compensation	$2,000	$2,400
((~~.710~~)) .030 (1)(g)(ii)	Compensation to Business Entity	$10,000	$12,000
((~~.710~~)) .030 (1)(g)	Bank Interest Paid	$2,400	$2,900
((~~.710~~)) .030 (1)(h)	Real Property-Acquired	$10,000	$12,000
((~~.710~~)) .030 (1)(i)	Real Property-Divested	$10,000	$12,000
((~~.710~~)) .030 (1)(j)	Real Property-Held	$10,000	$12,000
((~~.710~~)) .030 (1)(k)	Real Property-Business	$20,000	$24,000
((~~.710~~)) .030 (1)(l)	Food and Beverages	$50	

Statutory ((~~Section~~)) chapter 29B.55 RCW	Subject Matter	Amount Last Revised	Revision Effective May 21, 2019
((~~.710~~)) .030 (2)	Dollar Code A	Up to $4,449	Up to $29,999
	Dollar Code B	$4,500-$23,999	$30,000-$59,999
	Dollar Code C	$24,000-$47,999	$60,000-$99,999
	Dollar Code D	$48,000-$119,999	$100,000-$199,999
	Dollar Code E	$120,000 and up	$200,000-$499,999
	Dollar Code F		$500,000-$749,999
	Dollar Code G		$750,000-$999,999
	Dollar Code H		$1,000,000 or more

RDS-6743.1

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-28-020 Definition—Applicant. The term applicant for the purposes of chapter 390-28 WAC means any person who seeks a modification of the filing requirements pursuant to RCW ((~~42.17A.120~~)) 29B.20.040 and these rules.

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

WAC 390-28-025 Hearing to modify reporting requirements. (1) Any individual who considers compliance with any of the reporting requirements of ((~~chapter 42.17A~~)) Title 29B RCW to be a manifestly unreasonable hardship in a particular case may apply for a modification of such reporting requirements pursuant to RCW ((~~42.17A.120~~)) 29B.20.040 and further pursuant to these rules.

(2) A hearing to modify the reporting requirements will be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), unless otherwise modified by chapter 390-28 WAC.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-28-040 Hearing to modify reporting—Prehearing procedure and requirements. (1) An applicant must electronically submit with the commission a request for a hearing for suspension or modification of reporting requirements, unless the executive director makes an exception for an applicant who lacks the technological ability to file reports electronically. An applicant requesting a modification regarding a report filed annually including, but not limited to, the statement of financial affairs, should submit the application at least ((~~forty-five~~)) 45 days before the report is due so that action on the request can be completed before the filing deadline.

(2) The request must contain (a) the required report completed to the extent possible, (b) a statement of reasons why the reporting of required information would cause a manifestly unreasonable hardship, with as much detail as possible, and (c) any relevant evidence regarding the request. (A general statement, such as "violates right of privacy" will not be deemed as sufficient compliance with this requirement.) The applicant is encouraged to also include a proposed modification to the required reporting which, in the applicant's opinion, will relieve the perceived hardship.

(3) The submission of a request for modification does not suspend the reporting requirement of any portion of ((~~chapter 42.17A~~)) Title 29B RCW. The reporting obligation remains in effect unless the commission grants the request pursuant to a hearing.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions. (1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW ((~~42.17A.120~~)) 29B.20.040 are considered to be a public record. However, if a modification of reporting requirements is requested by a filer because of a concern for personal safety that is caused by the potential disclosure of information required to be reported, upon request by the filer, the information submitted for that modification request regarding that safety concern will not be made public prior to, or at the hearing on the request for modification. In accordance with RCW ((~~42.17A.120~~)) 29B.20.040, any information provided or prepared by the applicant for the modification hearing will remain exempt from public disclosure under ((~~chapters 42.17A~~)) Title 29B and chapter 42.56 RCW to the extent it is determined at the hearing that disclosure of such information would reasonably present a personal safety risk to the applicant or a member of their family. If no written order is entered based on findings pursuant to this section, then the exempted information will become available for public disclosure.

(2) Except as otherwise provided in subsection (1) of this section, there is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and ((~~42.17A.120~~)) 29B.20.040, the commission or presiding officer may close the hearing or a portion of the hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW ((~~42.17A.120~~)) 29B.20.040; or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(3)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission or presiding officer must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (2)(a) or (b) of this section;

(ii) An open hearing or record to report the information would present a manifestly unreasonable hardship, or personal safety risk, to the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission or presiding officer has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of ((~~chapter 42.17A~~)) Title 29B RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a closed session identifying the matters for which the applicant requests modification under these rules will be considered confidential by the commission or presiding officer pursuant to a protective order which will be entered by the commission or presiding officer unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge, acting as the presiding officer, determines that testimony in private may be necessary, the judge will immediately adjourn the hearing and refer the matter to the commission.

(4) Any decision or order rendered by the commission or presiding officer must be in writing or stated in the record, however any dispositive order accompanied by findings of fact and conclusions of law must be in writing. The full commission may review any order rendered by a presiding officer, pursuant to WAC 390-37-144.

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

WAC 390-28-090 Hearing to modify reporting—Required findings. (1) The commission or presiding officer, after a hearing, as provided in these rules, may suspend the applicable reporting requirement of ((~~chapter 42.17A~~)) Title 29B RCW if the commission or presiding officer finds that the literal application of such requirement works a manifestly unreasonable hardship in the case under consideration and if it also finds that such suspension or modification will not frustrate the purposes of the act. The commission or presiding officer must suspend or modify such reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof to support such claim.

(2) The commission or presiding officer may approve a modification for the length of an elected official's term of office, or up to three years for an executive state officer. If the commission has approved a modification for more than one year, and there is a material change in the applicant's circumstances or relevant information after the initial year, then the applicant must request a modification at least one month prior to the next filing deadline (rather than at the conclusion of the approval period).

(3) The commission or presiding officer may apply a modification retroactively to previously filed reports. In such cases, the previously reported information of the kind that is no longer being reported is confidential and exempt from public disclosure under this chapter and chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 21-04-073, filed 1/29/21, effective 3/1/21)

WAC 390-28-100 Reporting modifications—Possible qualifications—Standards—Statement of financial affairs. (1) Under RCW ((~~42.17A.120~~)) 29B.20.040, the commission or presiding officer may modify reporting requirements, including the statement of financial

affairs, if literal application of the requirement would work a manifestly unreasonable hardship and the suspension or modification would not frustrate the purpose of the law. One or more of the following may be considered by the commission or presiding officer as possible qualifications for a reporting modification with respect to the statement of financial affairs, when such standard is met:

(a) **Banks, savings accounts, insurance policies - Financial interests.** An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW ((~~42.17A.710~~)) 29B.55.030 (1)(b) if:

(i) The financial institution or other entity in which the applicant held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the applicant; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** An applicant may be exempted from reporting the information otherwise required by RCW ((~~42.17A.710~~)) 29B.55.030 (1)(f) and (g), if:

(i) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the applicant in whole or in part;

(ii) Such reporting would present a manifestly unreasonable hardship to the applicant including, but not limited to:

(A) Violating a legally recognized confidential relationship that serves a legitimate business interest, and otherwise was not formed to prevent required disclosure, although such relationship may be subject to administrative subpoena or court order to require disclosure; or

(B) Adversely affecting the competitive position of an entity in which the applicant had an interest of ((~~ten~~)) 10 percent or more as described in RCW ((~~42.17A.120~~)) 29B.20.040; and

(iii) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** An applicant may be exempted from reporting the information otherwise required by RCW ((~~42.17A.710~~)) 29B.55.030 for members of the applicant's immediate family, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest is not a present or prospective source of income to the applicant or to any other person who is dependent upon the applicant for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ((~~ten~~)) 10 percent or more would be likely to adversely affect the competitive position of the entity, under RCW ((~~42.17A.120~~)) 29B.20.040.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW ((~~42.17A.710~~)) 29B.55.030 (1)(h) through (k):

(i) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county. Judges, prosecutors, or sheriffs may describe

a personal residence in the alternative manner provided under RCW ((~~42.17A.710(2),~~)) 29B.55.030(2) and WAC 390-24-200 without a modification.

(ii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider and grant such a modification to amend the description of a residential address to the extent necessary to protect the applicant or an immediate family member who has received a threat, has obtained a no contact order, or has presented a similar personal safety concern.

(e) **Other.** An applicant may be exempted from reporting information otherwise required under RCW ((~~42.17A.710~~)) 29B.55.030 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of other common requests will be considered as follows:

(i) **Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission).** An applicant may be allowed to satisfy the reporting requirements of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows:

(A) The names of the business clients for whom the applicant has done legal work;

(B) Other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means;

(C) The names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, website, or similar promotional materials; and

(D) Governmental clients that have done business with the law firm.

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g)(ii) and WAC 390-24-020 by disclosing any required information of which the applicant is aware, provided the applicant certifies that the applicant is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a nonincumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable business clients of the law firm.

(iii) **Motor vehicle dealers.** An applicant may satisfy the reporting requirements of RCW ((~~42.17A.710 (1)(g)~~)) 29B.55.030 (1)(g) and WAC 390-24-020 by disclosing:

(A) All purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office;

(B) Other business and governmental entities that purchased or leased ((~~ten~~)) 10 or more vehicles from the dealership;

(C) Business customers who paid in excess of ((~~twenty thousand dollars~~)) $20,000 for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess of the disclosure threshold established under RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g)(ii) for the purchase of parts and/or service.

(iv) **Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant.** When an applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW ((~~42.17A.710~~)) 29B.55.030 (1)(g)(ii) by disclosing reportable customers from whom compensation in excess of the disclosure threshold established under RCW ((~~42.17A.710)~~)) 29B.55.030 (1)(g)(ii) has been received as follows:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) The business and other governmental customers or clients of the applicant's spouse/domestic partner of which the applicant is aware; and

(C) Any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

(c) Separate property court decree under chapter 26.09 RCW;

(d) Domestic partnership agreement under chapter 26.60 RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

RDS-6744.1

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-32-010 Fair Campaign Practices Code for candidates and political committees. Pursuant to the provisions of RCW ((~~42.17A.110~~)) 29B.20.030 (1) and (6) the public disclosure commission adopts this Fair Campaign Practices Code:

(1) I shall conduct my campaign, and to the extent reasonably possible shall insist that my supporters conduct themselves, in a manner consistent with the best American tradition, discussing the issues and presenting my record and policies with sincerity and candor.

(2) I shall uphold the right of every qualified voter to free and equal participation in the election process.

(3) I shall not participate in, and I shall condemn, personal vilification, defamation, and other attacks on any opposing candidate or party which I do not believe to be truthful, provable, and relevant to my campaign.

(4) I shall not use or authorize, and I shall condemn material relating to my campaign which falsifies, misrepresents, or distorts the facts, including but not limited to malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.

(5) I shall not appeal to, and I shall condemn appeals to, prejudices based on race, creed, sex or national origin.

(6) I shall not practice, and I shall condemn practices, which tend to corrupt or undermine the system of free election or which hamper or prevent the free expression of the will of the voters.

(7) I shall promptly and publicly repudiate the support of any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent(s) to methods in violation of the letter or spirit of this code.

(8) I shall refrain from any misuse of the Public Disclosure Law, ((~~chapter 42.17A~~)) Title 29B RCW to gain political advantage for myself or any other candidate.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-32-020 Filing—Fair Campaign Practices Code. (1) A copy of the code provided in WAC 390-32-010 shall be printed in appropriate campaign reporting instructions made available to candidates and political committees.

(2) Failure to subscribe to the code shall not constitute a violation of ((~~chapter 42.17A~~)) Title 29B RCW.

AMENDATORY SECTION (Amending WSR 18-08-062, filed 4/2/18, effective 5/3/18)

WAC 390-32-030 Complaint publication—Fair Campaign Practices Code—Alternative to investigation or adjudicative proceeding. (1) Written and signed complaints alleging a violation of one or more spe-

cific provisions of WAC 390-32-010. The Fair Campaign Practices Code may be submitted to the commission by any person.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint under subsection (1) of this section, the executive director shall forward a copy of the complaint to the respondent within ((~~twenty-four~~)) 24 hours, accompanied by a request for a response to the complaint returned within five business days from the date of mailing.

(b) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five business days, the complaint shall be made public without a response.

(c) The commission will not issue comments or opinions about complaints or responses received under this subsection.

(2) As provided by WAC 390-37-060, and considering the factors set forth in WAC 390-37-061, the executive director may authorize the processing of a complaint alleging violations of ((~~chapter 42.17A~~)) Titles 29B RCW or ((~~Title~~)) 390 WAC according to the complaint publication process provided in this section.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint authorized by the executive director for processing under this subsection, the executive director shall forward a copy of the complaint to the respondent, accompanied by a request for a response to the complaint to be returned within five business days from the date of mailing.

(b) Complaints authorized by the executive director for processing under this subsection shall be forwarded to the respondent within eight days prior to the date that ballots must be available under RCW 29A.40.070(1).

(c) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five days, the complaint shall be made public without a response.

(d) Except as provided under (a) or (b) of this subsection, the publication of complaints or responses under this subsection shall constitute the final disposition of complaints authorized by the executive director for processing under this section.

(3) Following the processing of a complaint under subsection (2) of this section, the executive director shall review the complaint and any response received. Whenever a complaint and response indicate that a material violation of ((~~chapter 42.17A~~)) Title 29B RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, considering the factors set forth in WAC 390-37-061, the executive director may:

(a) Dispose of the complaint through an additional alternative response as provided in WAC 390-37-060; or

(b) Direct a formal investigation be conducted.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints received within eight days of the date that ballots must be mailed to voters under RCW 29A.40.070(1).

(5) The filing of a complaint with the commission under this section or any provision of chapter 390-37 WAC constitutes implied consent to have the complainant's identity disclosed.

RDS-6745.2

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-001 Enforcement cases—Jurisdiction. The public disclosure commission (PDC) enforces ((~~chapter 42.17A~~)) Title 29B RCW concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, campaign contribution limitations and the other provisions in ((~~chapter 42.17A~~)) Title 29B RCW. (The PDC does not enforce the Public Records Act under chapter 42.56 RCW. RCW 42.56.550 provides for direct review by the superior courts for persons seeking to enforce chapter 42.56 RCW.)

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-005 Complaint review and categorization. (1) PDC staff, upon receiving or initiating a complaint, will promptly conduct an initial review and preliminarily assign matters to certain categories.

(2) Upon initial review, a matter may be preliminarily categorized as:

(a) Unfounded or frivolous, pursuant to WAC 390-37-060;

(b) A "remediable violation," pursuant to RCW ((~~42.17A.755~~)) 29B.60.020;

(c) Appropriate for resolution as a "technical correction," pursuant to RCW ((~~42.17A.755~~)) 29B.60.020;

(d) A minor violation, appropriate for alternative resolution alternatives, pursuant to WAC 390-37-061;

(e) Appropriate to initiate an investigation as to whether or not there has been a material violation;

(f) Appropriate for referral to the attorney general, pursuant to WAC 390-37-042; or

(g) Other status as authorized and appropriate under ((~~chapter 42.17A~~)) Title 29B RCW or Title 390 WAC.

(3) Each enforcement matter will be posted on the PDC's public case-tracking database, where its status will be updated from time to time as appropriate until the matter is closed, to apprise the parties and general public.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-010 Enforcement procedures—General. This chapter provides the procedures for the PDC's enforcement of compliance with ((~~chapter 42.17A~~)) Title 29B RCW, including categorization of enforcement matters, complaint processes, alternative resolutions, investigations, and adjudicative proceedings (enforcement hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW ((~~42.17A.755~~)) 29B.60.020, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedures, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency at any time, pursuant to RCW ((~~42.17A.105 and 42.17A.755~~)) 29B.20.020 and 29B.60.020.

In addition, the procedures for a person required to file a report under this chapter to request a hearing on a petition to modify or suspend reporting requirements are provided in RCW ((~~42.17A.120~~)) 29B.20.040 and chapters 390-24 and 390-28 WAC.

The policy of the PDC is to facilitate the resolution of compliance matters in a fair and expeditious manner. The PDC encourages the parties to consider corrections, alternative resolution, partial resolution, statements of understanding, settlement and stipulation procedures as set forth in WAC 390-37-040, 390-37-060, 390-37-062, 390-37-075, 390-37-090, or 390-37-142 whenever appropriate. Informal settlements are encouraged by RCW 34.05.060.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-020 Enforcement procedures—Who may allege a violation with the PDC. Alleged violations of ((~~chapter 42.17A~~)) Title 29B RCW may be brought to the attention of the PDC staff by:

(1) A member of the public;

(2) The PDC staff;

(3) A commission member, who shall thereafter, in their discretion, determine whether disqualification from participating in the adjudication of an enforcement matter that may arise from a complaint regarding the alleged violation(s) is appropriate;

(4) Referral from the office of the attorney general or any other law enforcement agency; or

(5) A state agency, local agency or member of a state or local agency.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the PDC. (1) A complaint filed with the PDC must be by electronic writing. Complainants must use the form(s) provided by

the PDC on its website. The executive director may waive this requirement and allow for the use of another written format on the basis of hardship.

(2) A complaint must include:

(a) A statement of the nature of the alleged violation or violations, referencing ((~~chapter 42.17A~~)) Title 29B RCW and/or Title 390 WAC (if known), date, time and place of each occurrence and name of person or persons believed to be responsible, and a description of the impact of the alleged violation on the public;

(b) All available documentation and other evidence which the complainant is able to supply that supports the allegations made in the complaint. Information about where documents or evidence can be obtained and any relevant contact information should be included for any items that cannot be supplied with the complaint;

(c) The names and telephone numbers, email addresses, and U.S. mail address, if known, of any witnesses or other persons who have knowledge of facts related to the complaint;

(d) The complainant's name, email address which will be the PDC's official method of communication, U.S. mail address, and telephone number;

(e) The signature of the complainant certifying under penalty of perjury under the laws of the state of Washington that the information provided with the complaint is true and correct to the best of their knowledge and belief;

(f) Identification of any complaint filed by the complainant against the same respondent within the previous 12 months from the date of the complaint; and

(g) Other pertinent information, as required by the PDC.

(3) The person or entity against whom a complaint is filed is known as the respondent.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-042 Enforcement procedures—Process and criteria for referring enforcement matters to the attorney general. (1) When a complaint is filed or initiated by the PDC, the PDC may refer the matter at any time to the attorney general in accordance with RCW ((~~42.17A.755~~)) 29B.60.020. The determination to refer a matter to the attorney general will be made by either:

(a) A majority vote of the commission at a regular or special commission meeting; or

(b) By the executive director with the documented concurrence by electronic writing of either the chair or vice chair of the commission.

Any referral to the attorney general will be made in writing and may be made by electronic transmission.

(2) Enforcement matters potentially appropriate for referral may be brought to the executive director's attention by members of the commission, by PDC staff, by another party, or by the attorney general.

(3) Where the attorney general has requested referral of a matter and addressed the relevant criteria under RCW ((~~42.17A.755~~)) 29B.60.020, the executive director shall respond to the request within

two business days. Both the request and the response shall be in writing and may be by electronic transmission.

(4) The executive director shall report at each regular commission meeting all referrals made by the executive director to the attorney general and all requests for referral by the attorney general since the prior commission meeting.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-060 Case initiation and resolution procedures—Alternative responses to noncompliance—Technical corrections—Investigation of complaints—Initiation of adjudicative proceeding. (1) Upon receipt or initiation of a complaint, the PDC staff will conduct an initial review pursuant to WAC 390-37-005.

(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC's jurisdiction, the executive director will inform the complainant and, as appropriate, the respondent why no further action is warranted.

(b) The executive director may resolve a matter as a technical correction pursuant to RCW ((~~42.17A.755~~)) 29B.60.020. PDC staff will notify the respondent of the need to make a correction and the deadline by which that correction must be made. The deadline will be no less than two days and no more than 21 days from the date of the notification. The failure to make the requested correction may result in the initiation of an investigation or other enforcement action.

(c) The executive director may resolve a matter as a remediable violation pursuant to RCW ((~~42.17A.755~~)) 29B.60.020.

(d) The executive director may resolve any complaint that alleges minor violations of ((~~chapter 42.17A~~)) Title 29B RCW by issuing a formal written warning. If the resolution is conditioned upon the respondent reaching or maintaining compliance, specific expectations and any deadlines will be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

(e) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint.

(f) The executive director may enter into a statement of understanding, in accordance with WAC 390-37-142.

(g) The executive director may propose a stipulation to the commission before or after conducting an investigation.

(h) The executive director may initiate an investigation whenever an initial review of a complaint indicates that a material violation may have occurred.

(i) The executive director may, with the concurrence of the commission chair or vice chair, refer a complaint to the attorney general, in accordance with WAC 390-37-042.

(j) The executive director must report at each regular commission meeting a summary covering the period since the previous commission meeting of all complaints initiated or received; how they were categorized; the nature of the allegations; conformance to required timelines; and actions taken and resolutions achieved pursuant to the alternatives provided for under ((~~chapter 42.17A~~)) Title 29B RCW, such as dismissals, requests for technical correction, warning letters,

complaint publication, statements of understanding, initiations of investigations, status reviews, stipulations, referrals to the attorney general's office, brief adjudicative proceedings, or commission hearings.

(2) If the executive director determines an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) If the executive director determines an investigation is warranted, an initial hearing (also referred to as a "case status review") will be held pursuant to WAC 390-37-071.

(4) Following the initial hearing (case status review), and further investigation if needed, the executive director may initiate an adjudicative proceeding before the commission whenever the facts support that a material violation may have occurred and the matter is not appropriate for a dismissal or an alternative resolution.

(5) The respondent and complainant must be notified of the date of the adjudicative proceeding or a report on an enforcement matter resulting from a complaint no later than 10 calendar days before that date. The notice must contain the information required by RCW 34.05.434, the staff investigative report, if a report was completed, and any charges to be adjudicated. The notice, whenever possible, will be delivered electronically.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-061 Enforcement procedures—Alternative responses to noncompliance—Goals and objectives—Factors to be considered. (1) In considering appropriate responses to violations, the PDC staff will consider whether an investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the PDC's mission and public expectations by allowing the expedited resolution of minor violations and technical reporting errors, and the focusing of resources on more significant violations of ((~~chapter 42.17A~~)) Titles 29B RCW and ((~~Title~~)) 390 WAC.

(2) A minor violation is a violation that occurs:

(a) When required information is not timely disclosed, but the public is not deprived of critical information;

(b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information; or

(c) When any other violation of ((~~chapter 42.17A~~)) Title 29B RCW has occurred that does not materially affect the public interest.

(3) In authorizing an alternative response to alleged noncompliance, the executive director may consider the nature of the alleged violation and any relevant circumstances including, but not limited to, the factors described in subsection (4) of this section: Provided, that, if after weighing the relevant circumstances and factors, the executive director determines there is evidence that so warrants, the allegations may be addressed through an investigation as provided by WAC 390-37-060.

(4) The factors the executive director may consider in permitting an alternative response to noncompliance, an investigation, or an adjudicative proceeding include, but are not limited to:

An alternative response to noncompliance may be appropriate if …	**An investigation and possible adjudicative hearing may be appropriate if …**
It appears that noncompliance resulted from a good-faith error, omission, or misunderstanding.	It appears that the noncompliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.
The respondent is a first-time filer.	The respondent has experience in complying with the applicable requirements.
The respondent's compliance history indicates the noncompliance was isolated or limited in nature, and not indicative of systematic or ongoing problems.	The noncompliance is part of a pattern of violations by the respondent, or in the case of a political committee, or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization.
The impact of the noncompliance on the public was minimal.	The noncompliance deprived the public of timely or accurate information during a time-sensitive period in a campaign, legislative session, etc., or otherwise had a significant or material impact on the public.
The respondent's organization or campaign was relatively unsophisticated or small.	The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well financed and staffed.
The total expenditures by the respondent in the campaign or statement period were relatively modest.	The campaign or statement period involved significant expenditures by the respondent.
The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.	The late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period.
There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.	It appears the respondent or anyone else benefited politically or economically from the noncompliance.
Personal emergency or illness of the respondent, the respondent's officer, or member of their immediate family contributed to the noncompliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Other emergencies such as fire, flood, or utility failure prevented compliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
PDC staff or equipment error including technical problems at the agency prevented or delayed electronic filing.	PDC staff or equipment error did not appear to contribute to the noncompliance.
The noncompliance resulted from the respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions, a lack of clarity in the rule or statute, or uncertainty concerning the valid application of the commission's requirements.	It appears the respondent understood the application of staff's guidance or instructions, and did not dispute the valid application of the commission's rules.
The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).	The respondent appeared negligent or unwilling to address the noncompliance.
The respondent made a good-faith effort to comply, including by consulting with PDC staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.	The respondent failed to provide a timely or adequate response to the complaint, or was otherwise uncooperative.
The alleged violation was or is being addressed under an analogous local ordinance, regulation, or policy.	The commission has primary jurisdiction over the alleged violation.
The alleged violation presents a new question or issue for the commission's interpretation.	The alleged violation does not present a case of first impression.
Other factors relevant to a particular case	

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-062 Enforcement procedures—Alternative responses—Cases resolvable by stipulation prior to an investigation—Penalty schedule. (1) The purpose of this section is to set forth a schedule of violations and penalties that may be agreed to by a respondent pursuant to a stipulation prior to an investigation, as authorized by RCW ((~~42.17A.755~~)) 29B.60.020. That schedule appears in the table below.

(2) A violation not set forth in the schedule may be resolved pursuant to a stipulation, provided that the proposed penalty amount is within the dollar ranges listed in the schedule.

(3) "Occasion" as used in the schedule means a violation found by the commission, or acknowledged by the respondent in a statement of understanding.

(4) Only violations within the last five years will be considered for determining whether the violation under consideration will be deemed a second or third occasion.

(5) Any proposed stipulation must be in writing, must include a brief recitation of the facts, violations, and penalty, and be signed by each party to the stipulation or their representative and provided by 4:00 p.m. three business days preceding the commission meeting. The executive director will sign for PDC staff.

(6) The commission has the option of accepting, modifying or rejecting the proposed stipulation. If the commission accepts the stipulation, or modifies the stipulation with the agreement of the parties, the commission will enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation, the commission staff may consider whether:

(a) An investigation should be initiated; or

(b) The matter may appropriately be resolved in another manner.

(7) In determining whether to accept the stipulation, the commission may consider the nature of the violation(s), and any aggravating and/or mitigating factors as provided in WAC 390-37-185.

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 Report) / (2) Candidate Registration / (C-1 Report) / (3) Lobbyist Monthly Expense Report (L-2 Report) / (4) Lobbyist Employer Annual Report (L-3 Report) and (5) Local Treasurer's Annual Report (T-1 Report).			
	1st Occasion	**2nd Occasion**	**3rd Occasion**
Filed missing report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Report is filed late and is incomplete or inaccurate.	$0 - $1,000	$1,000 - $2,000	$1,200 - $2,400
Respondent failed to file or timely file accurate and complete campaign disclosure reports:			
Cash Receipts Monetary Contributions Report (C-3 Report)			
Filed missing C-3 Report or amended C-3 Report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failed to timely deposit monetary contributions within five business days of receipt.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failed to include employer and occupation information for contributors of more than $100.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Campaign Summary Receipts and Expenditures Report (C-4 Report)			

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 Report) / (2) Candidate Registration / (C-1 Report) / (3) Lobbyist Monthly Expense Report (L-2 Report) / (4) Lobbyist Employer Annual Report (L-3 Report) and (5) Local Treasurer's Annual Report (T-1 Report).			
	1st Occasion	**2nd Occasion**	**3rd Occasion**
Filed missing C-4 Report or amended C-4 Report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failed to properly report the "purpose" of an expenditure under RCW ((~~42.17A.240(6) or 42.17A.255 (5)(b)~~)) 29B.25.100(6) or 29B.25.120 (5)(b).	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failed to report a contractual contingent liability.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failed to properly dispose of surplus funds.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Independent Expenditure Report (C-6 Report)			
Filed missing C-6 Report or amended C-6 Report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Report is incomplete or inaccurate.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Out-of-State Political Committee Report (C-5 Report)			
Filed missing C-5 Report or amended C-5 Report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Last Minute Contribution Report (LMC report)			
Filed missing LMC report or amended LMC report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Exceeding Contribution Limits			
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Other Alleged Violations			
Exceeding Mini Reporting Threshold			
Filed C-3 and C-4 Reports for full reporting after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Failure to file electronically			
Filed C-3 and C-4 Reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition.			
Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Use of public facilities was not incidental or isolated, or evidence was submitted indicating that the use may have affected the outcome of the election.	$0 - $1,500	$1,500 - $3,000	$3,000 - $5,000

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 Report) / (2) Candidate Registration / (C-1 Report) / (3) Lobbyist Monthly Expense Report (L-2 Report) / (4) Lobbyist Employer Annual Report (L-3 Report) and (5) Local Treasurer's Annual Report (T-1 Report).			
	1st Occasion	**2nd Occasion**	**3rd Occasion**
Failure to file Lobbyist Registration report (L-1 Report)			
Filed missing L-1 Report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Failure to File Agency Lobbying Report (L-5 Report)			
Filed missing L-5 Report or amended L-5 Report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Grassroots Lobbying Report (L-6 Report)			
Filed missing L-6 Report or amended L-6 Report after being notified about the complaint, and provided written explanation with mitigating circumstances.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Sponsor identification requirements for political advertising			
Political advertising failed to include any sponsor identification, or included improper or misleading sponsor identification.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Party preference requirement for political advertising			
Political advertising failed to include a candidate's party preference.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Use of current picture requirement in political advertising			
Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Political advertising or electioneering communication—Libel or defamation per se			
Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office; falsely represents that a candidate is the incumbent for the office sought; or makes a false claim stating or implying the support or endorsement of any person or organization.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Commercial advertisers—Public inspection of documents			
Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain records and books of account, or make such information available by the methods provided under WAC 390-18-050.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Candidates and political committees—Public inspection of books of accounts			
Candidates or political committees who fail to accommodate requests for public inspection as required by WAC 390-16-043.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000
Limitations on employers or labor organizations			
Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.	$0 - $1,000	$1,000 - $2,000	$2,000 - $3,000

(8) In a matter where the PDC staff have completed an investigation or resolved the matter as a technical correction, as authorized

in RCW ((~~42.17A.755~~)) 29B.60.020, the schedule set forth in the table above is not applicable.

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

WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas. (1) During the course of a PDC audit or investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena must:

(a) Specifically describe the information which is sought; and

(b) Set forth a reasonable time and place for the production of the information; and

(c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission or the presiding officer may issue a subpoena under RCW ((~~42.17A.110(6)~~)) 29B.20.030(6) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, text messages, records, memoranda, electronically stored data, or other evidence that the commission deems relevant and material.

(3) As provided in the act, the commission or executive director may apply in superior court for authorization to issue a subpoena before issuing the subpoena, in circumstances where appropriate.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-071 Enforcement procedures—Initial hearing (case status review prior to 90 days). (1) After initiating an investigation pursuant to WAC 390-37-060, the executive director will conduct a case status review, referred to as an initial hearing in RCW ((~~42.17A.755~~)) 29B.60.020. The case status review is not an adjudicative proceeding conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW), and does not determine any rights of the parties. Its purpose is to ensure the investigation, is being conducted expeditiously and to provide an opportunity to discuss possible alternative resolutions.

(2) The case status review will be conducted within 90 days of the complaint being filed in the matter, and may be held by telephone conference or in-person at a time and place specified by PDC staff. Notice of the case status review will be delivered electronically whenever possible.

(3) Participation in the case status review by the respondent is not mandatory. The failure to participate in the hearing will not prejudice or affect any rights of the respondent with respect to the investigation or potential adjudication of the matter.

(4) The case status review shall have a set time limit as determined by the executive director.

(5) At the case status review, the executive director shall have the authority to:

(a) Provide the respondent with a brief opportunity to explain the respondent's view of the matter, including why further investigation may not be warranted;

(b) Identify any available options to resolve the matter;

(c) When appropriate, encourage the parties to enter into a stipulated agreement as authorized by RCW ((~~42.17A.755~~)) 29B.60.020 and WAC 390-37-062; and

(d) Consider such other matters as may aid in the investigation, disposition or resolution of the matter.

(6) Following the case status review, the executive director shall direct PDC staff to update the PDC's public case-tracking database pursuant to WAC 390-37-005.

(7) The executive director shall report to the commission, no later than the next regular commission meeting, any case status reviews held. The executive director's report shall include an overview of matters addressed and any review outcomes.

(8) Nothing in this section shall limit the authority of the commission or its staff to resolve a complaint, pursue an investigation and enforcement, or refer a matter to the attorney general at any time.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-075 Enforcement procedures—Deferred enforcement after an investigation has been commenced. (1) As provided by WAC 390-37-060, the chair or the chair's designee commissioner may authorize deferred enforcement:

(a) Following a case status review provided for in WAC 390-37-071, referred to as an initial hearing in RCW ((~~42.17A.755~~)) 29B.60.020, in lieu of a formal investigation;

(b) Following an investigation, in lieu of a notice of administrative charges for an adjudicative proceeding; or

(c) After a notice of administrative charges, prior to an adjudicative proceeding.

(2) The executive director will recommend to the chair or the chair's designee commissioner the conditions of a deferred enforcement. The conditions shall be clearly defined and agreed to by the respondent, along with the consequences for failure to meet the conditions of the deferral. Negotiations regarding deferred enforcement shall be informal and without prejudice to rights of a participant in the negotiations.

(3) With concurrence of the chair or the chair's designee commissioner, the executive director or designee (commission staff) shall memorialize the pertinent facts and the conditions of the deferral by electronic writing to the respondent, together with the consequences for failure to meet the conditions of the deferral. The agreement shall be signed by the executive director or designee (commission staff) and the respondent. Staff shall notify the respondent that any

administrative charges issued in the matter are stayed pending satisfaction of the deferral conditions.

(4) Once the deferral conditions are met, the complaint shall be dismissed with no further investigation or action as provided by WAC 390-37-070.

(5) If the deferral conditions are not met, the complaint shall proceed in accordance with WAC 390-37-060.

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

WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings). (1) An enforcement hearing (adjudicative proceeding) will be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding must be heard by the commission, except for brief adjudicative proceedings which may be conducted by a presiding officer pursuant to WAC 390-37-142. The commission may request through the office of administrative hearings the appointment of an administrative law judge to preside over any adjudicatory proceeding.

(3) The commission or the presiding officer have the authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Rule on procedural matters, objections, and motions;

(d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(h) Take official notice of facts pursuant to RCW 34.05.452(5);

(i) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(j) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Issue an order of default pursuant to RCW 34.05.440;

(l) Take any other action necessary and authorized by any applicable statute or rule;

(m) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(n) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through (m) of this subsection, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may:

(a) Find that the respondent did not violate ((~~chapter 42.17A~~)) Title 29B RCW, as alleged, and dismiss the case; or

(b) Find that the respondent violated ((~~chapter 42.17A~~)) Title 29B RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Find that the respondent is in apparent violation of ((~~chapter 42.17A~~)) Title 29B RCW, and that the commission's statutory remedies are inadequate, and enter an order referring the matter to the attorney general or another appropriate law enforcement agency as provided in RCW ((~~42.17A.105 and 42.17A.755~~)) 29B.20.020 and 29B.60.020.

(6) Upon the conclusion of an adjudicative proceeding or after submission of memos, briefs or proposed findings when requested by the presiding officer, the commission:

(a) Must set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order within ((~~thirty~~)) 30 days, unless extended by the presiding officer due to the complexity of the case or other good cause; and

(b) Must serve the parties by electronic communication a copy of the findings of fact, conclusions of law and decision and order.

(7) Once the commission has drafted and approved an order, the executive director is authorized to sign orders on behalf of the commission at the discretion of the commission.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-103 Enforcement procedures—Commission options following receipt of a staff report on alleged violations. Upon receipt of a PDC staff report concerning alleged violations, the commission may:

(1) Direct the executive director to pursue an alternative resolution as provided in WAC 390-37-060;

(2) Defer enforcement as provided in WAC 390-37-075;

(3) Issue an order; or

(4) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW ((~~42.17A.105(5) and 42.17A.755~~)) 29B.20.020 and 29B.60.020.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-142 Brief enforcement hearing (brief adjudicative proceeding)—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the respondent notice, which shall include:

(a) Alleged violation;

(b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and

(c) Person's right to respond either by electronic writing or in person.

(3) As provided in RCW 34.05.050, a respondent may waive the opportunity for a hearing by providing the following:

(a) A signed statement of understanding;

(b) Any missing required reports; and

(c) A penalty payment specified by the executive director in accordance with the penalty authority of WAC 390-37-140 and the brief enforcement hearing penalty schedules of this chapter.

(4) As used in this section, the term "statement of understanding" means a written statement signed by the respondent that:

(a) Acknowledges a violation of ((~~chapter 42.17A~~)) Title 29B RCW and any relevant rules; and

(b) Expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

(5) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than $2,000, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

(6) Within 30 days after the hearing, the commission shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and information about any internal administrative review or reconsideration available. The executive director is authorized to sign the decision on behalf of the presiding officer.

(7) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-143 Brief enforcement hearings (brief adjudicative proceeding)—Penalty schedule. The presiding officer may assess a penalty up to $2,000 upon finding a violation of ((~~chapter 42.17A~~)) Title 29B RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$150 - $500	$500 - $1,000	$1,000 - $1,500
Failed to file report by date of enforcement hearing.	$250 - $750	$750 - $1,000	$1,000 - $2,000

Violation	1st Occasion	2nd Occasion	3rd Occasion
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $500 per report	$500 - $1,000 per report	$1,000 - $1,500 per report up to $2,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$150 per report	$300 per report	$600 per report up to $1,000
Failed to file report by date of enforcement hearing.	$250 per report	$500 per report	consideration by full commission
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$500	$1,000	$1,500
Failed to file report by date of enforcement hearing.	$750	$1,500	$2,000
Failure to timely file an accurate and complete lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$500	$1,000	$1,500
Failed to file report by date of enforcement hearing.	$750	$1,250	$2,000
Failure to timely file accurate and complete disclosure reports:			
Political committee registration (C-1pc).	$500	$1,000	$1,500
Statement of contributions deposit (C-3).	$500	$1,000	$1,500
Summary of total contributions and expenditures (C-4).	$500	$1,000	$1,500
Independent expenditures and electioneering communications (C-6).	$500	$1,000	$1,500
Last minute contribution report (LMC).	$500	$1,000	$1,500
Out-of-state committee report (C-5).	$500	$1,000	$1,500
Annual report of major contributors (C-7).	$500	$1,000	$1,500
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	$500	$1,000	$1,500
Public agency lobbying report (L-5).	$500	$1,000	$1,500
Grass roots lobbying report (L-6).	$500	$1,000	$1,500
Failure to file electronically.	$750	$1,500	$2,000
Exceeding contribution limits.	$500	$1,000	$1,500
Exceeding mini reporting threshold.	$500	$1,000	$1,500
Failure to comply with political advertising sponsor identification requirements.	$500	$1,000	$1,500
Failure to include required candidate's party preference in political advertising.	$500	$1,000	$1,500
Failure to comply with other political advertising requirements, RCW ((~~42.17A.330 through 42.17A.345~~)) 29B.30.060 through 29B.30.090.	$500	$1,000	$1,500
Use of public facilities to assist a campaign for election or promote a ballot measure.	$500	$1,000	$1,500
Treasurer's failure to timely file an accurate and complete annual treasurer's report (T-1):			

Violation	1st Occasion	2nd Occasion	3rd Occasion
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $500	$500 - $1,000	$1,000 - $1,500
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$500	$1,000	$1,500
Failed to file report by date of enforcement hearing.	$750	$1,500	$2,000

"Occasion" means established violation, including any violation acknowledged by the respondent in a statement of understanding. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(2) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors as set forth under WAC 390-37-185.

(3) The presiding officer has authority to suspend all or a portion of an assessed penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within 30 business days of the date of the entry of the order in that case.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) The presiding officer may direct a matter to the full commission if the officer believes the penalty limit would be an insufficient penalty or the matter warrants consideration by the full commission. Cases will automatically be scheduled before the full commission for an enforcement action when:

(a) The respondent already had been found in violation during a previous reporting period;

(b) That prior violation remains in effect, following any appeals; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-182 Penalty factors (full adjudicatory proceedings). (1) Under RCW ((~~42.17A.755~~)) 29B.60.020, the commission:

(a) May waive a penalty for a first-time violation;

(b) Must assess a penalty for a second violation by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Must assess successively increased penalties for succeeding violations pursuant to the following schedule:

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 Report) / (2) Candidate Registration / (C-1 Report) / (3) Lobbyist Monthly Expense Report (L-2 Report) / (4) Lobbyist Employer Annual Report (L-3 Report) and (5) Local Treasurer's Annual Report (T-1 Report).			
	1st Occasion	**2nd Occasion**	**3rd Occasion**
Filed missing report after being notified about the complaint.	$0 - $1,000	$1,000 - $2,500	$2,500 - $5,000
Report is filed late and is incomplete or inaccurate.	$0 - $2,000	$2,000 - $5,000	$5,000 - $7,500
Failed to file missing report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Respondent failed to file or timely file accurate and complete campaign disclosure reports:			
Cash Receipts Monetary Contributions Report (C-3 Report)			
Filed missing C-3 Report or amended C-3 Report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to timely deposit monetary contributions within five business days of receipt.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to include employer and occupation information for contributors of more than $100.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing or amended C-3 Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Campaign Summary Receipts and Expenditures Report (C-4 Report)			
Filed missing C-4 Report or amended C-4 Report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing or amended C-4 Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Failed to properly report the "purpose" of an expenditure under RCW ((~~42.17A.240(6) or 42.17A.255 (5)(b)~~)) 29B.25.100(6) or 29B.25.120 (5)(b).	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to report a contractual contingent liability.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to properly dispose of surplus funds.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Independent Expenditure Report (C-6 Report)			
Filed missing C-6 Report or amended C-6 Report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Report is filed late and is incomplete or inaccurate.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing or amended C-6 Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Out-of-State Political Committee Report (C-5 Report)			
Filed missing C-5 Report or amended C-5 Report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing or amended C-5 Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Last Minute Contribution Report (LMC report)			
Filed missing LMC report or amended LMC report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing or amended LMC Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Exceeding contribution limits			

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 Report) / (2) Candidate Registration / (C-1 Report) / (3) Lobbyist Monthly Expense Report (L-2 Report) / (4) Lobbyist Employer Annual Report (L-3 Report) and (5) Local Treasurer's Annual Report (T-1 Report).			
	1st Occasion	**2nd Occasion**	**3rd Occasion**
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Other Alleged Violations:			
Exceeding mini reporting threshold			
Filed C-3 and C-4 Reports for full reporting after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing C-3 and C-4 Reports by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Failure to file electronically			
Filed C-3 and C-4 Reports electronically after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file C-3 and C-4 Reports electronically by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition			
Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Use of public facilities was not incidental or isolated, or evidence was submitted indicating that the use may have affected the outcome of the election.	$0 - $5,000	$5,000 - $7,500	$7,500 - $10,000
Failure to File Lobbyist Registration Report (L-1 Report)			
Filed missing L-1 Report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing L-1 Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Failure to File Agency Lobbying Report (L-5 Report)			
Filed missing L-5 Report or amended L-5 Report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing or amended L-5 Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Grassroots Lobbying Report (L-6 Report)			
Filed missing L-6 Report or amended L-6 Report after being notified about the complaint.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Failed to file missing or amended L-6 Report by date of enforcement hearing.	$0 - $3,000	$3,000 - $7,500	$7,500 - $10,000
Sponsor identification requirements for political advertising			
Political advertising failed to include any sponsor identification or included improper or misleading sponsor identification.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Party preference requirement for political advertising			
Political advertising failed to include a candidate's party preference.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Use of current picture requirement in political advertising			

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 Report) / (2) Candidate Registration / (C-1 Report) / (3) Lobbyist Monthly Expense Report (L-2 Report) / (4) Lobbyist Employer Annual Report (L-3 Report) and (5) Local Treasurer's Annual Report (T-1 Report).			
	1st Occasion	**2nd Occasion**	**3rd Occasion**
Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Political advertising or electioneering communication—Libel or defamation per se			
Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Commercial advertisers—Public inspection of documents			
Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain records and books of account, or make such information available by the methods provided under WAC 390-18-050.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Candidates and political committees—Public inspection of books of account			
Candidates or political committees who fail to accommodate requests for public inspections as required by WAC 390-16-043.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000
Limitations on employers or labor organizations			
Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.	$0 - $2,500	$2,500 - $5,000	$5,000 - $10,000

(2) In determining the appropriate penalty, the commission may consider the nature of the violation and aggravating and mitigating factors as set forth under WAC 390-37-185. The commission may consider the factors in the penalty schedule under subsection (1) of this section, and the factors set forth under WAC 390-37-185, in determining whether to suspend a portion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

(3) Notwithstanding the above schedule, the commission may assess a penalty of up to $10,000 per violation, or a greater amount if agreed to by the parties, pursuant to RCW ((~~42.17A.755~~)) 29B.60.020, based on the aggravating factors set forth in subsections (1) and (2) of this section. In making an assessment outside of the schedule, the commission may evaluate the deterrent effect the penalty will have on the respondent, in consideration of the sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization, or other factors.

(4) The penalty schedule for brief enforcement proceedings is provided under WAC 390-37-143.

AMENDATORY SECTION (Amending WSR 25-16-030, filed 7/28/25, effective 11/5/25)

WAC 390-37-185 Aggravating and mitigating factors for consideration of penalty amounts for brief enforcement hearings and full adjudicatory proceedings. (1) In assessing a penalty after a brief enforcement hearing or a full adjudicatory proceeding, the commission considers the purposes of ((~~chapter 42.17A~~)) Title 29B RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW ((~~42.17A.001~~)) 29B.05.010; and, promoting compliance with the law. The commission also considers and applies RCW ((~~42.17A.755~~)) 29B.60.020 and may consider any of the factors described in subsection (2) of this section.

(2) In addition to the requirements of RCW ((~~42.17A.755~~)) 29B.60.020, the commission may consider the nature of the violation and any relevant circumstances, including the following factors:

(a) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(b) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(c) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(d) Amount of financial activity by the respondent during the statement period or election cycle;

(e) Whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Whether the respondent or any person, including an entity or organization, benefited politically or economically from the noncompliance;

(h) Personal emergency or illness of the respondent, the respondent's officer, or member of their immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) PDC staff or equipment error, including technical problems at the PDC, or with a third-party vendor, preventing or delaying electronic filing;

(k) The respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions;

(l) Corrective action or other remedial measures initiated by the respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

(m) Whether the respondent is a first-time filer;

(n) Good faith efforts to comply, including consultation with PDC staff prior to initiation of enforcement action and cooperation with PDC staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(o) Participation in one or more PDC training courses that demonstrates a proactive effort to become familiar with filing requirements;

(p) Penalties imposed in factually similar cases;

(q) Any unpaid or outstanding penalties from a prior enforcement action; and

(r) Other factors relevant to a particular case.

WSR 26-01-215
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2025-11—Filed December 24, 2025, 11:37 a.m., effective January 24, 2026]

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

Purpose: The final rule implements provisions of E2SSB 5213 (chapter 242, Laws of 2024, codified at chapter 48.200 RCW) that go into effect January 1, 2026. This law regulates the business practices of health care benefit managers (HCBMs), including pharmacy benefit managers (PBMs).

The final rule allows the office of the insurance commissioner (OIC) to continue effective oversight of HCBMs. The final rule ensures that affected entities understand their rights and obligations under these new provisions.

Citation of Rules Affected by this Order: New WAC 284-180-550; and amending WAC 284-180-120, 284-180-130, 284-180-210, 284-180-220, 284-180-465, 284-180-501, 284-180-507, 284-180-517, and 284-180-522.

Statutory Authority for Adoption: RCW 48.200.900 and 48.02.060.

Adopted under notice filed as WSR 25-22-093 on November 4, 2025.

Changes Other than Editing from Proposed to Adopted Version: (1) In the definition of "contract price" at WAC 284-180-130(4), OIC changed the first sentence to replace the word "price" with the word "amount" and added "fees for a pharmacist's professional services that are not related to the ingredient cost of the drug" at the end of the last sentence.

(2) In the definition of "other conditions" at WAC 284-180-130(25), OIC replaced "board of pharmacy" with "pharmacy quality assurance commission."

(3) In the definition of "require or coerce" at WAC 284-180-130(33), OIC made three changes. OIC replaced "an enrollee" with "a covered person." In addition, OIC replaced "their representative, or an entity under contract with" with "or a person acting on behalf of a pharmacy benefit manager." Last, OIC removed the phrase "when a network pharmacy that is not owned by or affiliated with a pharmacy benefit manager is also available to the covered person" from the definition. The final rule's definition of "require or coerce" now reads: "(33) As used in RCW 48.200.310, "require or coerce" means an action by a pharmacy benefit manager or a person acting on behalf of a pharmacy benefit manager, to compel or force a covered person to use only a pharmacy benefit managers' owned or affiliated pharmacy."

(4) In WAC 284-180-501(2), OIC reordered the second sentence as new subsection (a), removed "For purposes of this subsection," changed "price" to "amount," and created new subsections (b) and (c), which state: "(b) The pharmacy benefit manager's reimbursement amount to a network pharmacy excludes adjustments, denials, or reversals of prescription drug claims due to a network pharmacy submitting the original claim fraudulently or as the result of a pharmacy audit conducted in accordance with RCW 48.200.220.

(c) The term "contract price" has the meaning given in WAC 284-170-130."

(5) In WAC 284-180-522 (5)(g), OIC removed "with the approval of the presiding officer."

(6) Regarding the scope of "new prescriptions" in WAC 284-180-550 (2)(b), OIC reordered the subsection and created new subsections (ii)

and (iii) to exclude: "(ii) Prescriptions for which the only change is a difference in the dosage; and

(iii) Prescriptions for which the only change is substitution between a brand and generic drug. This subsection does not exempt substitution between a biological and biosimilar drug, including an interchangeable biosimilar drug, from the requirement for a pharmacy benefit manager to obtain affirmative authorization in this subsection."

(7) In WAC 284-180-505 [284-180-550](4), OIC rewrote the subsection to read: "For new prescriptions that are issued after January 1, 2026, a pharmacy benefit manager must receive affirmative authorization from a covered person to receive a prescription drug through a mail order pharmacy before a mail order pharmacy fills a prescription prescribed to the covered person."

(8) In WAC 284-180-505 [284-180-550](4), OIC added a new subsection (e) which reads: "The responsibility to obtain a covered person's affirmative authorization under this subsection applies only to pharmacy benefit managers. This subsection does not create a new obligation on the part of a pharmacy or other health care provider or facility to obtain affirmative authorization from a covered person."

A final cost-benefit analysis is available by contacting Rules Coordinator, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7000, email rulescoordinator@oic.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 9, 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: December 24, 2025.

Patty Kuderer
Insurance Commissioner

RDS-6768.3

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-120 Applicability and scope. (1) This chapter applies to:

(a) Health care benefit managers as defined in RCW 48.200.020, and health carriers who contract with health care benefit managers; and

(b) Pharmacy benefit managers who contract with pharmacies on behalf of health carriers, medicaid managed care organizations, and employee benefits programs as defined in RCW 48.200.020.

(2) Effective January 1, 2026, RCW 48.200.280, 48.200.310, and 48.200.320 and WAC 284-180-500, 284-180-507, 284-180-517, and 284-180-522 apply to self-funded group health plans that have elected to participate under RCW 48.200.330.

(3) This chapter does not apply to ((~~the actions of~~)) health care benefit managers providing services exclusively to, or acting exclusively on behalf of ((~~medicare supplement or medicare advantage plans~~)):

(a) Self-funded group health plans, other than an employee benefit program as defined in RCW 48.200.020 or with respect to compliance with RCW 48.200.280, 48.200.310, and 48.200.320, a self-funded group health plan that has elected to participate under RCW 48.200.330;

(b) Medicare supplement plans;

(c) Medicare advantage plans;

(d) Medicare Part D prescription drug plans;

(e) Medicaid, except that pharmacy benefit managers that contract with pharmacies on behalf of medicaid managed care plans are subject to chapter 48.200 RCW and this chapter;

(f) Children's health insurance program plans;

(g) Discount plans;

(h) Union plans, other than a union plan that is a self-funded group health plan that has elected to participate under RCW 48.43.330 with respect to compliance with RCW 48.200.280, 48.200.310, and 48.200.320; and

(i) Plans that provide monetary payment, such as income replacement disability plans or life insurance accelerated benefits, unless these plans provide coverage for health care services, drugs, or supplies.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions apply throughout this chapter:

(1) "Affiliate" or "affiliated employer" has the same meaning as the definition of affiliate or affiliated employer in RCW 48.200.020.

(2) "Annual gross income" means the sum of all amounts paid during a calendar year by any entities with which a health care benefit manager has contracted for the provision of health care benefit management services in Washington state.

(3) "Certification" has the same meaning as the definition of certification in RCW 48.43.005.

(4) "Contract price" means the amount a pharmacy benefit manager charges a carrier, insurer, third-party payor, or prescription drug purchasing consortium for a drug, pursuant to a contract between the pharmacy benefit manager and the carrier, insurer, third-party payor, or prescription drug consortium. "Contract price" does not include a pharmacy's dispensing fee or fees for a pharmacist's professional services that are not related to the ingredient cost of the drug.

(5) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and poli-

cies of a person, such as through ownership of voting securities, membership rights, or by contract.

((~~(5)~~)) (6) "Corporate umbrella" means an arrangement consisting of, but not limited to, subsidiaries and affiliates operating under common ownership or control.

((~~(6)~~)) (7) "Covered person" has the same meaning as in RCW 48.43.005.

((~~(7)~~)) (8) As used in RCW 48.200.020 and 48.200.280, "credentialing" means the collection, verification, and assessment of whether a health care provider meets relevant licensing, education, and training requirements.

((~~(8)~~)) (9) "Drug" has the same meaning as in RCW 18.64.011(15).

(10) "Employee benefits programs" has the same meaning as the definition of employee benefits program in RCW 48.200.020.

((~~(9)~~)) (11) "Generally available for purchase" means available for purchase by multiple pharmacies within the state of Washington from national or regional wholesalers.

((~~(10)~~)) (12) "Health care benefit manager" has the same meaning as the definition of health care benefit manager in RCW 48.200.020.

((~~(11)~~)) (13) "Health care provider" or "provider" has the same meaning as the definition of health care provider in RCW 48.43.005.

((~~(12)~~)) (14) "Health care services" has the same meaning as the definition of health care services in RCW 48.43.005.

((~~(13)~~)) (15) "Health carrier" or "carrier" has the same meaning as the definition of health carrier in RCW 48.43.005.

((~~(14)~~)) (16) "Laboratory benefit manager" has the same meaning as the definition of laboratory benefit manager in RCW 48.43.020.

((~~(15)~~)) (17) Effective January 1, 2026, "list" has the same meaning as the definition of list in RCW 48.200.280, as amended by section 5, chapter 242, Laws of 2024.

((~~(16)~~)) (18) "Local network pharmacy" means a network pharmacy with a physical retail location that is within a reasonable proximity of the enrollee's business or residence. "Local network pharmacy" does not include mail order pharmacies owned by or affiliated with a pharmacy benefit manager.

(19) "Mail order pharmacy" has the same meaning as the definition of mail order pharmacy in RCW 48.200.020.

((~~(17)~~)) (20) "Mental health benefit manager" has the same meaning as the definition of mental health benefit manager in RCW 48.200.020.

((~~(18)~~)) (21) Effective January 1, 2026, "multiple source drug" has the same meaning as the definition of multiple source drug in RCW 48.200.280, as amended by section 5, chapter 242, Laws of 2024.

((~~(19)~~)) (22) "Net amount" means the invoice price that the pharmacy paid to the supplier for a prescription drug that it dispensed, plus any taxes, fees or other costs, minus the amount of all discounts and other cost reductions attributable to the drug.

((~~(20)~~)) (23) "Network" has the same meaning as the definition of network in RCW 48.200.020.

((~~(21)~~)) (24) "Network pharmacy" has the same meaning as the definition of network pharmacy in RCW 48.200.280.

((~~(22)~~)) (25) As used in RCW 48.200.310, "other conditions" means conditions a pharmacy benefit manager applies to a covered person that directly affect the covered person's access to and convenience of receiving a covered prescription drug. "Other conditions" include, but are not limited to, the frequency at which an enrollee may receive a prescription refill and the duration of the refill, restrictions on

the type of provider that must order the prescription, and restrictions on a network pharmacy's preparation or dispensing of a medication other than those established by the pharmacy quality assurance commission.

(26) "Oversight activities" includes all work done by the commissioner to ensure that the requirements of chapter 48.200 RCW are properly followed and in fulfilling its duties as required under chapter 48.200 RCW.

((~~(23)~~)) (27) "Person" has the same meaning as the definition of person in RCW 48.200.020.

((~~(24)~~)) (28) "Pharmacy benefit manager" has the same meaning as the definition of pharmacy benefit manager in RCW 48.200.020.

((~~(25)~~)) (29) "Pharmacy network" has the same meaning as the definition of pharmacy network in RCW 48.200.020.

((~~(26)~~)) (30) "Predetermined reimbursement cost" means maximum allowable cost, maximum allowable cost list, or any other benchmark price utilized by the pharmacy benefit manager, including the basis of the methodology and sources utilized to determine drug or multisource generic drug reimbursement amounts. However, dispensing fees are not included in the calculation of predetermined reimbursement costs for drugs or multisource generic drugs.

((~~(27)~~)) (31) "Radiology benefit manager" has the same meaning as the definition of radiology benefit manager in RCW 48.200.020.

((~~(28)~~)) (32) "Readily available for purchase" means manufactured supply is held in stock and available for order by more than one pharmacy in Washington state when such pharmacies are not under the same corporate umbrella.

((~~(29)~~)) (33) As used in RCW 48.200.310, "require or coerce" means an action by a pharmacy benefit manager or a person acting on behalf of a pharmacy benefit manager, to compel or force a covered person to use only a pharmacy benefit managers' owned or affiliated pharmacy.

(34)(a) Through December 31, 2025, "retaliate" means action, or the implied or stated threat of action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has filed or intends to file an appeal under RCW 48.200.280.

(b) Effective January 1, 2026, "retaliate" means action, or the implied or stated threat of action, to cancel, restrict, or refuse to renew or offer a contract to a pharmacy, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has:

(i) Filed or intends to file an appeal under RCW 48.200.280;

(ii) Disclosed information in a court, in an administrative hearing, or legislative hearing, if the pharmacist or pharmacy has a good faith belief that the disclosed information is evidence of a violation of a state or federal law, rule, or regulation; or

(iii) Disclosed information to a government or law enforcement agency, if the pharmacist or pharmacy has a good faith belief that the disclosed information is evidence of a violation of a state or federal law, rule, or regulation.

((~~(30)~~)) (35) "Union plan" means an employee welfare benefit plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) in which an employee organization participates and that exists for the purpose, in whole

or in part, of dealing with employers concerning an employee welfare benefit plan.

((~~(31)~~)) (36) "Unsatisfied" means that the network pharmacy did not receive the reimbursement that it requested at the first tier appeal.

((~~(32)~~)) (37) As used in RCW 48.200.310, "unusable condition" means a condition in which a prescription drug arrives to an enrollee in a manner that renders the prescription drug ineffective or unsafe for the enrollee to use as prescribed. "Unusable condition" includes, but is not limited to, prescription drugs that are:

(a) Above or below the temperature required for safe and effective use;

(b) Open, tampered with, or showing physical damage; or

(c) Incompatible with electronic or other devices that must be paired with the prescription drug for its effective and safe use, resulting in the prescription drug being unusable.

(38) "Utilization review" has the same meaning as the definition of utilization review in RCW 48.43.005.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-210 Registration and renewal fees. (1) The commissioner must establish fees for registration and renewal in an amount that ensures the program for the registration, renewal, and oversight activities of the health care benefit managers is self-supporting. Each health care benefit manager must contribute a sufficient amount to the commissioner's regulatory account to pay for the reasonable costs, including overhead, of regulating health care benefit managers.

(2) The initial registration fee is $((~~200~~)) 500.

(3) For the renewal fee, the commissioner will charge a proportional share of the annual cost of the insurance commissioner's renewal and oversight activities of health care benefit managers. Each health care benefit managers' proportional share of the program annual operating costs will be based on their Washington state annual gross income of their health care benefit manager business for the previous calendar year. The renewal fee is $((~~500~~)) 750, at a minimum, and may increase based on a proportional share of each health care benefit manager's Washington state annual gross income as reported to the insurance commissioner.

(4) If an unexpended balance of health care benefit manager registration and renewal funds remain in the insurance commissioner's regulatory account at the close of a fiscal year, the commissioner will carry the unexpended funds forward and use them to reduce future renewal fees.

(5) Carriers are exempt from the definition of health care benefit manager under RCW 48.200.020.

(a) An entity that is owned or controlled by a holding company that owns or controls a carrier is not exempt from registration as a health care benefit manager.

(b) Under RCW 48.200.050, when a carrier, i.e., "carrier A," acts as a health care benefit manager for another carrier, i.e., "carrier B," carrier B is responsible for the conduct of carrier A with respect to its action as a health care benefit manager on carrier B's behalf.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-220 Health care benefit manager registration. (1) Beginning January 1, 2022, and thereafter, to conduct business in this state, health care benefit managers must have an approved registration with the commissioner as required in RCW 48.200.030 and 48.200.300. The registration application is not complete until the commissioner receives the complete registration form, any supporting documentation required by the commissioner, and the $((~~200~~)) 500 registration fee.

(2) Health care benefit managers must apply for registration using the commissioner's electronic system, which is available at www.insurance.wa.gov.

(3) The registration period is valid from the date of approval of registration through June 30th of the same fiscal year.

(4) A health care benefit manager that provides services to, or acts on behalf of, a self-funded group health plan and also provides services to, or acts on behalf of, a health carrier or employee benefits program must register under this section.

(5) A pharmacy benefit manager that contracts with pharmacies or contracts to provide any pharmacy benefit management services on behalf of a self-funded group health plan and also contracts with pharmacies or contracts to provide any pharmacy benefit management services on behalf of health carriers, employee benefits programs, or medicaid managed care programs must register under this section.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-465 Self-funded group health plan opt-in. (1)(a) A self-funded group health plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) that elects under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. Election decisions are effective beginning January 1, 2026. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by RCW 48.200.280, 48.200.310, and 48.200.320 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(b) A pharmacy benefit manager may not, by contract or otherwise, prohibit a self-funded group health plan from electing to participate under RCW 48.200.330.

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

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until

the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least 15 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in pharmacy benefit manager regulation as provided in RCW 48.200.330 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by a Washington state employer has elected under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 and has employees that reside in other states, those employees are protected by RCW 48.200.330 in RCW 48.200.280, 48.200.310, and 48.200.320 when filling a prescription ordered by a provider in Washington state or at a pharmacy located in Washington state.

(5) A pharmacy benefit manager providing services to or acting on behalf of a self-funded group health plan that elects to participate under this section must comply with RCW 48.200.280, 48.200.310, and 48.200.320 related to the pharmacy benefit manager's conduct specific to the participating self-funded group health plan. The pharmacy benefit manager is not subject to other provisions of chapter 48.200 RCW for its conduct specific to the participating self-funded group health plan. This subsection does not relieve a pharmacy benefit manager of its duty to register under chapter 48.200 RCW or this chapter if, in addition to providing services to or acting on behalf of an opted-in self-funded group health plan, the pharmacy benefit manager provides pharmacy benefit management services to or acts on behalf of a carrier, employee benefits program, or medicaid managed care organization.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-501 Pharmacy reimbursement. (1) A pharmacy benefit manager may not reimburse a pharmacy in the state an amount less than the amount the pharmacy benefit manager reimburses an affiliate for dispensing the same prescription drug as dispensed by the pharmacy, calculated on a per unit basis.

(2) A pharmacy benefit manager may not reimburse a network pharmacy an amount less than the contract price between the pharmacy benefit manager and the carrier, insurer, third-party payor, or prescription drug purchasing consortium the pharmacy benefit manager has contracted with for a drug. For purposes of this subsection:

(a) The pharmacy benefit manager's reimbursement amount to a network pharmacy includes post-sale or post-invoice adjustments the pharmacy benefit manager makes that affect the amount paid for a drug including, but not limited to, fees, discounts, reconciliations, or assessments.

(b) The pharmacy benefit manager's reimbursement amount to a network pharmacy excludes adjustments, denials, or reversals of prescription drug claims due to a network pharmacy submitting the original claim fraudulently or as the result of a pharmacy audit conducted in accordance with RCW 48.200.220.

(c) The term "contract price" has the meaning given in WAC 284-180-130.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-507 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services. (1)(a) For claims adjudicated on or after January 1, 2026, a network pharmacy, or its representative, may appeal the reimbursement amount for a drug to a health care benefit manager providing pharmacy benefit management services (first tier appeal) if the reimbursement amount for the drug is less than the net amount the network pharmacy paid to the supplier of the drug and the claim was adjudicated within the past 90 days.

(b) If a pharmacy is represented by a pharmacy services administrative organization, or other entity, the contract between the pharmacy benefit manager and the pharmacy must allow the pharmacy services administrative organization or other entity to use the appeal process included in the contract between the pharmacy benefit manager and the pharmacy. The pharmacy benefit manager must meet all statutory, regulatory, and contractual requirements when reviewing an appeal submitted by a representative on behalf of a pharmacy.

(c) A pharmacy services administrative organization may submit an appeal to a pharmacy benefit manager on behalf of multiple pharmacies if:

(i) The claims that are the subject of the appeal are for the same prescription drug; and

(ii) The pharmacies on whose behalf the claims are submitted are members of the pharmacy services administrative organization; and

(iii) The pharmacy benefit manager has contracts with the pharmacies on whose behalf the pharmacy services administrative organization is submitting the claims.

(2) Before a pharmacy files an appeal pursuant to this section, upon request by a pharmacy or pharmacist, a pharmacy benefit manager must provide, within four business days of receiving the request, a current and accurate list of bank identification numbers, processor control numbers, and pharmacy group identifiers for health plans and for self-funded group health plans that have elected under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 with which the pharmacy benefit manager either has a current contract or had a contract that has been terminated within the past 12 months to provide pharmacy benefit management services.

(3) A pharmacy benefit manager must process the network pharmacy's appeal as follows:

A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's website fully describing the right to appeal under RCW 48.200.280. If the health care benefit manager provides other health care benefit management services in addition to pharmacy benefit management services, this information must be under an easily located page that is specific to pharmacy services. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager between 9 a.m. and 5 p.m. Pacific Time Zone Monday through Friday, except national holidays, and speak with an individual responsible for processing appeals;

(ii) A fax number that a network pharmacy can use to submit information regarding an appeal; and

(iii) An email address or a link to a secure online portal that a network pharmacy can use to submit information regarding an appeal. If the pharmacy benefit manager chooses to use a link to a secure online portal to satisfy the requirement of this subsection, the contract must include explicit and clear instructions as to how a pharmacy can gain access to the portal. Submission by a pharmacy of an appeal that includes the claim adjudication date or dates consistent with subsection (1) of this section and documentation or information described in subsection (4) of this section, or of a request for information regarding an appeal, to the email address or secure online portal included in the contract under this subsection must be accepted by the pharmacy benefit manager as a valid submission.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(4) The pharmacy benefit manager must reconsider the reimbursement amount. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with an opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. Documents or information that may be submitted by a network pharmacy or their representative to show that the reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug include, but are not limited to:

(a) An image of information from the network pharmacy's wholesale ordering system;

(b) Other documentation showing the amount paid by the network pharmacy; or

(c) An attestation by the network pharmacy that:

(i) The reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug; and

(ii) Describes the due diligence the network pharmacy undertook to procure the drug at the most favorable amount for the pharmacy, taking into consideration whether the pharmacy has fewer than 15 retail outlets within the state of Washington under its corporate umbrella and whether the network pharmacy's contract with a wholesaler or secondary supplier restricts disclosure of the amount paid to the wholesaler or secondary supplier for the drug.

(5) The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(6) The pharmacy benefit manager must complete the appeal within 30 calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy benefit manager's decision within that time frame, then the appeal is deemed denied.

(7) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than 15 retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates

that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110.

(8)(a) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial, the national drug code, and price of a drug that has been purchased by other network pharmacies located in the state of Washington at a price less than or equal to the reimbursement cost for the drug and the name of at least one wholesaler or supplier from which the drug was available for purchase at that price on the date of the claim or claims that are subject of the appeal.

(b) If the pharmacy benefit manager bases its denial on the fact that one or more of the claims that are the subject of the appeal is not subject to RCW 48.200.280 and this chapter, it must provide documentation clearly indicating that the plan to which the claim relates is a self-funded group health plan that has not opted in under RCW 48.200.330, is a medicare plan, or is otherwise not subject to RCW 48.200.280 and this chapter.

(9) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. The commissioner will presume that a reasonable adjustment applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of chapter 48.200 RCW under RCW 48.200.290. If a therapeutically equivalent interchangeable product becomes available during the period that a reasonable adjustment is in effect, the adjustment may reflect the cost of that product from the date it becomes available to the end of the prospective reasonable adjustment period. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(10) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(11) A pharmacy benefit manager's response to an appeal submitted by a Washington small pharmacy that is denied, partially reimbursed, or untimely must include written documentation or notice to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate

entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

(12) Health care benefit managers providing pharmacy benefit management services must identify a pharmacy benefit manager employee who is the single point of contact for appeals, and must include the address, phone number, name of the contact person, and valid email address. This includes completing and submitting the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

(13) This section is effective January 1, 2026.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-517 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner. (1) The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs or drugs (reimbursement). WAC 284-180-500 through 284-180-540 describe the procedures for how the commissioner processes a network pharmacy's appeal (second tier appeal) of the pharmacy benefit manager's decision in the first tier appeal through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

(2) This section is effective January 1, 2026.

AMENDATORY SECTION (Amending WSR 25-02-024, filed 12/18/24, effective 1/18/25)

WAC 284-180-522 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by submitting a petition at https://www.insurance.wa.gov according to the filing instructions.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's business address ((~~and~~)), mailing address, and email address; and

(iii) Documents supporting the appeal;

(c) Documents supporting the appeal include:

(i) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review, if any (if the pharmacy benefit manager has not issued a decision on the first tier appeal in a timely manner, a signed attestation to that fact must be submitted by the appealing pharmacy);

(ii) Documentation evidencing the net amount paid for the drug by the small pharmacy;

(iii) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the reimbursement cost for the drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

(iv) Any additional information that the commissioner may require;

(d) The network pharmacy must file the petition for review with the commissioner within 30 days of receipt of the pharmacy benefit manager's decision or within 30 days after the deadline for the pharmacy benefit manager's deadline for responding to the first tier appeal;

(e) The network pharmacy making the appeal must have less than 15 retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must include a signed attestation that this requirement is satisfied; and

(f) Electronic signatures and electronic records may be used to facilitate electronic transactions consistent with the Uniform Electronic Transactions Act chapter 1.80 RCW.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within 30 calendar days of the receipt of the network pharmacy's complete petition for review. A complete petition for review means that all requirements under subsection (1) of this section have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, issuing civil penalties pursuant to RCW 48.200.290, or taking other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply ((~~with the approval of the presiding officer~~)).

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of

the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within 10 days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the 10-day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

(11) This section is effective January 1, 2026.

SUBCHAPTER F
ENROLLEES' ACCESS TO NETWORK PHARMACIES

NEW SECTION

WAC 284-180-550 Enrollee rights and pharmacy benefit manager obligations—Mail order and retail pharmacies. (1) For purposes of this section, "issued" means ordered by a prescribing health care provider.

(2)(a) For purposes of this section, "new prescription" means:

(i) A prescription that is ordered for the first time by a health care provider; or

(ii) A prescription that is ordered for the first time following a covered person receiving a prescription under a new health plan, employee benefits program, or medicaid managed care organization.

(b) "New prescription" excludes:

(i) Refills or continuations of existing prescriptions by the prescribing health care provider that ordered the original prescription under the same pharmacy benefit manager;

(ii) Prescriptions for which the only change is a difference in the dosage; and

(iii) Prescriptions for which the only change is substitution between a brand and generic drug. This subsection does not exempt substitution between a biological and biosimilar drug, including an interchangeable biosimilar drug, from the requirement for a pharmacy benefit manager to obtain affirmative authorization in this subsection.

(3) A pharmacy benefit manager must permit a covered person to receive delivery of a prescription drug through the mail or common carrier from any network pharmacy that is not primarily engaged in dispensing prescription drugs to enrollees through the mail or common carrier. For purposes of this section, a network pharmacy not primarily engaged in dispensing prescription drugs through the mail or common carrier is one that receives less than 50 percent of the total value of its annual prescription drug reimbursements, excluding dispensing fees, from mail order prescriptions.

(4) For new prescriptions that are issued after January 1, 2026, a pharmacy benefit manager must receive affirmative authorization from a covered person to receive a prescription drug through a mail order pharmacy before a mail order pharmacy fills a prescription prescribed to the covered person.

(a) Affirmative authorization for use of a mail order pharmacy offered to an enrollee must be included in the pharmacy benefit manager's records, including the date upon which the authorization was given, the means by which authorization was obtained, and the individual that obtained the authorization from the covered person.

(b) The authorization form, or the individual obtaining the authorization from the covered person, if it is obtained by other means, must clearly state the purpose of the authorization and the enrollee's right to have each new prescription filled at a network pharmacy other than a mail order pharmacy under RCW 48.200.310 and this section.

(c) If the affirmative authorization is in a written form, it must be a separate and distinct paper or electronic document that is not combined with other enrollee communications. It must be printed or displayed in at least 12 point font. The enrollee must clearly sign or acknowledge their consent on the form, in writing or by e-signature. The date of the enrollee's signature must be included on the form.

(d) A pharmacy benefit manager must permit a covered person to rescind the covered person's affirmative authorization at any time. The pharmacy benefit manager must provide instructions and information regarding the right to rescind authorization on the pharmacy benefit manager's website and incorporate such instructions and information in the required communications under (b) and (c) of this subsection.

(e) The responsibility to obtain a covered person's affirmative authorization under this subsection applies only to pharmacy benefit managers. This subsection does not create a new obligation on the part of a pharmacy or other health care provider or facility to obtain affirmative authorization from a covered person.

(5) If an enrollee uses a mail order pharmacy to receive a prescription drug through the mail or common carrier, the pharmacy benefit manager shall:

(a) Allow a prescription drug to be dispensed to the enrollee at a local network pharmacy if:

(i) The prescription drug's delivery is delayed by more than one calendar day after the original delivery date promised by the mail order pharmacy; or

(ii) The prescription drug arrives to the enrollee in an unusable condition as that term is defined in WAC 284-180-130. A pharmacist acting on behalf of a local network pharmacy may determine whether a drug arrives in an unusable condition.

(b) Ensure that patients have easy and timely access to prescription drug counseling by a pharmacist. For purposes of this subsection and RCW 48.200.310, "easy and timely access" means that pharmacist counseling is available to the patient by phone from 9:00 a.m. to 5:00 p.m. Pacific time every day except holidays, at a minimum, and that this phone number and other pharmacist counseling instructions are made available to the patient and prominently displayed on the pharmacy benefit manager's website.