WSR 22-13-000A
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed June 22, 2022, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-129.

Title of Rule and Other Identifying Information: Chapter 16-228 WAC, General pesticide rules. The department is proposing to modify WAC 16-228-1540 to offer an additional testing option of computerized or virtual-based pesticide licensing testing through a third-party entity. The current option of paper-based testing would continue to be offered. Computer-based testing fees, not to exceed $65, will be established by contract with a third-party entity and the fee will be posted on the agency website.

Hearing Location(s): On July 26, 2022, at 9:00 a.m. Microsoft Teams meeting: Join on your computer or mobile app by the following link https://teams.microsoft.com/l/meetup-join/19%3ameeting_MGI4ZjNmMDEtN2NlYS00OWY3LWFjZWEtMGFjMDUzNDE0OTVl%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d; or call in (audio only) +1 564-999-2000, Phone Conference ID 600 031 128#. This public hearing will be held solely over video and teleconference; or on July 26, 2022, at 2:00 p.m. Microsoft Teams meeting: Join on your computer or mobile app by the following link https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2EyZWE5YzQtOWM5NS00ODJmLTk5YWQtN2M3YTljZDc2ZTEz%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d; or call in (audio only), +1 564-999-2000, Phone Conference ID 612 247 341#. This public hearing will be held solely over video and teleconference.

Date of Intended Adoption: August 2, 2022.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., July 26, 2022.

Assistance for Persons with Disabilities: Contact Maryann Connell, phone 360-902-2012, fax 360-902-2093, TTY 800-833-6388, email mconnell@agr.wa.gov, by July 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department oversees the initial and continued certification and licensing of pesticide applicators, dealer managers, consultants, and structural pest inspectors. As part of the licensing process, the department administers pesticide exams to ensure that individuals and businesses that apply, sell, or consult on pesticide products are sufficiently competent to do so and in a safe and effective manner.

Currently, exams are offered primarily in paper format at a few locations on limited dates and are required to be graded and distributed manually.

The department is proposing to add an option for computer- or virtual-based testing environments in which applicants can take exams at professional testing facilities or on other platforms throughout the state. Offering these exams at more locations and at more conven-

ient times will make the exam step in the licensing process more efficient, convenient, and accessible for applicants.

To offer this service, the department must utilize a third-party entity to facilitate access and administration of the certification exams. Exam administration through these third-party entities, however, typically costs more than the department's current paper-based exam fee.

The department will continue to offer paper-based testing. Applicants may utilize the paper-based testing option currently available or may elect to take exams via computer-based or virtual-based platforms at a fee not to exceed $65 per exam. This fee will be established in contract with a third-party entity and will be posted to the Washington state department of agriculture (WSDA) website.

Reasons Supporting Proposal: Over the past several years, prospective licensees and employers have been requesting improved access to testing services, including more frequent testing sessions, more convenient testing locations, and enhanced exam review. Licensing staff and resources are limited, with testing only available at six established locations statewide on variable schedules. Computer- or virtual-based testing through specialized software is a way to efficiently meet the needs of agency customers.

During the 2020 legislative session, the Washington state legislature passed HB 2624. This bill provided the department authority to contract with a third-party entity to administer the exams and/or the collection of fees. This rule making provides license applicants with more testing options than currently provided by the department.

Statutory Authority for Adoption: RCW 15.58.040, 15.58.240, 17.21.030, 17.21.134.

Statute Being Implemented: RCW 15.58.040.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Kelle Davis, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, 360-902-1851; Implementation: Christina Zimmerman, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, 360-902-2150; and Enforcement: Tim Schultz, 222 North Havana, Suite 203, Spokane, WA 99202, 509-994-0936.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department has determined that no small business economic impact statement is necessary for this rule making. The department issues pesticide licenses to individuals, not businesses. Business[es] are not required to pay pesticide exam fees for employees, and the final responsibility to pay the exam fee falls on the individual. Therefore, this change has no impact on small businesses.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

June 22, 2022
Robin Schoen-Nessa

Assistant Director
Pesticide Management Division

OTS-3898.1

AMENDATORY SECTION (Amending WSR 12-22-015, filed 10/29/12, effective 1/1/13)

WAC 16-228-1540 What are the requirements for pesticide examinations? (1) An examination fee of ((~~twenty-five dollars~~)) $25 shall be paid prior to administration of any paper-based pesticide or structural pest inspector license examinations. ((~~The department reserves the right to restrict the number of applicants examining at any given time.~~))

(2) An examination fee of not more than $65 shall be paid prior to the administration of each computer-based pesticide or structural pest inspector license examination. If a third-party entity administers a computer-based licensing exam, an applicant shall pay the exam cost established in the vendor's contract with the department, not to exceed the amount set in this section. The department will post this exam fee to its website.

(3) The director may administer the pesticide exams, may contract with an examination or testing vendor to administer the exams, or both.

(4) The department reserves the right to restrict the number of applicants taking examinations at any given time.

(5) Any individual who fails any pesticide licensing examination twice shall be required to wait at least ((~~fourteen~~)) 14 days before retaking that examination a third time. Subsequent testing shall be at the director's discretion.

((~~(3)~~)) (6) An applicant shall complete the application form for a pesticide or structural pest inspector license and pay the required license application fee and testing fee at the time pesticide or structural pest inspector examinations are given, unless prior arrangements have been made.

((~~(4)~~)) (7) Pesticide and structural pest inspector examination scores shall not be released by the department until the license application fee and testing fee have been paid.

[Statutory Authority: 2012 2nd sp.s. c 7, RCW 17.21.030, 15.58.040, and chapter 34.05 RCW. WSR 12-22-015, § 16-228-1540, filed 10/29/12, effective 1/1/13. Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1540, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 15.58, 17.21 RCW. WSR 00-22-073, § 16-228-1540, filed 10/30/00, effective 11/30/00. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1540, filed 10/20/99, effective 11/20/99.]

WSR 22-13-001
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed June 1, 2022, 1:30 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: For the working connections and seasonal child care programs, WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps.

Hearing Location(s): On July 5, 2022, telephonic. Make oral comments by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through and including July 5, 2022, will be considered.

Date of Intended Adoption: July 6, 2022.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, by July 5, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by July 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule increases the working connections child care (WCCC) program rates paid to child care centers for enrolled WCCC-eligible children beginning July 1, 2022. The proposal also makes a technical correction to the designated age range for infants.

Reasons Supporting Proposal: Section 229 (5)(d), chapter 297, Laws of 2022, authorized a 16 percent subsidy base rate enhancement for child care centers for fiscal year 2023. The proposed rule fully implements the authorized enhancement.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Statute Being Implemented: Section 229 (5)(d), chapter 297, Laws of 2022.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Toni Sebastian, 206-200-0824; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

June 1, 2022
Brenda Villarreal
Rules Coordinator

OTS-3695.2

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps. (1) **Base rate.** Effective July 1, ((~~2021~~)) 2022, the child care subsidy rates paid to licensed or certified child care centers or DCYF contracted seasonal day camps are:

		Infants (((~~One month~~)) Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	((~~$41.40~~)) $48.02	((~~$37.50~~)) $43.50	((~~$34.20~~)) $39.67	((~~$33.75~~)) $39.15
	Half-Day	((~~$20.70~~)) $24.01	((~~$18.75~~)) $21.75	((~~$17.10~~)) $19.84	((~~$16.88~~)) $19.58
Spokane County	Full-Day	((~~$59.09~~)) $68.54	((~~$47.73~~)) $55.37	((~~$44.95~~)) $52.14	((~~$34.99~~)) $40.59
	Half-Day	((~~$29.55~~)) $34.27	((~~$23.87~~)) $27.69	((~~$22.48~~)) $26.07	((~~$17.50~~)) $20.30
Region 2	Full-Day	((~~$48.00~~)) $55.68	((~~$36.59~~)) $42.44	((~~$36.50~~)) $42.34	((~~$27.36~~)) $31.74
	Half-Day	((~~$24.00~~)) $27.84	((~~$18.30~~)) $21.22	((~~$18.25~~)) $21.17	((~~$13.68~~)) $15.87
Region 3	Full-Day	((~~$76.36~~)) $88.58	((~~$68.41~~)) $79.36	((~~$57.66~~)) $66.89	((~~$43.64~~)) $50.62
	Half-Day	((~~$38.18~~)) $44.29	((~~$34.21~~)) $39.68	((~~$28.83~~)) $33.45	((~~$21.82~~)) $25.31
Region 4	Full-Day	((~~$95.73~~)) $111.05	((~~$79.55~~)) $92.28	((~~$71.82~~)) $83.31	((~~$45.00~~)) $52.20
	Half-Day	((~~$47.87~~)) $55.53	((~~$39.78~~)) $46.14	((~~$35.91~~)) $41.66	((~~$22.50~~)) $26.10
Region 5	Full-Day	((~~$62.55~~)) $72.56	((~~$54.14~~)) $62.80	((~~$48.08~~)) $55.77	((~~$35.00~~)) $40.60
	Half-Day	((~~$31.28~~)) $36.28	((~~$27.07~~)) $31.40	((~~$24.04~~)) $27.89	((~~$17.50~~)) $20.30
Region 6	Full-Day	((~~$57.00~~)) $66.12	((~~$51.00~~)) $59.16	((~~$47.00~~)) $54.52	((~~$35.91~~)) $41.66
	Half-Day	((~~$28.50~~)) $33.06	((~~$25.50~~)) $29.58	((~~$23.50~~)) $27.26	((~~$17.96~~)) $20.83

(a) Centers in Clark County are paid Region 3 rates.

(b) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) WAC 110-300-0005 and 110-300-0356 allow providers to care for children from birth up to and including the end of their eligibility period after their 13th birthday.

(3) Providers must obtain child-specific and time-limited exceptions from DCYF to provide care for children outside the age listed on the center's license.

(4) If providers are granted an exception to care for a child who is 13 years old or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section, and the five through 12 year age range column is used for comparison; and

(b) The children must meet the special needs requirement described in WAC 110-15-0220.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0200, filed 2/3/22, effective 3/6/22; WSR 20-15-161, § 110-15-0200, filed 7/22/20, effective 8/22/20; WSR 19-12-058, § 110-15-0200, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1. WSR 17-21-077, § 170-290-0200, filed 10/16/17, effective 11/16/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0200, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, §

170-290-0200, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0200, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0200, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0200, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0200, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0200, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0200, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0200, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0200, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0200, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0200, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0200, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

WSR 22-13-026
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 21-06—Filed June 3, 2022, 2:17 p.m.]

Continuance of WSR 22-11-067.

Preproposal statement of inquiry was filed as WSR 21-16-111.

Title of Rule and Other Identifying Information: The rule making is proposing new chapter 173-446 WAC, Climate Commitment Act program. The purpose of this new chapter is to establish and implement the programmatic framework in the Climate Commitment Act (Greenhouse gas (GHG) emissions—Cap-and-invest program, E2SSB 5126, chapter 316, Laws of 2021, codified as chapter 70A.65 RCW).

This CR-102 continuance filing:

- Extends the comment period to July 15, 2022; and
- Announces the availability of a revised preliminary regulatory analysis that corrects a previous calculation error.

The proposed rule language was not changed as part of this continuance.

For more information on this rule making, including hearing dates and proposed rule language, visit https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446.

Date of Intended Adoption: September 29, 2022.

Submit Written Comments to: Joshua Grice, Send US mail to: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to: Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, email ecyreclimaterules@ecy.wa.gov, online https://aq.ecology.commentinput.com/?id=6Nx2J, by July 15, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, for Washington relay service or TTY call 711 or 877-833-6341, email ecyADAcoordinator@ecy.wa.gov, visit https://ecology.wa.gov/accessibility for more information, by June 16, 2022.

Statutory Authority for Adoption: RCW 70A.65.220 Adoption of rules.

Statute Being Implemented: RCW 70A.65.060 through 70A.65.210 (Climate Commitment Act—Cap and invest program).

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Kay Shirey, Lacey, Washington, 564-200-2372; Implementation and Enforcement: Luke Martland, Lacey, Washington, 360-764-3666.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Grice, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-6566, for Washington relay service or TTY call 711 or 877-833-6341, email ecyreclimaterules@ecy.wa.gov, the cost-benefit analysis is included in the revised preliminary regulatory analysis. This revised report corrects a previous calculation error that resulted in overestimation of costs and benefits, each by the same amount. In the previous version of this report, allowance prices were inadvertently applied to no cost

allowances, resulting in identically higher allowance purchase costs and allowance market revenues. This correction does not result from a change in the proposed rule language, and does not impact net benefits or the conclusions. The revised preliminary regulatory analysis is available at https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The revised preliminary regulatory analysis includes corrected calculations to costs and benefits; the small business economic impact statement (SBEIS) was also revised to be consistent with these corrected calculations. The revised preliminary regulatory analysis is available at https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446.

The following explanation of exemptions is unchanged from the original CR-102 filing (WSR 22-11-067).

The analyses required under the Regulatory Fairness Act (RFA), and their inclusion in an SBEIS, are based on whether the proposed rule would impose compliance costs on small businesses. A rule is otherwise exempt from these analyses under RCW 19.85.025(4).

Based on available information, we did not identify any small businesses that would be covered entities and therefore required to comply with the proposed rule. The average business that is likely to be a covered entity under the proposed rule employs 19,273 people. However, we do not have full information concerning all potential covered entities. For example, about half of the 50-60 expected electric power entities (EPEs) that would potentially start reporting under recent amendments to the GHG reporting rule (chapter 173-441 WAC), would also be covered entities. Based on the size of other covered entities, we do not expect these EPEs to be small businesses.

While it may be reasonable to assume that EPEs are all large businesses, we cannot be certain of all their attributes. This is particularly true for EPEs for which we have uncertainty about emissions levels. Due to uncertainty about the employment attributes of electric power entities, we chose to complete a SBEIS and complete work required under the RFA, to understand potential disproportion in the impacts of the proposed rule.

As the RFA requires analyses specifically related to employment impacts and price or output impacts (as they play into revenue and profits), we also determined this analysis would be the most appropriate space to discuss macroeconomic modeling we performed to understand the potential impacts of the proposed rule.

June 3, 2022
Heather R. Bartlett
Deputy Director

WSR 22-13-045
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed June 7, 2022, 2:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-057.

Title of Rule and Other Identifying Information: WAC 182-51-0050 Authority and purpose, 182-51-0100 Definitions, 182-51-0200 Reporting entity registration, 182-51-0300 Health carriers—Cost utilization data reporting, 182-51-0400 Pharmacy benefit managers—Data reporting, 182-51-0600 Manufacturers—Data and price reporting, 182-51-1200 Extension of deadlines, and 182-51-1600 Process to appeal determination of a violation and assessed fines.

Hearing Location(s): On July 26, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_okdBEytITLCb2dmAjv3rBA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 26, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by July 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending sections of chapter 182-51 WAC, the drug price transparency program, to increase program clarity by adding definitions and rewording requirements.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 43.71C.110.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 43.71C.110.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Julie Colacurcio, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-9585.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

June 7, 2022
Wendy Barcus
Rules Coordinator

OTS-3573.4

Chapter 182-51 WAC
((~~PRESCRIPTION~~)) DRUG ((~~PRICING~~)) PRICE TRANSPARENCY PROGRAM

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0050 Authority and purpose. (1) Under the authority of chapter 43.71C RCW, this chapter implements the Washington ((~~prescription~~)) drug ((~~pricing~~)) price transparency program.

(2) The purpose of the Washington ((~~prescription~~)) drug ((~~pricing~~)) price transparency program is to ((~~provide notice and disclosure of information~~)) improve transparency relating to the cost and ((~~pricing~~)) price of prescription drugs ((~~in order~~)) to provide accountability to the state for rising drug costs and a consumer's ability to afford prescription drugs ((~~pricing~~)).

(3) The authority publishes a data submission guide to the authority's website, detailing the data elements to report as required by chapter 43.71C RCW, and how to submit the data.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-0050, filed 9/15/20, effective 10/16/20.]

AMENDATORY SECTION (Amending WSR 21-18-046, filed 8/25/21, effective 9/25/21)

WAC 182-51-0100 Definitions. For the purposes of this chapter:

(1) "Authority" means the health care authority.

(2) "Calendar days" means the same as in WAC 182-526-0010.

(3) "Calendar year" means the period from January 1st to December 31st of each year.

(4) "Confidential information" means information collected by the authority according to RCW 43.71C.020 through 43.71C.080, which is not subject to public disclosure under chapter 42.56 RCW and must be held confidential by all data recipients, according to WAC 182-51-0900.

(5) "Course of treatment" means the duration of the actual administration of a drug to treat a condition.

(6) "Covered drug" means any prescription drug that:

(a) A covered manufacturer intends to introduce to ((~~the~~)) market ((~~in Washington state~~)) at a wholesale acquisition cost of ((~~ten thou-~~

~~sand dollars~~)) $10,000 or more for a course of treatment lasting less than one month or a ((~~thirty-day~~)) 30-day supply, whichever period is longer; or

(b) Meets all of the following:

(i) ((~~Is currently on the~~)) Has been introduced to market ((~~in Washington state~~));

(ii) Is manufactured by a covered manufacturer; and

(iii) Has a wholesale acquisition cost of more than ((~~one hundred dollars~~)) $100 for a course of treatment lasting less than one month or a ((~~thirty-day~~)) 30-day supply, and, taking into account only price increases that take effect on or after October 1, 2019, the manufacturer increases the wholesale acquisition cost such that:

(A) The new wholesale acquisition cost is ((~~twenty~~)) 20 percent higher than the wholesale acquisition cost on the same day of the month, ((~~twelve~~)) 12 months before the date of the proposed increase; or

(B) The new wholesale acquisition cost is ((~~fifty~~)) 50 percent higher than the wholesale acquisition cost on the same day of the month, ((~~thirty-six~~)) 36 months before the date of the proposed increase.

((~~(6)~~)) (7) "Covered manufacturer" means a person, corporation or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Covered manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store label, or a prescription drug repackager.

((~~(7)~~)) (8) "Data" means all data provided to the authority under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.

((~~(8)~~)) (9) "Data recipient" means an individual or entity authorized to receive data under RCW 43.71C.100.

((~~(9)~~)) (10) "Data submission guide" means the document that identifies the data required under chapter 43.71C RCW, and provides instructions for submitting this data to the authority, including guidance on required format for reporting, for each reporting entity.

((~~(10)~~)) (11) "Food and drug administration (FDA) approval date" means the deadline for the FDA to review applications for new drugs or new biologics after the new drug application or biologic application is accepted by the FDA as complete in accordance with the Prescription Drug User Fee Act of 1992 (106 Stat. 4491; P.L. 102-571).

((~~(11)~~)) (12) "Health plan," "health carrier," and "carrier" mean the same as in RCW 48.43.005.

((~~(12)~~)) (13) "Introduced to market" or "introduce to market" means ((~~marketed~~)) to make available for purchase in Washington state.

((~~(13)~~)) (14) "Pharmacy benefit manager" means the same as defined in RCW ((~~19.340.010~~)) 48.200.020.

((~~(14)~~)) (15) "Pharmacy services administrative organization" means an entity that:

(a) Contracts with a pharmacy to act as the pharmacy's agent with respect to matters involving a pharmacy benefit manager, third-party payor, or other entities, including negotiating, executing, or administering contracts with the pharmacy benefit manager, third-party payor, or other entities; and

(b) Provides administrative services to pharmacies.

((~~(15)~~)) (16) "Pipeline drug" means a drug or biologic product ((~~containing a new molecular entity~~)), not yet approved by the Food and Drug Administration, for which a manufacturer intends to seek initial approval from the Food and Drug Administration under an original

new drug application under 21 U.S.C. Sec. 355(b) or under a biologics license application under 42 U.S.C. Sec. 262 ((~~to be marketed in Washington state~~)).

((~~(16)~~)) (17) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW that is prescribed for outpatient use and distributed in a retail setting, including generic, brand name, specialty drugs, and biological products.

((~~(17)~~)) (18) "Private label distributor" means a firm that does not participate in the manufacture or processing of a drug but instead markets and distributes under its own trade name, and labels a drug product made by someone else.

((~~(18)~~)) (19) "Public domain" means information that is available to the general public, whether through internet search, Freedom of Information Act request, or through purchase or subscription, and includes information submitted to or reviewed by the Food and Drug Administration, information contained in financial statements, and information published or otherwise made available through drug information resources. "Public domain" does not include trade secrets as defined by RCW 19.108.010 and information protected by copyright law.

(20) "Qualifying price increase" means a price increase described in subsection ((~~(5)~~)) (6)(b) of this section.

((~~(19)~~)) (21) "Rebate" means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to a reporting entity in connection with utilization of prescription drugs by reporting entity members including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to a reporting entity during a coverage year, and any other form of price concession prearranged with a covered manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to a reporting entity and are directly attributable to the utilization of certain drugs by reporting entity members.

((~~(20)~~)) (22) "Reporting entity" means carriers, covered manufacturers, health carriers, health plans, pharmacy benefit managers, and pharmacy services administrative organizations, which are required to or voluntarily submit data according to chapter 43.71C RCW.

((~~(21)~~)) (23) "Wholesale acquisition cost" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price, for the most recent month for which the information is available, as reported in wholesale acquisition cost guides or other publications ((~~of~~)) containing prescription drug ((~~pricing~~)) prices.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-18-046, § 182-51-0100, filed 8/25/21, effective 9/25/21. Statutory Authority: RCW 41.05.021, 41.05.160, 43.71C.010, 43.71C.050, 43.71C.100, and 43.71C.110. WSR 21-10-008, § 182-51-0100, filed 4/22/21, effective 5/23/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-0100, filed 9/15/20, effective 10/16/20.]

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0200 Reporting entity registration. (1) ((~~No later than August 1st of each year,~~)) A reporting entity must register with the authority and provide the required contact information as defined in the applicable data submission guide. Reregistration is required only if ((~~there is a change in~~)) the contact information previously provided has changed.

(2) It is the responsibility of the reporting entity to maintain current and accurate contact information with the authority.

(3) Failure to register and provide or maintain accurate contact information with the authority may result in a reporting entity's inability to submit required data in compliance with this chapter.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-0200, filed 9/15/20, effective 10/16/20.]

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0300 Health carriers—Cost utilization data reporting. (1) No later than October 16, 2020, a health carrier must submit to the authority the prescription drug cost and utilization data for calendar years 2018 and 2019, for each health plan it offered in Washington state in calendar years 2018 and 2019, following the guidelines set in the authority's applicable data submission guide.

(2) Beginning October 1, 2021, and no later than October 1st annually thereafter, a health carrier must submit to the authority the prescription drug cost and utilization data for the previous calendar year for each health plan it offered in Washington state, following the guidelines set in the authority's applicable data submission guide.

(3) A carrier may voluntarily submit the data described in subsection (1) of this section for ((~~any~~)) other health plans it administers such as employer-sponsored, self-funded health plans; Taft-Hartley trust health plans; worker's compensation plans; medicare Part D plans; ((~~or~~)) medicare advantage plans ((~~it administers~~)); or medicaid managed care plans.

(4) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-0300, filed 9/15/20, effective 10/16/20.]

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0400 Pharmacy benefit managers—Data reporting. (1) No later than March 1st of each year, a pharmacy benefit manager must submit to the authority all data specified in RCW 43.71C.030, follow-

ing the guidelines set in the authority's applicable data submission guide.

(2) The authority may examine or audit a pharmacy benefit manager's financial records to ensure the information submitted under this section is accurate. Information the authority acquires in an examination of financial records according to this subsection is treated as proprietary and confidential. The information collected according to this subsection is not subject to public disclosure under chapter 42.56 RCW.

(3) A pharmacy benefit manager may voluntarily submit the data described in subsection (1) of this section for ((~~any~~)) other health plans it administers such as employer-sponsored, self-funded health plans; Taft-Hartley trust health plans; worker's compensation plans; medicare Part D plans; ((~~or~~)) medicare advantage plans ((~~it administers~~)); or medicaid managed care plans.

(4) The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW.

(5) The agency may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-0400, filed 9/15/20, effective 10/16/20.]

AMENDATORY SECTION (Amending WSR 21-10-008, filed 4/22/21, effective 5/23/21)

WAC 182-51-0600 Manufacturers—Data and price reporting. (1) On or before December 31, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, following the guidelines set in the authority's applicable data submission guide for each new covered drug introduced to market, or a covered drug that had a qualifying price increase between and including October 1, 2019, and October 15, 2020.

(2) Beginning October 16, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, following the guidelines set in the authority's applicable data submission guide, for each covered drug as follows:

(a) Sixty days in advance of a qualifying price((~~s~~)) increase for a covered drug ((~~marketed in Washington state~~)) already introduced to market; or

(b) Within ((~~thirty~~)) 30 days of a new covered drug introduced to market ((~~in Washington state~~)).

(3) For any drug approved under section 505(j) of the federal Food, Drug, and Cosmetic Act as it existed on August 18, 2020, or a biosimilar approved under section 351(k) of the federal Public Health Service Act as it existed on August 18, 2020, if submitting data in accordance with subsection (2)(a) of this section is not possible ((~~sixty~~)) 60 days before the price increase, that submission must be made as soon as known but no later than the date of the price increase.

(4) The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW.

(5) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

[Statutory Authority: RCW 41.05.021, 41.05.160, 43.71C.010, 43.71C.050, 43.71C.100, and 43.71C.110. WSR 21-10-008, § 182-51-0600, filed 4/22/21, effective 5/23/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-0600, filed 9/15/20, effective 10/16/20.]

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-1200 Extension of deadlines. (1) The authority may grant:

(a) An extension of time to a reporting requirement deadline; or

(b) Permission to correct a previously submitted ((~~data~~)) and accepted report.

(2) Extensions.

(a) A reporting entity may request an extension of time for submitting a report or the resubmission of a report due to extenuating circumstances affecting the reporting entity's ability to submit the data by the deadline.

(b) The request for an extension must contain a detailed explanation as to the reason the reporting entity is unable to meet the reporting requirements for that period.

(c) A reporting entity must submit a request for an extension to the authority at least ((~~thirty~~)) 30 calendar days before the applicable reporting deadline unless the requestor is unable to meet this deadline due to circumstances beyond the reporting entity's control. If unable to meet this deadline, the reporting entity must notify the authority in writing as soon as the reporting entity determines that an extension is necessary.

(d) The authority may approve a request for an extension for a period of time based on the specific circumstances or other extenuating circumstances. The authority provides written notification of the approval or denial to the requestor within ((~~fifteen~~)) 15 calendar days from when the authority receives the request from the reporting entity. If the authority does not approve a request for an extension, the written notification includes the reason for the denial.

(e) A reporting entity may not appeal the authority's decision to deny an extension.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-1200, filed 9/15/20, effective 10/16/20.]

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-1600 Process to appeal determination of a violation and assessed fines. (1) Each reporting entity to whom the authority issues a preliminary notice of a violation and fine(s) may request ((~~and~~)) an informal dispute resolution conference under WAC 182-51-1700.

(2) If the reporting entity requests an informal dispute resolution conference under WAC 182-51-1700, the reporting entity must com-

plete the informal dispute resolution process before requesting an administrative hearing.

(3) In lieu of an informal dispute resolution conference, the reporting entity may request a formal appeal under WAC 182-51-1800 in writing, in a manner that provides proof of receipt, within ((~~twenty-eight~~)) 28 calendar days after receipt of the preliminary notice of violation and fine(s). Upon receipt ((~~for~~)) of the reporting entity's request, the authority issues a final notice of violation and fine(s) with an explanation of the reporting entity's administrative hearing rights under WAC 182-51-1800.

(4) If the reporting entity does not request an informal dispute resolution conference or formal appeal within ((~~twenty-eight~~)) 28 calendar days after receipt of the preliminary notice of violation and fine(s), the authority issues a final notice of violation with an explanation of the reporting entity's administrative hearing rights under WAC 182-51-1800.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-1600, filed 9/15/20, effective 10/16/20.]

WSR 22-13-047
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed June 8, 2022, 7:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-051.

Title of Rule and Other Identifying Information: Dental-related services—Covered—Preventative, WAC 182-535-1082.

Hearing Location(s): On July 26, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_okdBEytITLCb2dmAjv3rBA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 26, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by July 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to add language back in that was inadvertently struck in the final CR-103P rule text in WSR 21-14-055, effective August 2, 2021. The agency held a public hearing and agreed to a request to not strike subsection (5) regarding tobacco/nicotine cessation counseling for the control and prevention of oral disease. The agency covers tobacco/nicotine cessation counseling for pregnant women only. See WAC 182-531-1720. The agency agreed; however, the final rule text filed under WSR 21-14-055, effective August 2, 2021, inadvertently had subsection (5) struck out.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Pixie Needham, P.O. Box 45079, Olympia, WA 98504-5079, 360-725-9967.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how

costs were calculated. The proposed rule does not impose a disproportionate cost impact on businesses.

June 8, 2022
Wendy Barcus
Rules Coordinator

OTS-3801.1

AMENDATORY SECTION (Amending WSR 21-14-055, filed 7/1/21, effective 8/1/21)

WAC 182-535-1082 Covered—Preventive services. Clients described in WAC 182-535-1060 are eligible for the dental-related preventive services listed in this section, subject to coverage limitations and client-age requirements identified for a specific service.

(1) **Prophylaxis.** The medicaid agency covers prophylaxis as follows. Prophylaxis:

(a) Includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on tooth structures and implants.

(b) Is limited to once every:

(i) Six months for clients:

(A) Age ((~~eighteen~~)) 18 and younger; or

(B) Of any age residing in an alternate living facility or nursing facility;

(ii) Twelve months for clients age ((~~nineteen~~)) 19 and older.

(c) Is reimbursed according to (b) of this subsection when the service is performed:

(i) At least six months after periodontal scaling and root planing, or periodontal maintenance services, for clients:

(A) Age ((~~thirteen~~)) 13 through ((~~eighteen~~)) 18; or

(B) Of any age residing in an alternate living facility or nursing facility; or

(ii) At least ((~~twelve~~)) 12 months after periodontal scaling and root planing, periodontal maintenance services, for clients age ((~~nineteen~~)) 19 and older.

(d) Is not reimbursed separately when performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy, gingivoplasty, or scaling in the presence of generalized moderate or severe gingival inflammation.

(e) Is covered for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to (a), (c), and (d) of this subsection and WAC 182-535-1099.

(2) **Topical fluoride treatment.** The agency covers the following per client, per provider or clinic:

(a) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, three times within a ((~~twelve-month~~)) 12-month period with a minimum of ((~~one hundred ten~~)) 110 days between applications for clients:

(i) Age six and younger;

(ii) During orthodontic treatment.

(b) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, two times within a ((~~twelve-month~~)) 12-month period with a minimum of ((~~one hundred seventy~~)) 170 days between applications for clients:

(i) From age seven through ((~~eighteen~~)) 18; or

(ii) Of any age residing in alternate living facilities or nursing facilities.

(c) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients age ((~~nineteen~~)) 19 and older, once within a ((~~twelve-month~~)) 12-month period.

(d) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

(e) Topical fluoride treatment for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(3) **Silver diamine fluoride.**

(a) The agency covers silver diamine fluoride as follows:

(i) When used for stopping the progression of caries or as a topical preventive agent;

(ii) Allowed two times per client per tooth in a ((~~twelve-month~~)) 12-month period; and

(iii) Cannot be billed with interim therapeutic restoration on the same tooth when arresting caries or as a preventive agent.

(b) The dental provider or office must have a signed informed consent form on file for each client receiving a silver diamine fluoride application. The form must include the following:

(i) Benefits and risks of silver diamine fluoride application;

(ii) Alternatives to silver diamine fluoride application; and

(iii) A color photograph example that demonstrates the post-procedure blackening of a tooth with silver diamine fluoride application.

(4) **Oral hygiene instruction.** Includes instruction for home care such as tooth brushing technique, flossing, and use of oral hygiene aids. Oral hygiene instruction is included as part of the global fee for prophylaxis for clients age nine and older. The agency covers individualized oral hygiene instruction for clients age eight and younger when all of the following criteria are met:

(a) Only once per client every six months within a ((~~twelve-month~~)) 12-month period.

(b) Only when not performed on the same date of service as prophylaxis or within six months from a prophylaxis by the same provider or clinic.

(c) Only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

(5) **Tobacco/nicotine cessation counseling for the control and prevention of oral disease.** The agency covers tobacco/nicotine cessation counseling for pregnant individuals only. See WAC 182-531-1720.

(6) **Sealants.** The agency covers:

(a) Sealants for clients age ((~~twenty~~)) 20 and younger and clients any age of the developmental disabilities administration of DSHS.

(b) Sealants once per tooth:

(i) In a three-year period for clients age ((~~twenty~~)) 20 and younger; and

(ii) In a two-year period for clients any age of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(c) Sealants only when used on the occlusal surfaces of:

(i) Permanent teeth two, three, ((~~fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one~~)) 14, 15, 18, 19, 30, and 31; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

(d) Sealants on noncarious teeth or teeth with incipient caries.

(e) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.

(f) Sealants are included in the agency's payment for occlusal restoration placed on the same day.

(g) Additional sealants not described in this subsection on a case-by-case basis and when prior authorized.

((~~(6)~~)) (7) **Space maintenance.** The agency covers:

(a) One fixed unilateral space maintainer per quadrant or one fixed bilateral space maintainer per arch, including recementation, for missing primary molars A, B, I, J, K, L, S, and T, when:

(i) Evidence of pending permanent tooth eruption exists; and

(ii) The service is not provided during approved orthodontic treatment.

(b) Replacement space maintainers on a case-by-case basis when authorized.

(c) The removal of fixed space maintainers when removed by a different provider.

(i) Space maintainer removal is allowed once per appliance.

(ii) Reimbursement for space maintainer removal is included in the payment to the original provider that placed the space maintainer.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-14-055, § 182-535-1082, filed 7/1/21, effective 8/1/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 2017 3rd sp.s. c 1 § 213 (1)(c). WSR 19-09-058, § 182-535-1082, filed 4/15/19, effective 7/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1082, filed 10/3/17, effective 11/3/17; WSR 16-18-033, § 182-535-1082, filed 8/26/16, effective 9/26/16. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1082, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1082, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1082, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1082, filed 3/1/07, effective 4/1/07.]

WSR 22-13-048
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed June 8, 2022, 8:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-07-103.

Title of Rule and Other Identifying Information: WAC 182-531-0300 Anesthesia providers and covered physician-related services.

Hearing Location(s): On July 26, 2022, at 10:00 a.m. Until further notice, health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_okdBEytITLCb2dmAjv3rBA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by 11:59 p.m., July 26, 2022.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email johanna.larson@hca.wa.gov, by July 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align with 42 C.F.R. § 482.52, HCA is amending WAC 182-531-0300(1) to include a doctor of medicine or osteopathy (other than an anesthesiologist) to the list of providers HCA reimburses for performing covered anesthesia services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 C.F.R. § 482.52.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 42 C.F.R. § 482.52.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Karin Inderbitzin, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-9805.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state

if the rule is not adopted: 42 C.F.R. § 482.52, Condition of participation: Anesthesia services.

June 8, 2022
Wendy Barcus
Rules Coordinator

OTS-3775.1

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

WAC 182-531-0300 Anesthesia providers and covered physician-related services. The medicaid agency bases coverage of anesthesia services on medicare policies and the following rules:

(1) The agency reimburses providers for covered anesthesia services performed by:

(a) Anesthesiologists;

(b) A doctor of medicine or osteopathy (other than an anesthesiologist);

(c) Certified registered nurse anesthetists (CRNAs);

((~~(c)~~)) (d) Oral surgeons with a special agreement with the agency to provide anesthesia services; and

((~~(d)~~)) (e) Other providers who have a special agreement with the agency to provide anesthesia services.

(2) The agency covers and reimburses anesthesia services for children and noncooperative clients in those situations where the medically necessary procedure cannot be performed if the client is not anesthetized. A statement of the client-specific reasons why the procedure could not be performed without specific anesthesia services must be kept in the client's medical record. Examples of such procedures include:

(a) Computerized tomography (CT);

(b) Dental procedures;

(c) Electroconvulsive therapy; and

(d) Magnetic resonance imaging (MRI).

(3) The agency covers anesthesia services provided for any of the following:

(a) Dental restorations and/or extractions:

(b) Maternity per subsection (9) of this section. See WAC 182-531-1550 for information about sterilization/hysterectomy anesthesia;

(c) Pain management per subsection (5) of this section;

(d) Radiological services as listed in WAC 182-531-1450; and

(e) Surgical procedures.

(4) For each client, the anesthesiologist provider must do all of the following:

(a) Perform a preanesthetic examination and evaluation;

(b) Prescribe the anesthesia plan;

(c) Personally participate in the most demanding aspects of the anesthesia plan, including, if applicable, induction and emergence;

(d) Ensure that any procedures in the anesthesia plan that the provider does not perform, are performed by a qualified individual as defined in the program operating instructions;

(e) At frequent intervals, monitor the course of anesthesia during administration;

(f) Remain physically present and available for immediate diagnosis and treatment of emergencies; and

(g) Provide indicated post anesthesia care.

(5) The agency does not allow the anesthesiologist provider to:

(a) Direct more than four anesthesia services concurrently; and

(b) Perform any other services while directing the single or concurrent services, other than attending to medical emergencies and other limited services as allowed by medicare instructions.

(6) The agency requires the anesthesiologist provider to document in the client's medical record that the medical direction requirements were met.

(7) General anesthesia:

(a) When a provider performs multiple operative procedures for the same client at the same time, the agency reimburses the base anesthesia units (BAU) for the major procedure only.

(b) The agency does not reimburse the attending surgeon for anesthesia services.

(c) When more than one anesthesia provider is present on a case, the agency reimburses as follows:

(i) The supervisory anesthesiologist and certified registered nurse anesthetist (CRNA) each receive ((~~fifty~~)) 50 percent of the allowed amount.

(ii) For anesthesia provided by a team, the agency limits reimbursement to ((~~one hundred~~)) 100 percent of the total allowed reimbursement for the service.

(8) Pain management:

(a) The agency pays CRNAs or anesthesiologists for pain management services.

(b) The agency allows two postoperative or pain management epidurals per client, per hospital stay plus the two associated E&M fees for pain management.

(9) Maternity anesthesia:

(a) To determine total time for obstetric epidural anesthesia during normal labor and delivery and c-sections, time begins with insertion and ends with removal for a maximum of six hours. "Delivery" includes labor for single or multiple births, and/or cesarean section delivery.

(b) The agency does not apply the six-hour limit for anesthesia to procedures performed as a result of post-delivery complications.

(c) See WAC 182-531-1550 for information on anesthesia services during a delivery with sterilization.

(d) See chapter 182-533 WAC for more information about maternity-related services.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-04-039, § 182-531-0300, filed 1/25/17, effective 2/25/17. WSR 11-14-075, recodified as § 182-531-0300, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-531-0300, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-0300, filed 12/6/00, effective 1/6/01.]

WSR 22-13-049
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed June 8, 2022, 8:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-136.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests. The proposed rule amendments establish an internal quarantine for Japanese beetle within Washington state. The quarantine area covers 49 square miles in the southeastern corner of Yakima County and the southwestern corner of Benton County. The proposed quarantine prohibits the movement of regulated articles located inside the quarantine area from moving outside of it, unless they are treated in a manner described in the rule.

Hearing Location(s): On August 2, 2022, at 10:00 a.m., at The Learning Center, 313 Division Street, Grandview, WA 98930. Microsoft Teams conference call, join on your computer or mobile app https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWExNDcyZDQtZWU0My00ODRiLTg3YTQtNzU1MGI2Zjc5OTY1%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d; or call in (audio only) +1 564-999-2000,,29145981#, United States, Olympia, Conference ID 291 459 81#.

Date of Intended Adoption: August 9, 2022.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., August 2, 2022.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by July 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Japanese beetle (*Popillia japonica* Newman) is a highly invasive plant pest native to Japan. It has been known to cause severe damage to more than 300 species of ornamental and agricultural plants, including roses, grapes, and hops. Adult beetles damage plants by skeletonizing foliage and feeding on buds, flowers, and fruit. The larvae also damage the roots of plants, such as turf grass. Although this feeding does not always kill the plant, it weakens it and may reduce the plant's overall yield. A quarantine against Japanese beetle has already been declared for certain areas outside of the state of Washington.

Under the proposed rule amendments, a quarantine will be established for certain areas within the state of Washington and regulated articles will be prohibited from moving outside the quarantined areas unless treated in a manner described in the rule.

Regulated articles are articles that pose a high risk of transporting Japanese beetle and include the following:

1. The upper eight inches of topsoil containing vegetative material from all properties, including but not limited to residential, agricultural, and commercial properties (including construction sites).

2. Humus and compost (except when produced commercially), and growing media (except when commercially packaged).

3. Yard debris, meaning plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping, or similar activities. This includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris.

4. Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media, including: All plants with roots, plant crowns or roots, bulbs, corms, tubers, and rhizomes. Garlic, allium, and other edible plant bulbs will not be regulated under the proposed quarantine, if free from soil.

5. Turfgrass (sod).

6. Hop bines and unshucked corn ears harvested during the Japanese beetle adult flight season (May 15 - October 15).

7. Cut flowers for decorative purposes.

8. Any other plant, plant part, article, or means of conveyance when determined by the director to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation.

The proposed amendments establish conditions governing the movement of regulated articles from within quarantined areas of Washington to areas outside the quarantined area.

Lastly, the proposed amendments allow the director to issue compliance agreements as defined in RCW 17.24.007, admitting regulated articles specified in WAC 16-470-710, from areas within the external or internal quarantine, that are not otherwise eligible for entry or movement from the area under quarantine. Compliance agreements will include conditions and provisions which the director may prescribe to prevent the introduction, escape, or spread of Japanese beetle.

Reasons Supporting Proposal: Since June 2021, the department has collected thousands of Japanese beetles in traps around the city of Grandview in Yakima County. Many beetles were also collected from traps in nearby Benton County, indicating an established population in these areas. Its presence poses a serious threat to gardens, parks, and farms by destroying vegetation. If Japanese beetle becomes permanently established throughout the state, it could result in a severe economic threat to several of Washington's agricultural industries. The threat this pest poses is particularly concerning due to the area in which the detection occurred. There are a number of farms and nurseries in close proximity to the detection site that grow plants targeted by Japanese beetle.

Not only do these beetles pose a threat to the plants themselves, but if established they have the potential to impact export markets for agricultural commodities grown in the area. Expanding the Japanese beetle quarantine to include portions of Yakima and Benton counties will help prevent the spread of this invasive pest and protect Washington's agricultural industries, as well as maintain access to national and international markets.

The proposed amendments are intended to prevent the spread of Japanese beetle in Washington state by reducing the risk of infested host material moving outside of the quarantine area.

Statutory Authority for Adoption: RCW 17.24.011 and 17.24.041.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Greg Haubrich, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-902-2071.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Small Business Economic Impact Statement

Chapter 16-470 WAC
Quarantine—Agricultural Pests
Japanese Beetle Quarantine

SECTION 1: **Describe the proposed rule, including: A brief history of the issue, an explanation of why the proposed rule is needed, and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

Overview and Background: WSDA is proposing to amend and expand the Japanese beetle quarantine to include portions of Yakima County and Benton County. The current quarantine specified in chapter 16-470 WAC is solely an exterior quarantine that applies to over 30 states, encompassing most of the midwest, south, and northeast areas of the United States.

Japanese beetle (*Popillia japonica* Newman) is a highly invasive plant pest native to Japan. It has been known to cause severe damage to more than 300 species of ornamental and agricultural plants, including roses, grapes, and hops. Adult beetles damage plants by skeletonizing foliage and feeding on buds, flowers, and fruit. The larvae also damage the roots of plants, such as turf grass. Although this feeding does not always kill the plant, it weakens it and may reduce the plant's overall yield.

Since June 2021, WSDA has collected thousands of Japanese beetles in traps around the city of Grandview in Yakima County. Many beetles were also collected from traps in nearby Benton County, indicating an established population in these areas. Its presence poses a serious threat to gardens, parks, and farms by destroying vegetation. If Japanese beetle becomes permanently established throughout the state, it could threaten several of Washington's agricultural industries. The threat this pest poses is particularly concerning due to the area in which the detection occurred. There are a number of farms and nurseries in close proximity to the detection site, growing plants targeted by Japanese beetle.

Not only do these beetles pose a threat to the plants themselves, but if established they have the potential to impact export markets for agricultural commodities grown in the area. Expanding the Japanese beetle quarantine to include portions of Yakima and Benton counties will help prevent the spread of this invasive pest and protect Washington's agricultural industries, as well as maintain access to national and international markets.

Proposed Rule Amendments: The proposed rule amendments would establish an internal quarantine for Japanese beetle within Washington State. The quarantine area would cover 49 square miles in the southeastern corner of Yakima County and the southwestern corner of Benton County. The proposed quarantine would prohibit the movement of regula-

ted articles located inside the quarantine area, from moving outside of it. Regulated articles are articles that pose a known risk of transporting Japanese beetle and include the following:

1. The upper eight inches of topsoil containing vegetative material from all properties, including but not limited to residential, agricultural, and commercial properties (including construction sites).

2. Humus and compost (except when produced commercially), and growing media (except when commercially packaged). Only backyard or residential compost will be considered a regulated article. Compost that is produced commercially will not be regulated under the proposed quarantine.

3. Yard debris, meaning plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping, or similar activities. This includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris.

4. Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media, including: All plants with roots, plant crowns or roots, bulbs, corms, tubers, and rhizomes. Garlic, allium, and other edible plant bulbs will not be regulated under the proposed quarantine, if free from soil.

5. Turfgrass (sod).

6. Hop bines and unshucked corn ears harvested during the Japanese beetle adult flight season (May 15 - October 15). Corn silage and corn that has been processed or shucked will not be regulated under the proposed quarantine.

7. Cut flowers for decorative purposes.

8. Any other plant, plant part, article, or means of conveyance when determined by the director to present a hazard of spreading live Japanese beetle due to either infestation or exposure to infestation.

The proposed amendments would also establish conditions governing the movement of regulated articles from commercial and private properties within quarantined areas of Washington, to areas outside the quarantined area. WSDA will monitor any treatment methods applied to regulated articles for compliance. Proposed conditions (treatment options) include:

1. *The upper eight inches of topsoil containing vegetative material from all properties, humus and compost (except when produced commercially), and growing media (except when commercially packaged):*

a. Steam heated to a temperature of 140°F for one hour, to kill all life stages of Japanese beetle;

b. Other treatments determined to be effective at eradicating Japanese beetle and approved in writing by the director.

2. *Yard debris:*

a. Steam heated to a temperature of 140°F for one hour, to kill all life stages of Japanese beetle;

b. When consisting solely of woody materials containing no soil, yard debris may be chipped to a screen size of one inch in two dimensions or smaller during the Japanese beetle adult flight season;

i. Woody material containing no soil can be moved outside of the Japanese beetle adult flight season without chipping.

c. Another treatment determined to be effective at eradicating Japanese beetle and approved in writing by the director.

3. *Plants for planting and propagation except when dormant and bareroot and free from soil or growing media: all plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turf-*

grass (sod): Each shipment must comply with the treatment or inspection requirements detailed under WAC 16-470-717 (3)(a) - (f). Before the shipment moves outside the quarantined area, the shipment must be approved by WSDA. Approval will be documented by the issuance of a certificate of treatment or inspection when WSDA determines that the shipment is in compliance with the treatment or inspection requirements. The certificate must accompany the shipment while the shipment is in transit. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped dormant and bareroot with no soil or growing media attached are exempt from these requirements, and should be identified as bareroot on shipping documents. WAC 16-470-717 (3)(a) - (f) requirements include:

a. Production in an approved Japanese beetle free greenhouse/screenhouse.

b. Production during a pest free window.

c. Application of approved regulatory treatments.

d. Dip treatment - not an approved treatment.

e. Drench treatments for container plants only. Not approved for ornamental grasses or sedges.

f. Media (granule) incorporation for container plants only. Not approved for ornamental grasses or sedges.

4. *Hop bines and unshucked corn ears:*

a. Fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by WSDA and found free of Japanese beetle for the entire adult flight period (May 15 through October 15), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by WSDA, bines and unshucked corn ears may be moved outside the quarantined area.

b. If WSDA determines there is evidence of Japanese beetle presence, bines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance.

c. All shipments of hop bines and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by WSDA stating the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

The proposed amendments would allow the director to issue compliance agreements as defined in RCW 15.13.250, admitting regulated articles specified in WAC 16-470-710, from areas within the external or internal quarantine, that are not otherwise eligible for entry or movement from the area under quarantine. Compliance agreements will include conditions and provisions that the director may prescribe to prevent the introduction, escape, or spread of Japanese beetle.

Required Professional Services: The proposed rule amendment would not require professional services. A business may choose to hire professional services to assist in applying a Japanese beetle treatment; however, it would not be mandatory.

SECTION 2: **Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	*Minor Cost Threshold = 1% of Average Annual Payroll	**Minor Cost Threshold = 0.3% of Average Annual Revenue
111150	Corn Farming	$2,759.57	$2,743.80
111421	Nursery and Tree Production	$5,428.08	$2,313.03
111998	All Other Miscellaneous Crop Farming (hop farming)	$11,782.08	$3,518.45
112120	Dairy Cattle and Milk Production	$6,187.97	$21,237.13
236118	Residential Remodelers	$1,457.74	$901.20
424590	Other Farm Product Raw Material Merchant Wholesalers (includes sod merchant wholesalers)	$3,948.77	$7,750.68
424910	Farm Supplies Merchant Wholesalers	$10,501.05	$35,044.58
444220	Nursery; Garden Center; and Farm Supply Stores	$4,675.20	$3,798.35
445110	Supermarkets and Other Grocery (except Convenience) Stores	$24,632.97	$39,505.18
454390	Other Direct Selling Establishments (includes Christmas tree sellers)	$4,034.18	$2,740.36
541320	Landscape Architectural Services	$4,874.31	$906.94
561730	Landscaping Services	$2,131.66	$798.41
562111	Solid Waste Collection	$14,106.51	$23,689.65

* Data source: 2020 Employment security department or United States Bureau of Labor Statistics
** Data source: 2020 Department of revenue

SECTION 3: **Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The industries impacted by the proposed rule vary greatly due to the large amount of host material targeted by Japanese beetle and the widespread availability of it within the proposed quarantine area. Likewise, the possible impact to businesses varies depending on the number of regulated articles a business handles and if those articles are moved outside of the proposed quarantine area. Some businesses may handle only one regulated article, whereas others handle multiple. The time of year a business moves regulated articles, whether during adult flight season or not, may also impact potential costs. Additionally, proposed regulated articles may be a product that is created and sold, or a waste byproduct of a business' operation. Businesses impacted by the proposed rule amendment are likely to experience a loss in sales or revenue if they sell any of the regulated articles and are unable to transport them outside of the proposed quarantine area. In order to transport these items, businesses will need to utilize one or more of the treatment options proposed under section 1. Depending on which treatment is used, businesses may see an increase in costs related to equipment, supplies, labor, and administration. To cover these potential cost impacts, this section has been broken into two parts. One covers the potential loss in revenue and the other covers additional costs associated with the implementation of treatment options.

WSDA estimates there are around 59 businesses in the proposed quarantine area that could be affected by the proposed rule amendments. However, it is not clear how many of these businesses would actually be impacted, as not enough information was available to make a determination. Below is a breakdown of the businesses by industry type

and a list of the proposed regulated articles the businesses could be affected by if transport restrictions were in place.

- Six plant producers - likely most affected by restrictions on:
  - Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media: All plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turfgrass (sod)
- Seven garden stores - likely most affected by restrictions on:
  - Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media: All plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turfgrass (sod)
- Ten landscaping businesses - likely most affected by restrictions on:
  - Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media: All plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turfgrass (sod)
  - The upper eight inches of topsoil containing vegetative material from all properties, including but not limited to residential, agricultural, and commercial properties (including construction sites)
  - Humus and compost (except when produced commercially), and growing media (except when commercially packaged)
  - Yard debris
- Nineteen construction companies - likely most affected by restrictions on:
  - The upper eight inches of topsoil containing vegetative material from all properties, including but not limited to residential, agricultural, and commercial properties (including construction sites)
  - Humus and compost (except when produced commercially), and growing media (except when commercially packaged)
- Two waste companies - likely most affected by restrictions on:
  - The upper eight inches of topsoil containing vegetative material from all properties, including but not limited to residential, agricultural, and commercial properties (including construction sites)
  - Humus and compost (except when produced commercially), and growing media (except when commercially packaged)
  - Yard debris
- Eight dairies - likely most affected by restrictions on:
  - Humus and compost (except when produced commercially), and growing media (except when commercially packaged)
- Seven hop producers - likely most affected by restrictions on:
  - Hop bines

WSDA attempted to contact businesses that may be growing corn in the proposed quarantine area. These attempts were largely unsuccessful, aside from two businesses, one of which no longer grows corn and the other that would not be affected by the proposed quarantine. Additionally, WSDA was not able to identify any businesses growing cut flowers in the area.

Loss of Sales or Revenue: A survey was sent directly to businesses that could be impacted by the proposed rule amendments. The survey was also posted by WSDA on multiple social media outlets reaching an estimated 8,146 people and further shared by other sources reaching an

additional 29,883 people. After several months, WSDA received a total of 41 survey responses, only 12 of which were completed (or almost completed). The other 29 responses did not contain enough information to determine if the business would be impacted. Some of the questions asked in the survey included:

- What proposed regulated items does your business handle (if any)?
- Are these items created/sold or a waste byproduct?
- Are these items moved/shipped out of the proposed quarantine area?

If so, are they moved during adult flight season (May 15 - October 15)?

- What is the estimated annual revenue generated by these items?
- What is the estimated loss in revenue if these items could not be moved?
- If unable to transport items, would your business experience increased costs related to supplies, labor, professional services, or administrative costs?
- Would any jobs be created or lost if items could not be moved?
- How are regulated items moved out of the proposed quarantine area?

Table 3.1 shows results for the 12 businesses that completed the survey. The results show which regulated articles are handled by each business. Of these businesses, nine are considered small businesses and three are large. At the time the survey was sent, WSDA was considering regulating all manure and compost, corn stalks/silage, and all soil. Survey results and feedback from the industry prompted the agency to reconsider these articles. WSDA found that regulating these articles would be a substantial financial cost to many businesses in the proposed quarantine area. The agency conducted extensive research and consulted with experts on the potential risk these items posed for transporting Japanese beetle. From that, the agency was able to narrow down specific pathways of risk for each item and exclude anything considered a relatively low risk for transporting the pest. **Table 3.1 shows articles included in the survey that are no longer proposed as regulated articles. These articles include manure and corn stalks/silage.** Updated regulated articles that resulted from stakeholder feedback include narrowing regulated soil to only the upper eight inches of topsoil containing vegetative material, excluding commercially produced compost, and only regulating unshucked corn ears.

Table 3.1 - Proposed regulated articles handled by businesses. Manure and corn stalk/silage are no longer proposed regulated articles.

Business ID	Business size	Proposed regulated articles created/ sold	Proposed regulated articles waste byproduct	Articles moved out of proposed quarantine area	Articles moved during adult flight season (May 15 - Oct 15)
15	Small	None	None	Manure*	Yes
14	Small	Humus, manure*	Manure*	Yes, both	Yes, both
9	Small	Soil, potted plants	Humus	None	Soil and potted plants
8	Large	Humus, manure*, corn stalks/silage*	Humus, manure*	Yes	Yes
1	Large	Yard debris, humus, potted plants, plant crowns, hop bines	Yard debris	Yes, humus, potted plants, plant crowns, and hop bines	Yes, humus, potted plants, and hop bines

Business ID	Business size	Proposed regulated articles created/ sold	Proposed regulated articles waste byproduct	Articles moved out of proposed quarantine area	Articles moved during adult flight season (May 15 - Oct 15)
17	Small	Humus, manure*, corn stalks/silage*, corn ears	Humus, manure	Yes	Yes
18	Small	Humus, manure*	Humus, manure*	Yes, both	Yes, both
19	Small	Plant crowns, hop bines	None	Yes	Yes, hop bines
26	Small	Manure*	Manure*	Yes	Yes
37	Small	Humus, manure*, corn stalks/silage*	Humus, manure*	Yes, humus, manure*	Yes, humus, manure*
39	Small	Potted plants	None	Yes	Yes
40	Large	Potted plants, plant crowns, hop bines	Yard debris, humus, potted plants, plant crowns, hop bines	Yes, soil, yard debris, humus, manure*, potted plants, plant crowns	Yes

* *No longer a proposed regulated article.*

Of the 12 businesses shown in Table 3.1, eight handle manure and/or corn stalks/silage. Five of these businesses stated in the survey that they would be greatly impacted if these articles were regulated.

Table 3.2 analyzes the estimated annual revenue generated by the proposed regulated articles (this includes manure and corn stalk/ silage), as well as the estimated loss in revenue and additional costs if the items could no longer be transported outside of the proposed quarantine area. Under the proposed rule amendments, regulated articles can be moved out of the quarantine area if conditions outlined in section 1 are met.

Table 3.2 - Estimated loss in revenue and cost increase to businesses if unable to transport regulated articles.

Business	Primary business activity	Est. annual revenue generated from articles	Est. loss in revenue if articles could not be moved outside of proposed quarantine area	Additional costs if unable to move articles out of proposed quarantine area (does not include treatment costs)
15	Other crop production	$50,000,000	$0	Supplies
14	Beef feedlot and manure composting	$800,000	$1,000,000	Supplies, labor, administrative
9	Nursery (including retailers that also sell live plants or cut flowers)	$300,000	$0	Equipment, labor, and other
8	Dairy	$2,000,000 - $3,000,000	Substantial losses - unable to estimate	No data provided
1	Nursery (including retailers that also sell live plants or cut flowers)	$9,000,000	$9,000,000	Equipment, supplies, labor, administrative
17	Dairy	$500,000	$500,000	Equipment, supplies, labor, professional services, administrative, other (compliance issues w/ nutrient management program)

Business	Primary business activity	Est. annual revenue generated from articles	Est. loss in revenue if articles could not be moved outside of proposed quarantine area	Additional costs if unable to move articles out of proposed quarantine area (does not include treatment costs)
18	Other (construction, waste management, dairy)	$2,000,000	$12,000,000	No data provided
19	Hop production	$6,000,000	$6,000,000	Equipment, labor
26	Alfalfa	$100,000	$100,000	Equipment, labor, professional services, administrative
37	Dairy	No data provided	No data provided	Equipment, supplies, labor, professional services, and administrative
39	Nursery (including retailers that also sell live plants or cut flowers)	$100,000	$100,000	Equipment
40	Hop production	$60,000,000	$30,000,000	Equipment, supplies, labor, professional services, administrative

Table 3.2 shows the substantial financial impact some businesses could have if they were unable to move regulated articles out of the proposed quarantine area. Losses in revenue and estimated additional costs listed for businesses 8, 14, 15, 17, 18, 26, and 37 may be far less than what is reflected in Table 3.2. This is because a large portion of their loss in revenue was associated with manure, commercial compost, and/or corn stalks/silage. Since these articles are no longer proposed for regulation, their estimated financial impact would likely be substantially reduced.

Businesses 1, 9, and 39 listed their primary business activity as nursery. Business 9 stated they would not likely see a loss in revenue because they are located outside the proposed quarantine area. Business 1 (large business) and 39 (small business) reported the total annual revenue generated by the regulated articles would be lost if they were unable to transport the items outside of the proposed quarantine area. This is similar to business 19 (small business), a hop production business, which also reported that they would lose all revenue generated by their hops if they were unable to transport them outside of the quarantine area. Another hop production, business 40 (large business), has half their acreage in the proposed quarantine area and reported they would lose half their revenue if they could not transport hops outside the quarantine area. There are an estimated 4,838 acres of hops in the proposed Japanese beetle quarantine area.

Probable Costs to Comply: Conditions for Moving Regulated Articles - Treatment Option Costs: A major financial impact to businesses under the proposed rule would be if they were unable to move regulated articles outside of the proposed quarantine area. However, under WAC 16-470-717, regulated articles may be moved outside of the quarantine area if they have first undergone a treatment to mitigate the risk of spreading Japanese beetle. Costs associated with treatments are difficult to determine, as they will vary depending on which regulated article is being treated, which treatment method is used, and what equipment a business already has available. The following describes requirements for each treatment option. All regulated article groups (WAC 16-470-717 (1) - (4)) also have an additional option for "another treatment determined to be effective at eradicating Japanese beetle and approved in writing by the director." This language allows for the

director to approve additional treatments in the future that could be utilized until the rule language is updated. A cost analysis was not conducted on this option, as there currently are no other treatments approved by the director and it is unclear at this time what those options might be in the future.

Treatment Options - Requirements and Estimated Costs:

(1) The upper eight inches of topsoil containing vegetative material from all properties; humus and compost (except when produced commercially), and growing media (except when commercially packaged):

(a) *Steam heated to a temperature of 140°F for one hour, to kill all life stages of Japanese beetle:* Topsoil containing vegetative material may be securely covered with a tarp or plastic sheeting and steamed to kill any Japanese beetle contained within. Equipment needed for this treatment would include a steam generator, fuel to run the generator, reinforced rubber hoses for transporting the steam, and tarps or plastic coverings. Estimated setup costs for the steam generator and tarps would be around $46,000. Fueling costs for a diesel steam generator would be around $27.85 per hour (using five gallons per hour at $5.57 per gallon) and the cost for staff to run the system would be around $18.11 per hour (assuming the employee is paid minimum wage and includes costs associated with benefits and taxes). Additional costs will include a compliance agreement with WSDA and inspection costs. A compliance agreement costs $50 per year for licensed nurseries and $62.50 per year for all other businesses. Estimated costs for an inspection in the Grandview area are as follows:

- Eighty-eight miles round trip (from WSDA Pasco or Yakima office to Grandview) at $0.585 per mile.
- One and one half hours travel time at $62.50 per hour ($50 per hour for licensed nursery).
- One half hour minimum inspection cost at $62.50 per hour ($50 per hour for licensed nurseries).

Total estimated costs (calculated for nonlicensed nursery) to set up and run this treatment option for two hours would be $46,330.90. After the initial setup costs, the ongoing costs for a business to continue utilizing this treatment method would be $45.96 per hour.

WSDA plans to set up an area within the proposed quarantine area where regulated soil could be transported and steamed at no cost to businesses. There will not be a fee for dropping material off. Businesses will not likely experience any increased transport costs associated with this, as the typical disposal facility is outside of the quarantine area and further [farther] away. The agency's ability to provide this service would be dependent on funding. If funding were no longer available, estimated costs for a business to set up their own steaming system would be as described above.

(2) Yard debris:

(a) *Option 1 - Steam heated to a temperature of 140°F for 1 hour, to kill all life stages of Japanese beetle:* The yard debris would first be chipped in a woodchipper to aid in the distribution of steam. It would then be loaded into a covered container, such as a roll-off container. A tarp may be used over the pile in addition to the container's covering to aid in the steaming process. The material would be steamed to a temperature of at least 140°F for one hour. Additional costs will include a compliance agreement with WSDA and inspection costs. A compliance agreement costs $50 per year for licensed nurseries and $62.50 per year for all other businesses. Estimated costs for an inspection in the Grandview area are as follows:

- Eighty-eight miles round trip (from WSDA Pasco or Yakima office to Grandview) at $0.585 per mile.
- One and one half hours travel time at $62.50 per hour ($50 per hour for licensed nursery).
- One half hour minimum inspection cost at $62.50 per hour ($50 per hour for licensed nurseries).

The total estimated cost (calculated for nonlicensed nursery) for this treatment option to set up and run for two hours (allowing 1 hour for container to reach temperature) would be around $67,630.90. If a business were to set up their own system, the estimated cost would be as follows:

Equipment/Resources	Details	Cost Occurrence	Estimated Cost
Wood chipper	To chip yard debris prior to treatment	One time cost	~$14,500 (depends on size needed)
Steam generator	Sioux SF-20	One time cost	$45,000
Fuel - diesel	$5.57 per gallon using five gallons per hour	Once per week	$27.85 per hour
Roll-off container	Vessel for steaming	One time cost	~$6,800
Tarp	Cover yard debris	One time cost	$1,000
Labor (assuming minimum wage employee and includes benefits and taxes)	Staff to run steamer	Once per week	$18.11 per hour

After the initial setup costs, the ongoing costs for a business to continue utilizing this treatment method would be $45.96/hour.

WSDA has worked with the city of Grandview to set up an area within the proposed quarantine area where regulated yard debris could be taken at no cost to businesses. This site will be free for residents and businesses located within the proposed quarantine area, with proof of address (such as a utility bill). The site will be open Monday to Friday from 8:00 a.m. to 5:00 p.m. There will not be a fee for dropping material off. There will not likely be increased transport costs associated with this, as the typical disposal facility is located outside of the quarantine area and further [farther] away. Some businesses stated they might see a decrease in transport costs due to this. The agency's ability to provide this steaming service would be dependent on funding.

(b) *Option 2 - Chipping of woody material containing no soil:* Yard debris consisting of woody material that contains no soil, can be moved outside of adult Japanese beetle flight season without any treatments. During May 15 through October 15, this material must first be chipped to a size of one inch in two dimensions or smaller, prior to being moved outside of the proposed quarantine area. Estimated costs associated with this option would include the cost of a chipper (~$14,500), fuel (using three gallons per hour at a cost of $5.57 per gallon), and labor to run the chipper ($18.11 per hour). Additional costs will include a compliance agreement with WSDA and inspection costs. A compliance agreement costs $50 per year for licensed nurseries and $62.50 per year for all other businesses. Estimated costs for an inspection in the Grandview area are as follows:

- Eighty-eight miles round trip (from WSDA Pasco or Yakima office to Grandview) at $0.585 per mile.
- One and one half hours travel time at $62.50 per hour ($50 per hour for licensed nursery).

- One half hour minimum inspection cost at $62.50 per hour ($50 per hour for licensed nurseries).

The total estimated cost to purchase a chipper and run it for one hour, along with the annual compliance agreement and inspection costs would be around $14,773.80. After the initial setup costs, the ongoing costs for a business to continue utilizing this treatment method would be $34.82/hour.

WSDA has worked with the city of Grandview to set up an area within the proposed quarantine area where regulated yard debris could be taken at no cost to businesses. This site will be free for residents and businesses located within the proposed quarantine area, with proof of address (such as a utility bill). The site will be open Monday to Friday from 8:00 a.m. to 5:00 p.m. There will not be a fee for dropping material off. There will not likely be increased transport costs associated with this, as the typical disposal facility is located outside of the quarantine area and further [farther] away. Some businesses stated they might see a decrease in transport costs due to this. The agency's ability to provide this steaming service would be dependent on funding.

(3) Plants for planting and propagation except when dormant and bareroot and free from soil or growing media: All plants with roots, plant crowns or roots, bulbs, corms, tubers, and rhizomes, and turfgrass (sod): These regulated articles (except for turfgrass/sod), are exempt from quarantine restrictions if shipped dormant and bareroot, without soil or growing media attached to the roots. Dormant and bareroot plants do not require further treatment.

A certificate of treatment or inspection will be issued for shipments in compliance. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped bareroot with no soil or growing media attached should be identified as bareroot on shipping documents. Shipments from the proposed quarantine area, into the pest-free areas of Washington, must meet **one** of the following certification options. Dip treatment is not an approved treatment option.

(a) *Option 1 - Production in an approved Japanese beetle-free greenhouse/screenhouse. All the following criteria apply to be approved as a Japanese beetle-free greenhouse/screenhouse. All media must be sterilized and free of soil. All planting stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period (May 15 - October 15). During the adult flight period, the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot enter. Such security measures must be approved by WSDA. No Japanese beetle contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by WSDA for the presence of all life stages of Japanese beetle and must be specifically approved as a secure area. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed, and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by WSDA as having met and maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an approved Japanese*

beetle-free greenhouse or screenhouse and were grown in sterile, soilless media."

Some businesses may already have a greenhouse/screenhouse, but need to secure it against Japanese beetle. Costs for purchasing anti-insect netting to secure a greenhouse/screenhouse is around $231 for 7.71 ft x 150 ft. For those businesses that do not already have a greenhouse/screenhouse and choose to purchase one, it would cost around $40,000 depending on the size and type. It is unlikely that businesses would choose to purchase a new greenhouse/screenhouse, as there are other options available with a substantially lower cost.

Costs to businesses associated with this treatment option would include a compliance agreement fee of $50 per year for licensed nurseries and $62.50 for all other businesses, inspection costs, and certification issuance costs. It is assumed that all businesses utilizing this treatment will be a licensed nursery. This is because any business with over $100 of sales which grows or handles plants must be licensed. Estimated costs for an inspection in the Grandview area and certification would be the following:

- Eighty-eight miles round trip (from WSDA Pasco or Yakima office to Grandview) at $0.585 per mile.
- One and one half hours travel time at $50 per hour.
- One half hour minimum inspection cost at $50 per hour.
- Certificate charge - first certificate issued is free with additional certificates at $8.25 per certificate.

Total estimated costs for inspection and certification would be $151.48 per inspection. The total estimated cost to a business that already has a greenhouse/screenhouse would be $201.48 for one inspection plus the cost of an annual compliance agreement. With the additional cost of purchasing anti-insect netting, the total cost would be around $432.48. For a business that chose to purchase a greenhouse/screenhouse, an estimated $40,000 would be added to bring the total to $40,201.48 (cost of anti-insect netting not included). As previously stated, it is unlikely that a business would choose to purchase a new greenhouse/screenhouse, when other lower cost options are available. Businesses will likely need more than one inspection annually, but the exact number will vary based on business practices.

(b) *Option 2 - Production during a pest free window. The entire rooted plant production cycle (planting, growth, harvest, and shipping) will be completed within a pest free window (October 16 - May 14), in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, which is May 15 - October 15. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season and were grown in sterile, soilless media."*

Costs to businesses associated with this treatment option would include a compliance agreement fee of $50 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $151.48 (see option 1 for breakdown of costs). The total estimated costs a business might pay under this treatment option would be $201.48 for one inspection plus the cost of an annual compliance agreement. Businesses will likely need more than one inspection annually, but the exact number will vary based on business practices.

(c) *Option 3 - Application of approved regulatory treatments. All treatments will be performed under direct supervision of WSDA, or under a compliance agreement. Treatments and procedures under a compli-*

ance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must accompany the shipment. Note that not all treatments or methods approved in the United States Domestic Japanese Beetle Harmonization Plan are acceptable for use within Washington state. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control Popillia japonica according to the criteria for shipment to category 1 states as provided in the United States Domestic Japanese Beetle Harmonization Plan and Washington state's Japanese beetle quarantine."

Costs under this treatment option would be associated with developing a standard operating procedure for application of treatments, purchasing of pesticide spray, application equipment, labor, WSDA inspection and certification costs, and WSDA compliance agreement. Developing a standard operating procedure for application of treatments would be a one-time cost to create a manual for treatments applied for Japanese beetle. Estimated costs to develop this would be around $724.40 for one full-time employee working 40 hours at $18.11 per hour. The average estimated cost associated with a pesticide spray, application equipment, labor, and fuel would be around $147.50 per acre.

Additional costs would include a compliance agreement fee of $50 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $151.48 (see option 1 for breakdown of costs). For a five-acre operation, the total estimated cost a business might pay under this treatment option would be $1,663.38.

(d) *Option 4 - Drench treatments - container plants only. Not approved for ornamental grasses or sedges. Not approved for field potted plants. Potting media used must be sterile and soilless, containers must be clean. Only containerized nursery stock with rootballs 12 inches in diameter or smaller and free from field soil are eligible. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated with an approved insecticide. Chemicals approved for drench treatments of container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a category 1 state, and must be labeled for use in Washington state.*

Costs under this treatment option would be associated with developing a standard operating procedure for application of treatments, purchasing of drench treatment, application equipment, labor, WSDA inspection and certification costs, and WSDA compliance agreement. Developing a standard operating procedure for application of treatments would be a one-time cost to create a manual for treatments applied for Japanese beetle. Estimated costs to develop this would be around $724.40 for one full-time employee working 40 hours at $18.11 per hour. The average estimated cost to purchase drench treatment insecticide would be around $50 for 96 ounces. It's unclear how many ounces a business will require for treatment. Typically, businesses will already have the necessary equipment to apply the treatment. Assuming it takes a business eight hours of labor to apply the treatment, the total estimated cost associated with drench treatment would be around $194.88 per 96 ounces of insecticide treatment used.

Additional costs would include a compliance agreement fee of $50 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $151.48 (see Option 1 for breakdown of costs). Total costs for setting up and applying treatment

would be around $1,120.76. Ongoing costs after setup would be around $68.11 per hour plus $151.48 weekly/monthly for inspection.

(e) *Option 5 - Media (granule) incorporation - container plants only. Not approved for ornamental grasses or sedges. Only containerized nursery stock with rootballs 12 inches in diameter or smaller, planted in approved growing media, and free from field soil are eligible. Plants grown in field soil and then potted into soilless container substrates are not eligible for certification using this protocol, unless all field soil is removed from the roots so plants are bareroot at the time of potting. All pesticides used for media incorporation must be mixed thoroughly into the media before potting and plants should be watered at least two times following media incorporation before shipment can begin. Approved growing media used must be free from soil and consist of synthetic or other substances (other than soil) used singly or in combinations. Examples of approved growing media include conifer bark, hardwood bark, expanded or baked clay pellets, expanded polystyrene beads, floral foam, ground coconut husk, ground cocoa pods, ground coffee hulls, ground rice husk, peat, perlite, pumice, recycled paper, rock wool, sawdust, sphagnum, styrofoam, synthetic sponge, vermiculite, and volcanic ash or cinder. The media shall contain only substances that were not used previously for growing plants or other agricultural purposes. It must be free of plant pests, sand, and related matter, and safeguarded in such a manner as to prevent the introduction of all life stages of Japanese beetle to the media. The granules must be incorporated into the media before potting. Plants being stepped up into treated potting media must first have undergone an approved drench treatment to eliminate any untreated volume of potting medium. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season, they must be repotted with a granular incorporated mix or retreated using one of the approved drench treatments. Chemicals approved for media (granule) incorporation for container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a category 1 state, and must be labeled for use in Washington state.*

Costs under this treatment option would be associated with developing a standard operating procedure for media incorporation, purchasing of media (granule), application equipment, labor, WSDA inspection and certification costs, and WSDA compliance agreement. Developing a standard operating procedure for media incorporation would be a one-time cost to create a manual for treatments applied for Japanese beetle. Estimated costs to develop this would be around $724.40 for one full-time employee working 40 hours at $18.11 per hour. Other costs would include those associated with purchasing the media product itself. This would be around $40 for a 25 pound bag. There would not be additional costs for application equipment, labor, or fuel, as the media would be put into a hopper that will automatically apply it at the required rate as the business mixes their potting media. Businesses will already have this equipment. Costs for purchasing soilless growing media would be around $0.75 per pound. Businesses are currently required to use soilless growing media. Under the proposed rule amendment, a business would only need to purchase soilless growing media if the plants were exposed to a second flight season of Japanese beetle.

Additional costs would include a compliance agreement fee of $50 per year, inspection costs, and certification issuance costs. Inspection and certification costs would be $151.48 (see option 1 for break-

down of costs). Total costs for setting up and applying this treatment option would be around $1,045.88 (estimate for 75 pounds of media). Ongoing costs after setup would be around $40 (25 lb bag) plus weekly/monthly inspection costs.

(4) Hop bines and unshucked corn ears:

(a) *Option 1 - Hop bines and unshucked corn ears: Fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by WSDA and found free of Japanese beetle for the entire adult flight period (May 15 - October 15), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by WSDA, bines and unshucked corn ears may be moved outside the quarantined area. If evidence of the presence of Japanese beetle is present during trapping, the business must follow option 2 to ship out of the quarantine area.*

All businesses transporting hop bines outside of the proposed quarantine area must enter into a compliance agreement with WSDA. This will cost a business $62.50 per year, plus inspection costs. Estimated costs for an inspection in the Grandview area would be the following:

- Eighty-eight miles round trip (from WSDA Pasco or Yakima office to Grandview) at $0.585 per mile.
- One and one half hours travel time at $62.50 per hour.
- One half hour minimum inspection cost at $62.50 per hour.

Total estimated costs for an inspection would be $176.48. Overall total costs for a compliance agreement and inspection would be $238.98. There are no anticipated costs to businesses associated with trapping. WSDA will conduct all surveying for Japanese beetle. WSDA will cover all costs associated with surveying.

(b) *Option 2: If WSDA determines there is evidence of Japanese beetle presence, bines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance. All shipments of hop bines and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by WSDA stating the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.*

If Japanese beetle is detected, the business must enter into a compliance agreement with WSDA. This will cost a business $62.50 per year, plus inspection costs. Estimated costs for an inspection in the Grandview area and certification would be the following:

- Eighty-eight miles round trip (from WSDA Pasco or Yakima office to Grandview) at $0.585 per mile.
- One and one half hours travel time at $62.50 per hour.
- One half hour minimum inspection cost at $62.50 per hour.

Total estimated costs for an inspection would be $176.48. Other costs to businesses under this treatment option would be associated with purchasing pesticide treatment for Japanese beetle and labor costs associated with spraying fields. Average estimated costs associated with a pesticide spray, application equipment, labor and fuel would be around $147.50 per acre. Therefore, estimated costs for treating a 100-acre field at $147.50 per acre would be around $14,750. With the compliance agreement, inspection, and certification costs, this would be an annual cost of around $14,988.98.

In addition to costs associated with treatment, some businesses may be required to cover vehicles prior to leaving the proposed quarantine area. This is only if Japanese beetle is detected in shipments from that field. Covering a vehicle may require some businesses to purchase and apply different types of covering products. One of these products could be a tarp, but this is not the only option. Costs associated with purchasing a tarp would be around $500 per truck, with the cost for labor to apply the tarp around $35. Total costs associated with covering vehicles would be an estimated $535 per truck. This could bring the total estimated annual cost for a 100-acre field to $15,523.98. Multiple tarps may be necessary depending on the number of trucks operated by a business. Tarps can be reused throughout their useful life. WSDA was initially going to require businesses to cover trucks if Japanese beetle was detected in their field, despite treatments also being required. After WSDA received suggestions and feedback from the hop industry, the proposed requirement was changed so that vehicle coverings would only be required if Japanese beetle was detected in a shipment.

Overview of Estimated Costs for Treatment Options: Table 3.3 shows a breakdown of all treatment options by regulated article groups and their estimated costs. Businesses may need to implement one or more of the treatment options if they want to move regulated articles out of the proposed quarantine area. There is insufficient data to determine exact costs businesses may incur as a result of the proposed rule amendments. This is because regulated articles will differ between businesses and treatment options used will vary.

Table 3.3: Treatment options and their estimated costs.

Regulated Item	Treatment Option	Details	Cost Occurrence	Estimated Cost Totals
Soil*	Option 1	Steam generator, fuel, tarp, and labor. **No anticipated costs to businesses.** WSDA provided service.	One time set-up cost. Monthly ongoing cost for running system.	Total: $46,330.90; Ongoing cost: $45.96/hour Or no cost to business, provided funding is available.
Yard debris	Option 1	Steam generator, fuel, tarp, container, and labor. **No anticipated costs to businesses.** WSDA provided service.	One time set-up cost. Monthly ongoing cost for running system.	Total: $67,630.90; Ongoing cost: $45.96/hour Or no cost to business, provided funding is available.
Yard debris	Option 2	Wood chipper, fuel, and labor. **No anticipated costs to businesses.** City of Grandview provided service.	One time set-up cost. Monthly ongoing cost for running system.	Total: $14,773.80; Ongoing cost: $34.82/hour Or no cost to business, provided funding is available.
Nursery articles**	Option 1	Purchase of greenhouse (**unlikely**), compliance agreement, inspection, and certification costs.	One time set-up cost. Weekly inspection/ certification costs.	Total: $40,201.48; Ongoing cost: $151.48 per inspection/certification.
Nursery articles**	Option 2	Compliance agreement, inspection, and certification costs.	One time cost for compliance agreement, then weekly inspection/ certification costs.	Total cost: $201.48; Ongoing cost: $151.48 per inspection/certification.

Regulated Item	Treatment Option	Details	Cost Occurrence	Estimated Cost Totals
Nursery articles**	Option 3	Purchase of pesticide, application equipment, labor, and developing application procedure. Additionally, compliance agreement, inspection, and certification costs.	Per acre treatment cost for pesticide and application equipment. One time cost for procedure and weekly inspection/certification costs.	Total (5 acres): $1,663.38; Per acre treatment cost $147.50.
Nursery articles**	Option 4	Purchase of drench insecticide treatment, labor, and developing application procedure. Additionally, compliance agreement, inspection, and certification costs.	Weekly or monthly cost for labor, drench insecticide, inspection/certification. One time cost for procedure.	Total: $1,120.76; Ongoing cost $68.11 per hour, plus $151.48 weekly/monthly for inspection/certificate.
Nursery articles**	Option 5	Purchase of media (granule) treatment and developing application procedure. Additionally, compliance agreement, inspection, and certification costs.	Per treatment cost for media (granule). One time cost for procedure and weekly inspection/certification costs.	Total: $1,045.88; Ongoing cost $40 per hour, plus $151.48 weekly/monthly for inspection/certificate.
Hops/Corn	Option 1	**No anticipated costs to businesses for surveying.** WSDA provided service. Costs for compliance agreement and inspection.	Annual compliance agreement and per inspection cost.	$238.98.
Hops/Corn	Option 2	Cost for pesticide and treatment, compliance agreement, inspection/ certification, plus purchasing 1 tarp and labor costs per vehicle.	Annual treatment cost and compliance agreement; one time purchase cost for tarp; per vehicle covering cost for labor; ongoing inspection/certification costs.	Total: $15,523.98 (if tarp used); Per acre treatment cost $147.50.

* The upper eight inches of topsoil containing vegetative material from all properties, including but not limited to residential, agricultural, and commercial properties (including construction sites); humus, compost (except when produced commercially), and growing media (except when commercially packaged).

** Plants for planting and propagation except when dormant and bareroot and free from soil or growing media: All plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turfgrass (sod).

Overall, anticipated costs to businesses related to treatment options for soil (WAC 16-470-717(1)) would be around $46,330.90 to set a steaming system up and an ongoing cost of $45.96 per hour of steaming. However, WSDA spoke with a number of construction companies in the Grandview area and found that many keep the soil on the project site and do not typically move it. Due to this practice, some businesses in the proposed quarantine area may not see any cost increase. For yard debris, anticipated costs would be $67,630.90 to set up a steaming system with an ongoing cost of $45.96 per hour of steaming. WSDA is developing a treatment system for soil, as well as collaborating with the city of Grandview to develop treatment systems and drop-off areas for businesses to take yard debris within the proposed quarantine area. This is dependent on available funding. If WSDA were successful at developing these treatment systems, there would be no anticipated costs to businesses. There may actually be a cost decrease to businesses disposing of yard debris, as the distance needed to transport it may be much shorter than taking it to a transfer station or landfill.

Costs associated with nursery articles (WAC 16-470-717(3)) will vary depending on which treatment option is utilized. Some businesses may already have treatments or practices in place that would satisfy the requirements of the proposed amendment, whereas others might not.

Treatment option costs for nursery articles could range from $201.48 to $40,201.48. All businesses wanting to move regulated articles outside of the quarantine area will need to do so under a compliance agreement ($50 annually), as well as have regular inspections and certification documents issued ($151.48). The amount of inspections and certifications needed will vary from business to business depending on the equipment already on hand and the frequency of shipments outside of the quarantine area.

For businesses wanting to transport hop bines and unshucked corn ears, there will be costs associated with an annual compliance agreement and inspection costs. This will be around $238.98. WSDA will be conducting all surveying for Japanese beetle, so businesses will not incur any costs from this. If Japanese beetle is detected, businesses must treat the regulated articles with an approved pesticide prior to harvest or movement. Additionally, if Japanese beetle is detected in a shipment, the business must cover all vehicles transporting hop bines or unshucked corn ears from that field. Costs associated with this include a $535 one-time cost for a tarp and labor to cover the truck. Costs per acre for application of a pesticide treatment would be around $147.50 for the pesticide, application equipment, fuel, and labor costs. A business growing 100 acres could see costs over $15,523.98. Due to the high cost of treatments, some growers may decide not to lease land within the proposed quarantine boundary, which could affect land lease values going forward. This is especially true for corn, which does not require special infrastructure to grow, unlike hops. However, no businesses selling unshucked corn ears were identified in the proposed quarantine area.

Compliance Agreements: Proposed amendments to WAC 16-470-720 would allow the director to issue compliance agreements admitting regulated articles that are not otherwise eligible for movement from the area under quarantine. If agreed to by the director, these articles would be transported under a compliance agreement listing specific conditions reducing the risk of moving Japanese beetle into non-quarantined areas of the state. Compliance agreements are issued by the plant services program and cost $50 per year for licensed nurseries and 62.50 per year for all other businesses. Businesses would also need to pay for any inspections conducted by WSDA, which cost $62.50 per hour plus drive time and mileage from the closest plant services office. Inspections would typically occur weekly, bimonthly, or monthly, depending on the volume of plant shipments a business was transporting outside of the quarantine area. An average inspection in the Grandview area would cost $176.48 for a business not licensed as a nursery:

- Eighty-eight miles round trip (from Pasco or Yakima offices) at $0.585 per mile.
- One and one half hour travel time at $62.50 per hour.
- One half hour minimum inspection at $62.50 per hour.
- Issuance of one phytosanitary certificate at $0 (first one free), $10 for each additional.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

As previously stated, there is insufficient data to determine exact costs businesses may incur as a result of the proposed rule amendments. This is because regulated articles will differ between businesses and treatment options used will vary. The size of the business may also change the cost required to comply. For example, a large

business with 300 acres of hops may have costs of over $44,250, whereas a smaller business with two acres may only have costs around $295. For hop producers, if Japanese beetle is detected at one business and not the other, this will also affect costs.

Table 4.1 shows a range of estimated costs for treatment options per NAICS code. The $0 cost reflects WSDA having available funding to set up treatment areas for yard debris and soil (WAC 16-470-717(1)), as well as WSDA covering survey costs for detection of Japanese beetle. The $0 cost for Dairy Cattle and Milk Production (112120) is due to survey results indicating that regulation of manure and commercial compost would have the greatest impact. These are no longer being proposed as regulated articles. In Table 4.1, the red highlighted cells indicate the potential for costs to exceed the minor cost threshold.

Table 4.1: Estimated treatment costs compared to minor cost threshold by NAICS code.

NAICS Business Description	*Minor Cost Threshold	Mitigation Treatment Cost Range
Corn Farming (111150)	$2,759.57	$0 - $976.48 (calculated for 5 acres)
Nursery and Tree Production (111421)	$5,428.08	$201.48 - $40,201.48
All Other Miscellaneous Crop Farming (111998) (includes hop farming)	$11,782.08	$238.98 - $15,523.98 (calculated for 100 acres)
Dairy Cattle and Milk Production (112120)	$21,237.13	$0 - $46,091.92
Residential Remodelers (236118)	$1,457.74	$0 - $46,330.90
Other Farm Product Raw Material Merchant Wholesalers (424590) (includes sod merchant wholesalers)	$7,750.68	$0 - $67,630.90
Farm Supplies Merchant Wholesalers (424910)	$35,044.58	$201.48 - $40,201.48
Nursery; Garden Center; and Farm Supply Stores (444220)	$4,675.20	$201.48 - $40,201.48
Supermarkets and Other Grocery (except Convenience) Stores (445110)	$39,505.18	$201.48 - $40,201.48
Other Direct Selling Establishments (454390) (includes Christmas tree sellers)	$4,034.18	$201.48 - $40,201.48
Landscape Architectural Services (541320)	$4,874.31	$0 - $67,630.90
Landscaping Services (561730)	$2,131.66	$0 - $67,630.90
Solid Waste Collection (562111)	$23,689.65	$0 - $67,630.90

* Of the minor cost thresholds list for each NAICS code, the higher minor cost threshold was used for comparison.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

RCW 19.85.040(1) requires WSDA to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per one hundred dollars of sales.

Although some businesses were willing to answer survey questions related to the proposed amendments, WSDA did not receive enough data to make a determination. Due to this and the variability of treatment options for each business, there is not sufficient data to calculate this comparison using the criteria from RCW 19.85.040(1).

Of the 12 businesses that participated in the survey, three were large and nine were small. Seven of these businesses will not likely

be impacted due to manure, commercial compost, and corn stalks/silage no longer being proposed for regulation. Of the five other businesses that completed the survey, three are considered small businesses and two are large. One of the small businesses that identified as a nursery, will not be impacted due to them being located outside of the proposed quarantine area. The other two small businesses identified themselves as a nursery and a hop producer. The two large businesses also identified themselves as a nursery and a hop producer. Table 5.1 shows a comparison of costs between the two large and two small businesses.

Table 5.1 - Cost comparison of large and small businesses by industry.

Business and Size	Industry	Annual Revenue	Est. loss in revenue if articles could not be moved outside of proposed quarantine area
21 - Small	Nursery	$100,000	$100,000
15 - Large	Nursery	$9,000,000	$9,000,000
18 - Small	Hop production	$6,000,000	$6,000,000
40 - Large	Hop production	$60,000,000	$30,000,000

It is difficult to determine a disproportionate impact, based on estimated loss in revenue alone, as treatment options can be used to move articles outside of the proposed quarantine area. Additionally, determining which treatment option a business will use is also difficult, as some may already have the necessary equipment and supplies available. Treatment costs for nurseries will likely be higher for larger businesses, as they will require more plants to be treated and longer inspections, as well as more certificates issued. Treatment costs per acre for hop producers will likely be similar, with larger businesses seeing a higher cost due to treating more acres. However, this scenario may differ depending on the industry and specific scenario. For example, there is not a strong correlation between the size of a construction company and the amount of soil or landscape waste it handles. This could also be the case for a large business, such as a hardware store or garden center, in which nursery stock is only a small portion of their inventory.

It is difficult to determine exact costs from the survey data collected because of the variability of treatment options used and the number of industries impacted. Due to this, it can be assumed that small businesses will likely be disproportionately impacted by the proposed rule amendment.

SECTION 6: **If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.**

It is concluded that the proposed rule amendment will have a disproportionate impact on small businesses. The following information is provided for further explanation and clarification.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) Reducing, modifying, or eliminating substantive regulatory requirements:

WSDA has worked with stakeholders to reduce regulatory requirements for the proposed articles and the treatment options for moving regulated articles outside of the proposed quarantine area. Initially, WSDA intended to regulate all soil, compost, manure, and corn. After hearing concerns from stakeholders about the economic burden this

would impose, WSDA consulted with experts to determine the risk of Japanese beetle spreading from these items. From that, WSDA reduced the proposed regulated articles to include the upper eight inches of vegetative topsoil, only regulating unshucked corn ears, not regulating commercial compost, and not regulating manure at all.

Additionally, WSDA modified the treatment option for hop bines after assessing concerns raised by the industry. Initially, WSDA was going to require all hop bines transported out of the quarantine area to be covered. This was revised to only require transported bines be covered if Japanese beetle is detected in a shipment from a field where the pest has been detected.

Any additional reduction, modification, or elimination of the regulatory requirements of the proposed rule amendment could increase the risk of Japanese beetle spreading to other areas of Washington. This could threaten multiple Washington industries, which grow crops targeted by the pest. Additionally, there could be impacts to trade both domestically and internationally, if Japanese beetle were to spread to other parts of the state.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements: The reporting requirements in the proposed rule amendment are necessary to verify shipments leaving the proposed quarantine area have been treated and no longer pose a high risk for spreading Japanese beetle into other areas of the Washington.

(c) Reducing the frequency of inspections: Inspections are required to monitor treatments of regulated articles prior to movement out of a proposed quarantine area. The inspections determine the effectiveness of the treatment at neutralizing Japanese beetle. Any reduction in the frequency of inspections could result in the spread of this pest.

(d) Delaying compliance timetables: Delaying compliance timetables is not a viable mitigation measure. Any delay will result in a higher risk of spread for Japanese beetle. Although, delaying compliance timetables is not an option, WSDA expects to work with businesses to develop other effective treatment options.

(e) Reducing or modifying fine schedules for noncompliance: This rule does not contain any fines for noncompliance.

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates: WSDA has worked closely with industry groups in developing the proposed rule amendments. The agency has already modified the articles it is proposing to regulate due to conversations with businesses. WSDA will continue to work with businesses to develop cost effective treatment options.

SECTION 7: **Describe how small businesses were involved in the development of the proposed rule.**

Industry groups representing small businesses were involved throughout the development of the proposed rule amendments. WSDA presented about Japanese beetle to stakeholders at over 16 meetings. Some of these groups included the NW Foundation Block Advisory Group, WSDA Grapevine Advisory Committee, Clean Plant Center NW Advisory Board, NCPN Hop Tier 2, NW Nursery Improvement Institute, Washington Blueberry Commission, Washington Hop Commission, NW Vegetable Association, Washington State Grape Society, and multiple pest boards. These presentations allowed WSDA to provide information about the proposed rule amendment to stakeholders and gather feedback from them.

Small businesses in multiple industries were contacted by WSDA directly to gain insight into their business practices and feedback on possible mitigation measures. It was through this and consultation

with experts that the treatment option list was developed. As previously stated, after communication with small and large businesses in the dairy, hop, construction, and other industries, the agency revised the list of proposed regulated articles.

SECTION 8: **Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

Results from the survey suggested that if regulated articles could not be moved out of the proposed quarantine area, then a large number of jobs could be lost. Under the conditions listed in WAC 16-470-717, businesses can move regulated articles outside of the proposed quarantine area if they have met treatment requirements. Due to this, the agency does not anticipate jobs will be created or lost as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

June 8, 2022
Brad White
Assistant Director

OTS-3793.2

AMENDATORY SECTION (Amending WSR 00-23-098, filed 11/21/00, effective 12/22/00)

WAC 16-470-700 Quarantine—Japanese beetle. A quarantine is established under this chapter against all live life stages of the insect pest Japanese beetle (*Popillia japonica* Newman), a member of the family Scarabaeidae. The Japanese beetle is a persistent, serious, and highly destructive pest, attacking the roots, leaves, and fruits of over ((~~three hundred~~)) 300 kinds of plants including fruit trees, ornamentals, and field and vegetable crops. The director of agriculture has determined that the regulation and exclusion of Japanese beetle is necessary to protect the environmental quality, forests, horticulture, floriculture, and agricultural crops of the state of Washington.

[Statutory Authority: Chapter 17.24 RCW. WSR 00-23-098, § 16-470-700, filed 11/21/00, effective 12/22/00; WSR 90-15-042 (Order 2049), § 16-470-700, filed 7/16/90, effective 8/16/90.]

AMENDATORY SECTION (Amending WSR 00-23-098, filed 11/21/00, effective 12/22/00)

WAC 16-470-705 Areas under quarantine. (1) Exterior: The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Vir-

ginia, West Virginia, Wisconsin, the District of Columbia, the Provinces of Ontario and Quebec, and any other state, province, parish, or county where infestations of Japanese beetle are detected are declared to be under quarantine for Japanese beetle.

((~~(2)~~)) (a) The director may exempt individual counties of the states under quarantine from meeting the conditions in WAC 16-470-715 if the director determines that:

((~~(a)~~)) (i) The state has adopted and is enforcing restrictions on the interstate and intrastate movement of regulated articles that are equivalent to or exceed the restrictions placed on the movement of regulated articles as provided in WAC 16-470-715; and

((~~(b)~~)) (ii) Annual surveys are conducted in such counties and the results of these surveys are negative for Japanese beetle; and

((~~(c)~~)) (iii) One or more neighboring counties are not subject to an unacceptable heavy Japanese beetle infestation.

((~~(3)~~)) (b) A plant health official of any state may request exemption of one or more counties under ((~~subsection (2) of~~)) this ((~~section~~)) subsection. The request must be in writing, and it must state the area surveyed, the survey method, personnel conducting the survey, and dates of any previous Japanese beetle infestations in that county.

(2) Interior: Within the state of Washington, those areas where infestations of Japanese beetle exist are declared to be under quarantine. These areas include the portion of Yakima and Benton counties designated as follows: Beginning within Yakima County at latitude N46°18'8" and longitude W120°0'26"; thence easterly across the Yakima-Benton County line to latitude N46°18'5" and longitude W119°51'39"; thence southerly to latitude N46°16'21" and longitude W119°51'40"; thence easterly to longitude W119°50'25"; thence southerly to latitude N46°13'44" and longitude W119°50'27"; thence westerly to latitude N46°13'44" and longitude W119°51'42"; thence southerly to latitude N46°12'00" and longitude W119°51'42"; thence westerly across the Yakima-Benton County line to latitude N46°12'3" and longitude W119°59'14"; thence northerly to latitude N46°14'39" and longitude W119°59'12"; thence westerly to longitude W120°0'28"; thence northerly to the point of beginning.

[Statutory Authority: Chapter 17.24 RCW. WSR 00-23-098, § 16-470-705, filed 11/21/00, effective 12/22/00; WSR 90-15-042 (Order 2049), § 16-470-705, filed 7/16/90, effective 8/16/90.]

AMENDATORY SECTION (Amending WSR 00-23-098, filed 11/21/00, effective 12/22/00)

WAC 16-470-710 Regulated articles. The following are declared to be hosts or possible carriers of Japanese beetle and are ((~~prohibited entry into this state from an area under quarantine as declared in WAC 16-470-705 either directly, indirectly, diverted or reconsigned, except as provided for in WAC 16-470-715:~~

~~(1) Soil, humus, compost, and manure (except when commercially packaged);~~

~~(2) All plants with roots (except bareroot plants free from soil in amounts that could contain concealed Japanese beetle eggs, larvae or pupae);~~

~~(3) Grass sod;~~

~~(4) Plant crowns or roots for propagation (except when free from soil);~~

~~(5) Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free of soil);~~

~~(6)~~)) regulated articles under the Japanese beetle quarantine:

(1) The upper eight inches of topsoil containing vegetative material from all properties including, but not limited to, residential, agricultural, and commercial properties (including construction sites);

(2) Humus and compost (except when produced commercially), and growing media (except when commercially packaged);

(3) Yard debris, meaning plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping, or similar activities. Yard debris includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris;

(4) Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media, including:

(a) All plants with roots;

(b) Plant crowns or roots;

(c) Bulbs;

(d) Corms;

(e) Tubers; and

(f) Rhizomes;

(5) Turfgrass (sod);

(6) Hop bines and unshucked corn ears harvested during the Japanese beetle adult flight season (May 15th through October 15th);

(7) Cut flowers for decorative purposes; and

(8) Any other plant, plant part, article, or means of conveyance when it is determined by the director to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation.

[Statutory Authority: Chapter 17.24 RCW. WSR 00-23-098, § 16-470-710, filed 11/21/00, effective 12/22/00; WSR 90-15-042 (Order 2049), § 16-470-710, filed 7/16/90, effective 8/16/90.]

AMENDATORY SECTION (Amending WSR 00-23-098, filed 11/21/00, effective 12/22/00)

WAC 16-470-715 Conditions governing the movement of regulated articles into Washington state from external quarantine areas. Regulated articles are prohibited entry into this state from a state or other area under quarantine listed in WAC 16-470-705(1), either directly, indirectly, diverted or reconsigned, except as provided for below.

(1) Prior notification is required. Persons shipping regulated articles as specified in WAC 16-470-710 into this state from areas ((~~under~~)) within the external quarantine must notify the department's plant services program by sending via ((~~telefacsimile~~)) email to nursery@agr.wa.gov or other method approved by the department, a copy of the applicable phytosanitary certificate as described in subsection (2) of this section for each shipment. The phytosanitary certificate must state the nature and quantity of the shipment, ((~~its expected date of arrival at destination,~~)) the name of the intended receiver,

and the destination. The person to whom the commodities are shipped must hold the shipment until it is inspected and released by the department.

(2) Each shipment of regulated articles must be accompanied by a phytosanitary certificate from the state of origin certifying that the commodity, soil, or means of conveyance is treated with methods and procedures approved and prescribed by the director. Approved methods and procedures include those specified in the National Plant Board U.S. Domestic Japanese Beetle Harmonization Plan Appendix 1. Shipment to Category 1 States, as amended June 20, 2016. A copy of this plan can be accessed at https://agr.wa.gov/beetles.

(3) Privately owned houseplants grown indoors may be allowed entry into this state if a department official inspects the plants and determines that they are free from Japanese beetle.

[Statutory Authority: Chapter 17.24 RCW. WSR 00-23-098, § 16-470-715, filed 11/21/00, effective 12/22/00; WSR 90-15-042 (Order 2049), § 16-470-715, filed 7/16/90, effective 8/16/90.]

NEW SECTION

WAC 16-470-717 Conditions governing the movement of regulated articles from internal quarantined areas. Regulated articles within the state of Washington quarantined areas are prohibited from moving outside the quarantined area (from all properties, including commercial and private properties), except as provided for below:

(1) The upper eight inches of topsoil containing vegetative material from all properties; humus and compost (except when produced commercially), and growing media (except when commercially packaged), may be allowed to move from the quarantine area if they are first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) Other treatments determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(2) Yard debris may be allowed to move from the quarantine area if it is first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) When consisting solely of woody materials containing no soil, yard debris may be chipped to a screen size of one inch in two dimensions or smaller during the Japanese beetle adult flight season (May 15th through October 15th). Woody material containing no soil can be moved outside of the Japanese beetle adult flight season without chipping;

(c) Another treatment determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(3) Plants for planting and propagation (except when dormant and bareroot and free from soil or growing media), all plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turfgrass (sod) may be allowed to move from the quarantine area if each shipment complies with one of the treatment or inspection requirements detailed under (a) through (f) of this subsection. Before the shipment

moves outside the quarantined area, the shipment must be approved by the department. Approval will be documented by the issuance of a certificate of treatment or inspection when the department determines that the shipment is in compliance with the treatment or inspection requirements. The certificate must accompany the shipment while the shipment is in transit. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped dormant and bareroot with no soil or growing media attached are exempt from these requirements, and should be identified as bareroot on shipping documents.

(a) Production in an approved Japanese beetle free greenhouse/screenhouse. All the following criteria apply to be approved as a Japanese beetle free greenhouse/screenhouse. All media must be sterilized and free of soil. All planting stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period (May 15th through October 15th). During the adult flight period, the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot enter. Such security measures must be approved by the department. No Japanese beetle contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by the department for the presence of all life stages of Japanese beetle and must be specifically approved as a secure area. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed, and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the department as having met and maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse and were grown in sterile, soilless media."

(b) Production during a pest free window. The entire rooted plant production cycle (planting, growth, harvest, and shipping) will be completed within a pest free window (October 16th through May 14th), in clean containers with sterilized and soilless growing medium, and shipment will occur outside the adult Japanese beetle flight period (May 15th through October 15th). The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season and were grown in sterile, soilless media."

(c) Application of approved regulatory treatments. All treatments will be performed under direct supervision of the department or under a compliance agreement. Treatments and procedures under a compliance agreement will be monitored throughout the season. State phytosanitary certificates listing and verifying the treatment used must accompany the shipment. Note that not all treatments or methods approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for use within Washington state. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control *Popillia japonica* according to the criteria for shipment to Category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Washington state's Japanese beetle quarantine."

(d) Dip treatment - Not an approved treatment.

(e) Drench treatments - Container plants only. Not approved for ornamental grasses or sedges. Not approved for field potted plants. Potting media used must be sterile and soilless, containers must be clean. Only containerized nursery stock with rootballs 12 inches in diameter or smaller and free from field soil are eligible. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season, they must be retreated with an approved insecticide. Chemicals approved for drench treatments of container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(f) Media (granule) incorporation - Container plants only. Not approved for ornamental grasses or sedges. Only containerized nursery stock with rootballs 12 inches in diameter or smaller, planted in approved growing media, and free from field soil are eligible. Plants grown in field soil and then potted into soilless container substrates are not eligible for certification using this protocol, unless all field soil is removed from the roots so plants are bareroot at the time of potting. All pesticides used for media incorporation must be mixed thoroughly into the media before potting and plants should be watered at least two times following media incorporation before shipment can begin. Approved growing media used must be free from soil and consist of synthetic or other substances (other than soil) used singly or in combinations. Examples of approved growing media include conifer bark, hardwood bark, expanded or baked clay pellets, expanded polystyrene beads, floral foam, ground coconut husk, ground cocoa pods, ground coffee hulls, ground rice husk, peat, perlite, pumice, recycled paper, rock wool, sawdust, sphagnum, styrofoam, synthetic sponge, vermiculite, and volcanic ash or cinder. The media shall contain only substances that were not used previously for growing plants or other agricultural purposes. It must be free of plant pests, sand, and related matter, and safeguarded in such a manner as to prevent the introduction of all life stages of Japanese beetle to the media. The granules must be incorporated into the media before potting. Plants being stepped up into treated potting media must first have undergone an approved drench treatment to eliminate any untreated volume of potting medium. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season, they must be repotted with a granular incorporated mix or retreated using one of the approved drench treatments. Chemicals approved for media (granule) incorporation for container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(4) Hop bines and unshucked corn ears: Fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by the department and found free of Japanese beetle for the entire adult flight period (May 15th through October 15th), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by the department, bines and unshucked corn ears may be moved outside the quarantined area. If the department determines there is evidence of Japanese beetle presence, bines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance. All shipments of hop bines

and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

[]

AMENDATORY SECTION (Amending WSR 00-23-098, filed 11/21/00, effective 12/22/00)

WAC 16-470-720 ((~~Special permits.~~)) Compliance agreements. The director may issue ((~~special permits~~)) compliance agreements as defined in RCW 15.13.250, admitting regulated articles specified in WAC 16-470-710, from areas within the external or internal quarantine, that are not otherwise eligible for entry or movement from the area under quarantine((~~, subject to~~)). Compliance agreements will include conditions and provisions which the director may prescribe to prevent the introduction, escape, or spread of Japanese beetle.

[Statutory Authority: Chapter 17.24 RCW. WSR 00-23-098, § 16-470-720, filed 11/21/00, effective 12/22/00; WSR 90-15-042 (Order 2049), § 16-470-720, filed 7/16/90, effective 8/16/90.]

WSR 22-13-068
WITHDRAWAL OF PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD
(By the Code Reviser's Office)
[Filed June 9, 2022, 11:07 a.m.]

WAC 136-600-080, proposed by the county road administration board in WSR 21-22-095, appearing in issue 21-22 of the Washington State Register, which was distributed on November 17, 2021, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-13-069
WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION
(By the Code Reviser's Office)
[Filed June 9, 2022, 11:15 a.m.]

WAC 230-19-045, proposed by the gambling commission in WSR 21-21-094, appearing in issue 21-21 of the Washington State Register, which was distributed on November 3, 2021, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-13-077
PROPOSED RULES
WENATCHEE VALLEY COLLEGE
[Filed June 10, 2022, 8:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-07-084.

Title of Rule and Other Identifying Information: WAC 132W-125-010.

Hearing Location(s): On September 21, 2022, at 3:45 p.m., at Wenatchee Valley College, 1300 Fifth Street, Wenatchee, WA 98801.

Date of Intended Adoption: October 19, 2022.

Submit Written Comments to: Reagan Bellamy, 1300 Fifth Street, email rbellamy@wvc.edu, fax 509-682-6441, by June 27, 2022.

Assistance for Persons with Disabilities: Contact Kristina Lii, phone 509-682-6854, email kli@wvc.edu.

Reasons Supporting Proposal: WAC reflects regulation changes.

Statute Being Implemented: WAC 132W-125-010.

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

Name of Proponent: Wenatchee Valley College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Reagan Bellamy, 1300 Fifth Street, 509-682-6445.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules relate to internal government operations that are not subject to violation by a nongovernment party.

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

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

June 10, 2022
Jim Richardson
President

OTS-3689.1

AMENDATORY SECTION (Amending WSR 14-08-013, filed 3/20/14, effective 4/20/14)

WAC 132W-125-010 Statement of policy. The college expects that students, staff members, faculty members, or former students who receive services for which a financial obligation is incurred will exercise responsibility in meeting these obligations. Appropriate college staff are empowered to act in accordance with regularly adopted procedures to carry out the intent of this policy, and if necessary to initiate legal action to insure that collection matters are brought to a timely and satisfactory conclusion.

((~~Admission to or registration with the college, conferring of degrees and issuance of academic transcripts may be withheld for fail-~~

~~ure to meet financial obligations to the college.~~)) If any person, including faculty member, staff member, student, or former student, is indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual including, but not limited to, admission, course registration, library access, transmitting files, records, or other services which have been requested by such person.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-08-013, § 132W-125-010, filed 3/20/14, effective 4/20/14. Statutory Authority: Chapter 28B.50 RCW. WSR 01-12-015, § 132W-125-010, filed 5/25/01, effective 6/25/01.]

WSR 22-13-118
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed June 17, 2022, 8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-064.

Title of Rule and Other Identifying Information: WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home [and] community services (HCB [HCS])—Financial eligibility using SS-related institutional rules.

Hearing Location(s): On July 26, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state.

To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_okdBEytITLCb2dmAjv3rBA.

If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 26, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email johanna.larson@hca.wa.gov, by July 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to increase the personal needs allowance for clients eligible to receive home and community services waiver services, in alignment with SSB 5745.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: SSB 5745 (67th legislature, 2022 regular session); RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-0757.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose a disproportionate cost on small businesses.

June 17, 2022
Wendy Barcus
Rules Coordinator

OTS-3842.2

AMENDATORY SECTION (Amending WSR 20-08-082, filed 3/27/20, effective 4/27/20)

WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility. (1) A client eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS when living ((~~at~~)) in their own home:

(a) A single client who lives ((~~at~~)) in their own home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to 300% of the federal ((~~poverty level (FPL)~~)) benefit rate (FBR) for the supplemental security income (SSI) cash grant program and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section. The Washington apple health income and resource standards chart identifies 300% of the FBR as the medical special income level (SIL).

(b) A married client who lives with the client's spouse ((~~at~~)) in their own home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married client who lives ((~~at~~)) in their own home and apart from the client's spouse keeps a PNA of up to the ((~~FPL~~)) SIL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living ((~~at~~)) in their own home where each client receives HCB waiver services is each allowed to keep a PNA of up to the ((~~FPL~~)) SIL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living ((~~at~~)) in their own home where each client receives HCB waiver services, one spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The client authorized by HCS retains the ((~~federal poverty level (FPL)~~)) SIL and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100. A Client:

(a) Keeps a PNA of under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first $65 plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at ((~~www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~)) www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-08-082, § 182-515-1509, filed 3/27/20, effective 4/27/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-515-1509, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R § 155. WSR 17-03-116, § 182-515-1509, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1509, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1509, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530 and Washington state 2007-09 operating budget (SHB 1128). WSR 08-22-052, § 388-515-1509, filed 11/3/08, effective 12/4/08.]

WSR 22-13-122
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed June 17, 2022, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-046, 21-18-001, 21-17-123, and 21-17-121.

Title of Rule and Other Identifying Information: The department is adding new sections to chapters 388-97, 388-76, 388-78A, and 388-107 WAC to implement ESHB 1120 (chapter 203, Laws of 2021).

Hearing Location(s): On July 26, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2; or virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than July 27, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on July 26, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov [Tencza@dshs.wa.gov], by 5:00 p.m. on July 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to implement the sections of ESHB 1120 (chapter 203, Laws of 2021) that direct the department to adopt rules to reestablish inspection timelines for nursing homes, assisted living facilities, adult family homes, and enhanced services facilities.

Reasons Supporting Proposal: These rules are necessary to instruct and inform licensed facilities on the process the department will use to determine the inspection schedule and bring all facilities back into compliance with the inspection timelines in statute.

Statutory Authority for Adoption: RCW 18.20.090, 70.97.100, 70.97.230, 70.128.040, and 74.42.620.

Statute Being Implemented: RCW 18.20.110, 18.51.091, 70.97.160, and 70.128.070.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Libby Wagner, P.O. Box 45600, Olympia, WA 98513, 360-464-4987; Implementation and Enforcement: Mike Anbesse, P.O. Box 45600, Olympia, WA 98513, 360-725-2401.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts "[r]ules relating only to internal governmental operations that are not subject to violation by a nongovernment party.["] These rules must be followed by the department, not by the licensed entities.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: ESHB 1120 (chapter 203, Laws of 2021).

June 14, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4932.2

NEW SECTION

WAC 388-76-10912 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of adult family homes required by RCW 70.128.070 (2)(b).

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in adult family homes when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of adult family homes affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the adult family home has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the adult family home.

(4) The department must conduct a full licensing inspection for adult family homes licensed after the reinstatement of RCW 70.128.070 (2)(b) in accordance with the schedule set by that section.

[]

NEW SECTION

WAC 388-78A-3141 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of assisted living facilities required by RCW 18.20.110.

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in assisted living facilities when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of assisted living facilities affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the assisted living facility has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the assisted living facility.

(4) The department must conduct a full licensing inspection for assisted living facilities licensed after the reinstatement of RCW 18.20.110 in accordance with the schedule set by that section.

[]

NEW SECTION

WAC 388-97-4361 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct general periodic inspections of nursing homes under RCW 18.51.091 and 18.51.230.

(2) During the suspension of the general periodic inspection requirements, the department continued to conduct complaint investigations in nursing homes when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume general periodic inspections of nursing homes affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the nursing home has had a state or federal remedy imposed in the last 24 months;

(c) The length of time since the last general periodic inspection of the nursing home; and

(d) Any requirements imposed by the centers for medicare and medicaid services, including those for facilities designated as special focus facilities.

(4) The department must conduct a general period inspection for nursing homes licensed after the reinstatement of RCW 18.51.091 and 18.51.230 in accordance with the schedule set by RCW 18.51.091(1) and 18.51.230(1), and chapter 388-97 WAC.

[]

NEW SECTION

WAC 388-107-1421 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of enhanced services facilities required by RCW 70.97.160(1).

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in enhanced services facilities when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of enhanced services facilities affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the enhanced services facility has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the enhanced services facility.

(4) The department must conduct a full licensing inspection for enhanced services facilities licensed after the reinstatement of RCW 70.97.160(1) in accordance with the schedule set by that section.

[]

WSR 22-13-125
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed June 17, 2022, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-02-032.

Title of Rule and Other Identifying Information: Chapter 365-190 WAC, Minimum guidelines to classify agricultural, forest and mineral lands and critical areas; chapter 365-195 WAC, Best available science; and chapter 365-196 WAC, Procedural criteria for adopting comprehensive plans and development regulations.

Hearing Location(s): On July 26, 2022, at 5:00 p.m., Zoom meeting, statewide; and on July 27, 2022, at 11:00 a.m., Zoom meeting, statewide. Commerce will host a virtual meeting. Please check the agency rule-making page for additional information https://www.commerce.wa.gov/about-us/rulemaking/.

Date of Intended Adoption: November 1, 2022.

Submit Written Comments to: Dave Andersen, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, email gmarulemaking@commerce.wa.gov, by July 27, 2022.

Assistance for Persons with Disabilities: Contact William Simpson, phone 509-280-3602, email william.simpson@commerce.wa.gov, by July 27, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Commerce is updating administrative rules that implement the Growth Management Act so that local governments have clear guidance before the next round of county and city periodic updates to comprehensive plans and development regulations, required under RCW 36.70A.130. Updates are necessary to reflect recent legislative changes to the periodic update deadline, the buildable lands program, potable water requirements, and school siting provisions. Commerce made other changes to provide clarity on requirements and recommendations to implement the Growth Management Act, with a large focus on the designation and protection of critical areas and natural resource lands.

Reasons Supporting Proposal: The proposed rules will assist cities and counties as they implement Growth Management Act requirements through local comprehensive plans and development regulations. Effective land use planning is critical to sustainable economic development, conservation of natural resource lands and industries, supporting a healthy natural environment, fiscally responsible infrastructure investments, and providing predictability to communities and developers.

Statutory Authority for Adoption: RCW 36.70A.050, 36.70A.190.

Statute Being Implemented: Chapter 36.70A RCW.

Rule is not necessitated by federal law, federal or state court decision; The attorney general’s office did not find any cases that created a need for mandatory revisions or found our rules invalid. Commerce did, however, consider a number of cases as we drafted changes to the rules.

Name of Proponent: Washington state department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Dave Andersen, 10 North Post Street, Suite 445, Spokane, WA 99201, 509-434-4491; Implementation: Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 509-434-4491; and Enforcement: Environ-

mental and Land Use Hearings Office, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-664-9160.

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

A cost-benefit analysis is not required under RCW 34.05.328. Commerce is not explicitly listed in subsection (5)(b)(i) and does not intend to make this section voluntarily applicable to this rule update per subsection [(5)(b)](ii). One of the primary purposes for the rule amendments is to clarify language, consistent with the provisions of RCW 34.05.328 (5)(b)(iv). Therefore, unless subsection [(5)(b)](ii) is invoked by the joint administrative rules review committee after filing the CR-102, no cost-benefit analysis is required.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

June 17, 2022
Dave Pringle
Rules Coordinator
Policy Advisor

OTS-3751.1

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-190-030 Definitions. (1) "Agricultural land" is 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. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

(2) "City" means any city or town, including a code city.

(3) "Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to

contamination that would affect the potability of the water, or is susceptible to reduced recharge.

(4) "Critical areas" include the following:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water, referred to in this chapter as critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) "Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

(6)(a) "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

(b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

(c) "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

(7) "Forest land" is 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 84.33.140, and that has long-term commercial significance. These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(8) "Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

(9) "Geologically hazardous areas" are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Landslide hazard areas" are areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) "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 land.

Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the ((~~twenty-year~~)) 20-year planning period, if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

(12) "Mine hazard areas" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(13) "Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(14) "Minerals" include gravel, sand, and valuable metallic substances.

(15) "Natural resource lands" means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) "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.

(17) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) "Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

(19) "Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

(20) "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 such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. 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.

(21) "Volcanic hazard areas" shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(22) "Watercourse" as defined in WAC 220-660-030(154).

(23) "Wellhead protection area (WHPA)" means protective areas associated with public drinking water sources established by water systems and approved or assigned by the state department of health.

(24) "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, 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. However, wetlands may include those artifi-

cial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted by the county or city.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-190-030, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-190-030, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-030, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-040 Process. (1) The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. These steps, outlined in subsections (4) and (5) of this section comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the act, the timing of the first steps coincided with development of the larger vision through the comprehensive planning process.

(2) The act required preliminary classifications and designations of natural resource lands and critical areas to be completed in 1991. Counties and cities planning under the act were to enact interim regulations to protect and conserve these natural resource lands and critical areas by September 1, 1991. By July 1, 1992, counties and cities not planning under the act were to bring their development regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act were to adopt comprehensive plans, consistent with the goals of the act. Implementation of the comprehensive plans was to occur by the following year.

(3) Under RCW 36.70A.130, all counties and cities must review, and if needed, update their natural resource lands and critical areas designations. Counties and cities fully planning under the act must also review and, if needed, update their natural resource lands conservation provisions, comprehensive plans and development regulations. Legal challenges to some updates have led to clarifications of the ongoing review and update requirements in RCW 36.70A.130, and the process for implementing those requirements. The process description and recommendations in this section incorporate those clarifications and describe both the initial designation and conservation or protection of natural resource lands and critical areas, as well as subsequent local actions to amend those designations and provisions.

(4) Classification is the first step in implementing RCW 36.70A.170 and requires defining categories to which natural resource lands and critical areas will be assigned.

(a) Counties and cities are encouraged to adopt classification schemes that are consistent with federal and state classification schemes and those of adjacent jurisdictions to ensure regional consistency. Specific classification schemes for natural resource lands and critical areas are described in WAC 365-190-050 through 365-190-130.

(b) State agency classification schemes are available for specific critical area types, including the wetlands rating systems for eastern and western Washington from the Washington state department of ecology, the priority habitats and species categories and recommendations from the Washington state department of fish and wildlife, and

the high quality ecosystem and rare plant categories and listings from the department of natural resources, natural heritage program. The Washington state department of natural resources provides significant information on geologic hazards and aquatic resources that may be useful in classifying these critical areas. Not all areas classified by state agencies must be designated, but such areas may be likely candidates for designation. WAC 365-195-915 provides guidance when departing from science-based recommendations.

(5) Designation is the second step in implementing RCW 36.70A.170.

(a) Pursuant to RCW 36.70A.170, natural resource lands and critical areas must be designated based on their defined classifications. For planning purposes, designation establishes:

(i) The classification scheme;

(ii) The distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and

(iii) The general distribution, location, and extent of critical areas.

(b) Inventories and maps should indicate designations of natural resource lands and critical areas. In circumstances where critical areas cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization.

(c) Designation means, at a minimum, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

(d) Successful achievement of the natural resource industries goal set forth in RCW 36.70A.020 requires the conservation of land base sufficient in size and quality to maintain and enhance those industries, and the development and use of land use techniques that discourage uses incompatible to the management of designated lands.

(e) Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

(6) Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. The law requires that natural resource land uses be protected from land uses on adjacent lands that would restrict resource production. Development regulations adopted to protect critical areas may limit some land development options. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt development regulations to conserve and protect designated natural resource lands and critical areas. The purpose of designating natural resource lands is to enable industries to maintain access to lands with long-term commercial significance for agricultural, forest, and mineral resource production. The purpose is not to confine all natural resource production activity only to designated lands nor to require designation as the basis for a permit to engage in natural resource production. The department pro-

vides technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

(7) Overlapping designations. The designation process may result in critical area designations that overlay other critical area or natural resource land classifications. Overlapping designations should not necessarily be considered inconsistent. If two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply.

(a) If a critical area designation overlies a natural resource land designation, both designations apply. For counties and cities required or opting to plan under the act, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

(b) If two or more natural resource land designations apply, counties and cities must determine if these designations are incompatible. If they are incompatible, counties and cities should examine the criteria to determine which use has the greatest long-term commercial significance, and that resource use should be assigned to the lands being designated.

(8) Counties and cities must involve the public in classifying and designating natural resource lands and critical areas. The process should include:

(a) Public participation program:

(i) Public participation should include, at a minimum, representative participation from the following entities: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations and should address proposed nonregulatory incentive programs.

(ii) 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 sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(iii) The department provides technical assistance in preparing public participation programs.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At a minimum the following steps should be included in the adoption process:

(i) Accept the requirements of chapter 36.70A RCW;

(ii) Consider minimum guidelines developed by the department under RCW 36.70A.050;

(iii) Consider other definitions used by state and federal regulatory agencies;

(iv) Consider definitions used by similarly situated counties and cities;

(v) Determine recommended definitions and check conformance with minimum definitions in chapter 36.70A RCW;

(vi) Adopt definitions, classifications, and standards;

(vii) Apply definitions by mapping designated natural resource lands and critical areas; and

(viii) Establish procedures for amending natural resource lands and critical areas designations.

(c) Intergovernmental coordination.

(i) The act requires coordination among counties and cities to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process may include one of two options:

(A) Notification option: Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within ((~~forty-five~~)) 45 days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied information on how to locate a copy of the proposal. The department may provide mediation services to counties and cities to help resolve disputed classifications or designations.

(B) Interlocal agreement option: Adjacent counties and cities; all the cities within a county; or several counties and the cities within them may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

(ii) Counties or cities may begin with the notification option in (c)(i)(A) of this subsection and choose to change to the interlocal agreement method in (c)(i)(B) of this subsection prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the counties or cities adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping natural resource lands. Mapping should be done to identify designated natural resource lands. For counties and cities fully planning under the act, natural resource lands designations must be incorporated into the comprehensive plan land use element and should be shown on the future land use map required under RCW 36.70A.070.

(9) Evaluation. When counties and cities adopt a comprehensive plan, the act requires them to evaluate their designations and development regulations to assure that they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and must include public participation.

(10) Designation amendment process.

(a) Land use planning is a dynamic process. ((~~Designation~~)) Natural resource lands review procedures should provide a rational and predictable basis for accommodating change.

(b)(i) De-designations of natural resource lands can undermine the original designation process. De-designations threaten the viability of natural resource lands and associated industries through conversion to incompatible land uses, and through operational interference on adjacent lands. Cumulative impacts from de-designations can adversely affect the ability of natural resource-based industries to operate.

(ii) Counties and cities should maintain and enhance natural resource-based industries and discourage incompatible uses. Because of the significant amount of time needed to review natural resource lands and potential impacts from incompatible uses, frequent, piecemeal de-designations of resource lands should not be allowed. Site-specific proposals to de-designate natural resource lands must be deferred until a comprehensive countywide analysis is conducted.

(c) Reviewing natural resource lands designation. In classifying ((~~and~~)), designating and de-designating natural resource lands, counties must ((~~approach the effort as a county-wide or regional process~~)) conduct a comprehensive countywide analysis. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel ((~~process~~)) basis. Designation amendments should be based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(iii) An error in designation or failure to designate;

(iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or

(v) A change in population growth rates, or consumption rates, especially of mineral resources.

(11) Use of innovative land use management techniques.

(a) Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

(b) Techniques to conserve and protect agricultural, forest lands, and mineral resource lands include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements, current use assessments, innovative zoning, or other innovations which maintain current uses and assure the conservation of these natural resource lands.

(12) Development in and adjacent to agricultural, forest, and mineral resource lands shall assure the continued management of these lands for natural resource production. Uses that would convert natural resource lands to other uses or would interfere with the allowed natural resource uses must be prohibited except as authorized in accessory uses under RCW 36.70A.177 or other applicable statutes. Any uses adjacent to agricultural, forest, and mineral resource lands of long-term

commercial significance must not interfere with their continued use for the production of agricultural, forest, or mineral products respectively. Counties and cities should consider the adoption of right-to-farm provisions, and may also adopt measures to conserve and enhance marine aquaculture. Covenants or easements recognizing that farming, forestry, and mining activities will occur should be imposed on new development in or adjacent to agricultural, forest, or mineral resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-040, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-040, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-190-050 Agricultural resource lands. (1) In classifying ((~~and~~)), designating and de-designating agricultural resource lands, counties must ((~~approach the effort as a county-wide or area-wide process~~)) conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10). Counties and cities should not review resource lands designations solely on a parcel-by-parcel ((~~process~~)) basis. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department

of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils, and farmlands of statewide importance, as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas;

(vi) Predominant parcel size;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby;

(x) Land values under alternative uses; and

(xi) Proximity to markets.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-190-050, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-190-050, filed 1/19/10, effective 2/19/10. Statutory Authority:

RCW 36.70A.050. WSR 91-07-041, § 365-190-050, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-060 Forest resource lands. (1) In classifying ((~~and~~)), designating and de-designating forest resource lands, counties must ((~~approach the effort as a county-wide or regional process~~)) conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10). Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis. Counties and cities must have a program for the transfer or purchase of development rights prior to designating forest resource lands in urban growth areas. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. ((~~Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.~~))

(2) Lands should be designated as forest resource lands of long-term commercial significance based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and cities should determine whether lands are well suited for forestry use based primarily on their physical and geographic characteristics.

Lands that are currently used for forestry production and lands that are capable of such use must be evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.

(c) The land has long-term commercial significance. When determining whether lands are used or capable of being used for forestry production, counties and cities should determine which land grade constitutes forest land of long-term commercial significance, based on local physical, biological, economic, and land use considerations. Counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity, and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species. These are only potential secondary benefits from retaining commercial forestry operations, and should not be used alone as a basis for designating or de-designating forest resource lands.

(4) Counties and cities must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:

(a) The availability of public services and facilities conducive to the conversion of forest land;

(b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements;

(c) The size of the parcels: Forest lands consist of predominantly large parcels;

(d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance;

(e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW;

(f) Local economic conditions which affect the ability to manage timberlands for long-term commercial production; and

(g) History of land development permits issued nearby.

(5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-060, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-060, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-070 Mineral resource lands. (1) In classifying, designating and de-designating mineral resource lands, counties and cities must ((~~approach the effort as a county-wide or regional process~~)) conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10), with the exception of owner-initiated requests for designation. Counties and cities should not review mineral resource lands designations solely on a parcel-by-parcel basis. Counties and cities may de-designate mineral resource lands without a comprehensive countywide analysis if mining operations have ceased and the site reclaimed.

(2) Counties and cities must identify and classify mineral resource lands from which the extraction of minerals occurs or can be anticipated. Counties and cities may consider the need for a longer planning period specifically to address mineral resource lands, based on the need to assure availability of minerals for future uses, and to not inadvertently preclude access to available mineral resources due to incompatible development. Other proposed land uses within these areas may require special attention to ensure future supply of aggre-

gate and mineral resource material, while maintaining a balance of land uses.

(3) Classification criteria.

(a) Counties and cities classify mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed. Counties and cities may approve and permit land uses on these mineral resource lands to occur after mining is completed.

(b) Counties and cities should classify lands with potential long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

(c) When classifying these areas, counties and cities should use maps and information on location and extent of mineral deposits provided by the department of natural resources, the United States Geological Service and any relevant information provided by property owners. Counties and cities may also use all or part of a detailed minerals classification system developed by the department of natural resources.

(d) Classifying mineral resource lands should be based on the geology and the distance to market of potential mineral resource lands, including:

(i) Physical and topographic characteristics of the mineral resource site, including the depth and quantity of the resource and depth of the overburden;

(ii) Physical properties of the resource including quality and type;

(iii) Projected life of the resource;

(iv) Resource availability in the region; and

(v) Accessibility and proximity to the point of use or market.

(e) Other factors to consider when classifying potential mineral resource lands should include three aspects of mineral resource lands:

(i) The ability to access needed minerals may be lost if suitable mineral resource lands are not classified and designated; and

(ii) The effects of proximity to population areas and the possibility of more intense uses of the land in both the short and long-term, as indicated by the following:

(A) General land use patterns in the area;

(B) Availability of utilities, including water supply;

(C) Surrounding parcel sizes and surrounding uses;

(D) Availability of public roads and other public services; and

(E) Subdivision or zoning for urban or small lots.

(iii) Energy costs of transporting minerals.

(4) Designation of mineral resource lands.

(a) Counties and cities must designate known mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded. Priority land use for mineral extraction should be retained for all designated mineral resource lands.

(b) In designating mineral resource lands, counties and cities should determine if adequate mineral resources are available for projected needs from currently designated mineral resource lands.

(c) Counties and cities may consult with the department of transportation and the regional transportation planning organization to determine projected future mineral resource needs for large transportation projects planned in their area.

(d) In designating mineral resource lands, counties and cities must also consider that mining may be a temporary use at any given mine, depending on the amount of minerals available and the consumption rate, and that other land uses can occur on the mine site after mining is completed, subject to approval.

(e) Successful achievement of the natural resource industries goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible with the management of designated lands.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-070, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-070, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-080 Critical areas. (1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the functions and values of critical areas to ensure no net loss of ecological functions and values. The department provides additional recommendations for adopting critical areas regulations in WAC 365-196-485.

(2) Counties and cities must include the best available science as described in chapter 365-195 WAC, when designating critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties and cities are encouraged to also protect both surface and groundwater resources, because these waters often recharge wetlands, streams and lakes.

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

(a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.

(b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-080, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-080, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-090 Wetlands. (1) The wetlands of Washington state are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs and property losses.

(2) In designating wetlands for regulatory purposes, counties and cities must use the definition of wetlands in RCW 36.70A.030. Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they existed on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology, including the management recommendations based on the best available science, mitigation guidance, and provisions addressing the option of using wetland mitigation banks.

(3) Wetlands rating systems. Wetland functions vary widely.

(a) When designating wetlands, counties and cities should use a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.

(c) If a county or city chooses to use an alternative rating system, it must include the best available science.

(d) A rating system should evaluate, at a minimum, the following factors:

(i) Wetlands functions and values;

(ii) Degree of sensitivity to disturbance;

(iii) Rarity;

(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and

(v) The ability to replace the functions and values through compensatory mitigation.

(4) Counties and cities may use the National Wetlands Inventory and a landscape-scale watershed characterization as information sources for determining the approximate distribution and extent of wetlands. The National Wetlands Inventory is an inventory providing maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior Fish and Wildlife Service. A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology,

and hydrology. Regardless, any potential locations of wetlands ((~~based on the National Wetlands Inventory or landscape-scale watershed characterization~~)) should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries delineated for regulation consistent with the wetlands definition in RCW 36.70A.030.

(5) Counties and cities must use the methodology for regulatory delineations in the adopted state manual identified in RCW 36.70A.175.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-090, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-100 Critical aquifer recharge areas. (1) Potable water is an essential life sustaining element for people and many other species. Much of Washington's drinking water comes from groundwater. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems.

(2) The quality and quantity of groundwater in an aquifer is inextricably linked to its recharge area. Where aquifers and their recharge areas have been studied, affected counties and cities should use this information as the basis for classifying and designating these areas. Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas exist. To determine the threat to groundwater quality, existing land use activities and their potential to lead to contamination should be evaluated.

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability ((~~is~~)) may be indicated by hydrogeological conditions that facilitate degradation, particularly where combined with land uses that contribute, or may potentially contribute, directly or indirectly to contamination that may degrade groundwater((~~, and hydrogeologic conditions that facilitate degradation~~)). Low vulnerability ((~~is~~)) may be indicated by the combination of hydrogeological conditions that do not facilitate degradation and land uses that do not contribute, or are not likely to contribute, contaminants that will degrade groundwater((~~, and by hydrogeologic conditions that do not facilitate degradation~~)). Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to groundwater;

(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;

(iii) Soil (texture, permeability, and contaminant attenuation properties);

(iv) Characteristics of the vadose zone including permeability and attenuation properties; and

(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

(i) General land use;

(ii) Waste disposal sites;

(iii) Agriculture activities;

(iv) Well logs and water quality test results;

(v) Proximity to marine shorelines; and

(vi) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the groundwater, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if groundwater contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

(i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;

(ii) Areas established for special protection pursuant to a groundwater management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;

(iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and

(v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(c) Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat. Protecting adequate recharge of these aquifers may provide additional benefits in maintaining fish and wildlife habitat conservation areas.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-100, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-110 Frequently flooded areas. ((~~Frequently flooded areas.~~)) Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property.

(1) Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(2) Counties and cities should consider the following when designating and classifying frequently flooded areas:

(a) Effects of flooding on human health and safety, and to public facilities and services;

(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in RCW 36.70A.110;

(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;

(d) The potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;

(e) Greater surface runoff caused by increasing impervious surfaces.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-110, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-120 Geologically hazardous areas. (1) ((~~Geologically hazardous areas.~~)) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(3) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; or

(d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(4) Counties and cities should assess the risks and classify geologically hazardous areas as either:

(a) Known or suspected risk;

(b) No known risk; or

(c) Risk unknown - data are not available to determine the presence or absence of risk.

(5) Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas.

(6) Landslide hazard areas include areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

(ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than ((~~fifteen~~)) 15 percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or groundwater seepage.

(c) Areas that have shown movement during the holocene epoch (from ((~~ten thousand~~)) 10,000 years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than ((~~eighty~~)) 80 percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of ((~~forty~~)) 40 percent or steeper and with a vertical relief of ((~~ten~~)) 10 or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ((~~ten~~)) 10 feet of vertical relief.

(7) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the

past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type or thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(8) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(b) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-120, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-130 Fish and wildlife habitat conservation areas.

(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. Fish and wildlife habitat conservation areas do 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. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

(a) Areas where endangered, threatened, and sensitive species have a primary association;

(b) Habitats and species of local importance, as determined locally;

(c) Commercial and recreational shellfish areas;

(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

(e) Naturally occurring ponds under ((~~twenty~~)) 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

(f) Waters of the state;

(g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

(3) When classifying and designating these areas, counties and cities must include the best available science, as described in chapter 365-195 WAC.

(a) Counties and cities should consider the following:

(i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate;

(ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);

(iii) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;

(iv) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;

(v) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;

(b) Counties and cities may also consider the following:

(i) Potential for restoring lost and impaired salmonid habitat;

(ii) Potential for designating areas important for local and ecoregional biodiversity; and

(iii) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will persist over the long term. Counties and cities ((~~should~~)) must consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Recovery plans and management recommendations for many of these species are available from the Unites States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and wildlife. Additional information that must be consulted is ((~~also~~)) available from the Washington state department of natural resources, natural heritage program, and aquatic resources program.

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities ((~~should~~)) must consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also

provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington state department of natural resources' natural heritage program ((~~can provide a~~)) includes a list of high quality ecological communities and systems and rare plants that must be consulted.

(c) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should consider the Washington state department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities must classify kelp and eelgrass beds, identified by the Washington state department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

(e) Naturally occurring ponds under ((~~twenty~~)) 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(f) Waters of the state.

(i) Waters of the state are defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and ((~~water courses~~)) watercourses in Washington. Stream types are classified in Title 222 WAC, the forest practices regulations. Counties and cities may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on Washington state department of natural resources maps of these stream types for purposes of regulating land uses or establishing stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or nonfish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;

(B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);

(C) Historic presence of species of local importance;

(D) Existing surrounding land uses that are incompatible with salmonid habitat;

(E) Presence and size of riparian ecosystems;

(F) Existing water rights; and

(G) The intermittent nature of some waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the Washington state department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the Washington state department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington state department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-130, filed 1/19/10, effective 2/19/10.]

OTS-3750.1

AMENDATORY SECTION (Amending WSR 01-08-056, filed 4/2/01, effective 5/3/01)

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. ((~~Every five years~~)) Periodically, they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of ((~~the Growth Management Act.~~)) RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations 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 they have met their statutory obligations under RCW 36.70A.172(1).

(3) 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) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of ((~~community, trade, and economic development~~)) commerce (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 01-08-056, § 365-195-900, filed 4/2/01, effective 5/3/01; WSR 00-16-064, § 365-195-900, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

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 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 ((~~make available a list of resources that state agencies have identified as meeting the criteria for best available science pursuant to this chapter~~)) 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 critical areas policies or regulations rests with the legislative authority of the county or city. ((~~However,~~)) Cities and counties must conduct a best available science review when updating 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 critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of in-

terest, formal training in the specific area of expertise, and field and/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. 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 follow-

ing 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 critical areas protection and incorporate new scientific information, as it becomes available.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-905, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

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 critical areas policies and development regulations, and related subjects. ((~~The department will make available to interested parties a current list of the best available science determined to be consistent with criteria set out in WAC 365-195-905 as identified by state or federal natural resource agencies for critical areas.~~))

(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, 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.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-910, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-920 Criteria for addressing inadequate scientific information. (1) Where there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas or uncertainty about the risk to critical area function of permitting development, counties and cities should use the following approach:

((~~(1)~~)) (a) A "precautionary or a no risk approach," in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved; and

((~~(2)~~)) (b) As an interim approach, an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives. Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their

effectiveness. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, counties and cities should be willing to:

((~~(a)~~)) (i) Address funding for the research component of the adaptive management program;

((~~(b)~~)) (ii) Change course based on the results and interpretation of new information that resolves uncertainties; and

((~~(c)~~)) (iii) Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting critical areas protection and anadromous fisheries.

(2) Ongoing permit implementation monitoring and adaptive management.

(a) In addition to the use of formal scientific approaches to monitoring and adaptive management program as an interim approach as described above, the department recommends counties and cities develop and maintain ongoing monitoring and adaptive management procedures to ensure implementation of critical area regulations is efficient and effective. Counties and cities should consult department guidance documents for information.

(b) Steps in developing permit implementation monitoring and adaptive management programs include:

(i) Determining the reasons for monitoring;

(ii) Establishing key objectives and study questions;

(iii) Designing the monitoring program;

(iv) Determining the monitoring time frame; and

(v) Evaluating results and making recommendations.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-920, filed 7/27/00, effective 8/27/00.]

OTS-3853.2

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-010 Background. Through the Growth Management Act, the legislature provided a new framework for land use planning and the regulation of development in Washington state. The act was enacted in response to problems associated with uncoordinated and unplanned growth and a lack of common goals in the conservation and the wise use of our lands. The problems included increased traffic congestion, pollution, school overcrowding, urban sprawl, and the loss of rural lands.

(1) Major features of the act's framework include:

(a) A requirement that counties with specified populations and rates of growth and the cities within them adopt comprehensive plans and development regulations under the act. Other counties can choose to be covered by this requirement, thereby including the cities they contain.

(b) A set of common goals to guide the development of comprehensive plans and development regulations.

(c) The concept that the process should be a "bottom up" effort, involving early and continuous public participation, with the central locus of decision-making at the local level, bounded by the goals and requirements of the act.

(d) Requirements for the locally developed plans to be internally consistent, consistent with ((~~county-wide~~)) countywide planning policies and multicounty planning policies, and consistent with the plans of other counties and cities where there are common borders or related regional issues.

(e) A requirement that development regulations adopted to implement the comprehensive plans be consistent with such plans.

(f) The principle that development and the providing of public facilities and services needed to support development should occur concurrently.

(g) A determination that planning and plan implementation actions should address difficult issues that have resisted resolution in the past, such as:

(i) The timely financing of needed infrastructure;

(ii) Providing adequate and affordable housing for all economic segments of the population;

(iii) Concentrating growth in urban areas, provided with adequate urban services;

(iv) The siting of essential public facilities;

(v) The designation and conservation of agricultural, forest, and mineral resource lands;

(vi) The designation and protection of environmentally critical areas.

(h) A determination that comprehensive planning can simultaneously address these multiple issues by focusing on the land development process as a common underlying factor.

(i) An intention that economic development be encouraged and fostered within the planning and regulatory scheme established for managing growth.

(j) A recognition that the act is a fundamental building block of regulatory reform. The state and local government have invested considerable resources in an act that should serve as the integrating framework for other land use related laws.

(k) A desire to recognize the importance of rural areas and provide for rural economic development.

(l) A requirement that counties and cities must periodically review and update their comprehensive plans and development regulations to ensure continued compliance with the goals and requirements of the act.

(2) The pattern of development established in the act. The act calls for a pattern of development that consists of different types of land uses existing on the landscape. These types generally include urban land, rural land, resource lands, and critical areas. Critical areas exist in rural, urban, and resource lands. Counties and cities must designate lands in these categories and develop policies governing development consistent with these designations. The act establishes criteria to guide the designation process and to guide the character of development in these lands.

(3) How the act applies to existing developed areas. The act is prospective in nature. It establishes a framework for how counties and cities plan for future growth. In many areas, the pattern called for in the act is a departure from the pattern that existed prior to the act. As a consequence, areas developed prior to the act may not clear-

ly fit into the pattern of development established in the act. In rural areas, comprehensive plans developed under the act should find locally appropriate ways to recognize these areas without allowing these patterns to spread into new undeveloped areas. In urban areas, comprehensive plans should find locally appropriate ways to encourage redevelopment of these areas in a manner consistent with the pattern of development envisioned by the act.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-010, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-030 Applicability. (1) Where these guidelines apply.

(a) This chapter applies to all counties and cities that are required to plan or choose to plan under RCW 36.70A.040.

(b) WAC 365-196-830 addressing protection of critical areas applies to all counties and cities, including those that do not fully plan under RCW 36.70A.040.

(c) As of May 1, 2009, the following counties and cities within them are not required to fully plan under RCW 36.70A.040: Adams, Asotin, Cowlitz, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, Skamania, and Whitman.

(2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches.

(3) How the growth management hearings board use these guidelines. The growth management hearings board must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, board must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

(4) When a county or city should consider the procedural criteria. Counties and cities should consider these procedural criteria when amending or updating their comprehensive plans, development regulations or ((~~county-wide~~)) countywide planning policies. Since adoption of the act, counties and cities and others have adopted a variety of agreements and frameworks to collaboratively address issues of local concern and their responsibilities under the act. The procedural criteria do not trigger an independent obligation to revisit those agreements. Any local land use planning agreements should, where possible, be construed as consistent with these procedural criteria. Changes to these procedural criteria do not trigger an obligation to review and update local plans and regulations to be consistent with these criteria.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-030, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-030, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-060 Goals. The act lists ((~~thirteen~~)) 13 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.

(1) This list of ((~~fourteen~~)) 14 goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the ((~~fourteen~~)) 14 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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-060, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-210 Definitions of terms as used in this chapter. The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) "Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(2) "Achieved density" means the density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

(4) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, includ-

ing utilities other than telephone, do not exceed ((~~thirty~~)) 30 percent of the household's monthly income.

(5) "Allowed densities" means the density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(6) "Assumed densities" means the density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(7) "Concurrency" or "concurrent with development" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above.

(8) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

(9) "Contiguous development" means development of areas immediately adjacent to one another.

(10) "Coordination" means consultation and cooperation among jurisdictions.

(11) "Cultural resources" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

(12) "Demand management strategies" or "transportation demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that:

(a) Shift demand outside of the peak travel time;

(b) Shift demand to other modes of transportation;

(c) Increase the average number of occupants per vehicle;

(d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

(13) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

(14) "Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

(15) "Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

(16) "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 ((~~twelve~~)) 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.

((~~(15)~~)) (17) "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.

((~~(16)~~)) (18) "Growth Management Act" - See definition of "act."

((~~(17)~~)) (19) "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.

((~~(18)~~)) (20) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the tangible and material evidence of the human past, aged ((~~fifty~~)) 50 years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

((~~(19)~~)) (21) "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.

((~~(20)~~)) (22) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

((~~(21)~~)) (23) "Mitigation" or "mitigation sequencing" means a prescribed order of steps taken to reduce the impacts of activities on critical areas. As defined in WAC 197-11-768, mitigation means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(24) "Must," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

((~~(22)~~)) (25) "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.

((~~(23)~~)) (26) "Planning period" means the ((~~twenty-year~~)) 20-year period ((~~following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon~~)) starting on the relevant due date for the most recent periodic update specified in RCW 36.70A.130(5).

((~~(24)~~)) (27) "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.

((~~(25)~~)) (28) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

((~~(26)~~)) (29) "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.

((~~(27)~~)) (30) "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.

((~~(28)~~)) (31) "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.

((~~(29)~~)) (32) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

((~~(30)~~)) (33) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

((~~(31)~~)) (34) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

((~~(32)~~)) (35) "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 ((~~county-wide~~)) countywide planning policies.

((~~(33)~~)) (36) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

((~~(34)~~)) (37) "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.

((~~(35)~~)) (38) "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.

((~~(36)~~)) (39) "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.

((~~(37)~~)) (40) "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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-210, filed 1/19/10, effective 2/19/10.]

PART THREE
URBAN GROWTH AREAS AND ((~~COUNTY-WIDE~~)) COUNTYWIDE PLANNING POLICIES

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-300 Urban density. (1) The role of urban areas in the act. The act requires counties and cities to direct new growth to urban areas to allow for more efficient and predictable provision of adequate public facilities, to promote an orderly transition of governance for urban areas, to reduce development pressure on rural and resource lands, and to encourage redevelopment of existing urban areas.

(2) How the urban density requirements in the act are interrelated. The act involves a consideration of density in three contexts:

(a) Allowed densities: The density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(b) Assumed densities: The density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(c) Achieved density: The density at which new development occurred in the period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) Determining the appropriate range of urban densities. Within urban growth areas, counties and cities must permit urban densities and provide sufficient land capacity suitable for development. The requirements of RCW 36.70A.110 and 36.70A.115 apply to the densities assumed in the comprehensive plan and the densities allowed in the implementing development regulations.

(a) Comprehensive plans. Under RCW 36.70A.070(1) and in RCW 36.70A.110(2), the act requires that the land use element identify areas and assumed densities sufficient to accommodate the ((~~twenty-year~~)) 20-year population allocation. The land use element should clearly identify the densities, or range of densities, assumed for each land use designation as shown on the future land use map. When reviewing the urban growth area, the assumed densities in the land capacity analysis must be urban densities.

(b) Development regulations. Counties and cities must provide sufficient capacity of land suitable for development.

(i) Development regulations must allow development at the densities assumed in the comprehensive plan.

(ii) Counties and cities need not force redevelopment in urban areas not currently developed at urban densities, but the development regulations must allow, and should not discourage redevelopment at urban densities. If development patterns are not occurring at urban densities, counties and cities should review development regulations for potential barriers or disincentives to development at urban densities. Counties and cities should revise regulations to remove any identified

barriers and disincentives to urban densities, and may include incentives.

(4) Factors to consider for establishing urban densities. The act does not establish a uniform standard for minimum urban density. Counties and cities may establish a specified minimum density in ((~~county-wide~~)) countywide or multicounty planning policies. Counties and cities should consider the following factors when determining an appropriate range of urban densities:

(a) An urban density is a density for which cost-effective urban services can be provided. Higher densities generally lower the per capita cost to provide urban governmental services.

(b) Densities should be higher in areas with a high local transit level of service. Generally, a minimum of seven to eight dwelling units per acre is necessary to support local urban transit service. Higher densities are preferred around high capacity transit stations.

(c) The areas and densities within an urban growth area must be sufficient to accommodate the portion of the ((~~twenty-year~~)) 20-year population that is allocated to the urban area. Urban densities should allow accommodation of the population allocated within the area that can be provided with adequate public facilities during the planning period.

(d) Counties and cities should establish significantly higher densities within regional growth centers designated in RCW 47.80.030; in growth and transportation efficiency centers designated under RCW 70.94.528; and around high capacity transit stations in accordance with RCW 47.80.026. Cities may also designate new or existing downtown centers, neighborhood centers, or identified transit corridors as focus areas for infill and redevelopment at higher densities.

(e) Densities should allow counties and cities to accommodate new growth predominantly in existing urban areas and reduce reliance on either continued expansion of the urban growth area, or directing significant amounts of new growth to rural areas.

(f) The densities chosen should accommodate a variety of housing types and sizes to meet the needs of all economic segments of the community. The amount and type of housing accommodated at each density and in each land use designation should be consistent with the need for various housing types identified in the housing element of the comprehensive plan.

(g) Counties and cities may designate some urban areas at less than urban densities to protect a network of critical areas, to avoid further development in frequently flooded areas, or to prevent further development in geologically hazardous areas. Counties or cities should show that the critical areas are present in the area so designated and that area designated is limited to the area necessary to achieve these purposes.

(5) Addressing development patterns that occurred prior to the act.

(a) Prior to the passage of the act, many areas within the state developed at densities that are neither urban nor rural. Inside the urban growth area, local comprehensive plans should allow appropriate redevelopment of these areas. Newly developed areas inside the urban growth area should be developed at urban densities.

(b) Local capital facilities plans should include plans to provide existing urban areas with adequate public facilities during the planning period so that available infrastructure does not serve as a limiting factor to redevelopment at urban densities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-300, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-305 ((~~County-wide~~)) Countywide planning policies.

(1) Purpose of ((~~county-wide~~)) countywide planning policies. The act requires counties and cities to collaboratively develop ((~~county-wide~~)) countywide planning policies to govern the development of comprehensive plans. The primary purpose of ((~~county-wide~~)) countywide planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of ((~~county-wide~~)) countywide planning policies is to facilitate the transformation of local governance in the urban growth area, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.

(2) Relationship to the act. ((~~County-wide~~)) Countywide planning policies must comply with the requirements of the act. ((~~County-wide~~)) Countywide planning policies may not compel counties and cities to take action that violates the act. ((~~County-wide~~)) Countywide planning policies may not permit actions that the act prohibits nor include exceptions to such prohibitions not contained in the act. If a ((~~county-wide~~)) countywide planning policy can be implemented in a way that is consistent with the act, then it is consistent with the act, even if its subsequent implementation is found to be out of compliance. RCW 36.70A.210(4) requires state agencies to comply with ((~~county-wide~~)) countywide planning policies.

(3) Relationship to comprehensive plans. The comprehensive plans of counties and cities must comply with both the ((~~county-wide~~)) countywide planning policies and the act. Any requirements in a ((~~county-wide~~)) countywide planning policy do not replace requirements in the act or any other state or federal law or regulation.

(4) Required policies. Consistent with RCW 36.70A.210(3) and 36.70A.215, ((~~county-wide~~)) countywide planning policies must cover the following subjects:

(a) Policies to implement RCW 36.70A.110, including:

(i) Designation of urban growth areas;

(ii) Selection ((~~and allocation~~)) of population projections, employment forecasts, and growth allocations between cities and counties as part of the review of an urban growth area;

(iii) Procedures governing amendments to urban growth areas, including the review required by RCW 36.70A.130(3);

(iv) Consultation between cities and counties regarding urban growth areas; and

(v) If desired, policies governing the establishment of urban service boundaries or potential annexation areas.

(b) Promoting contiguous and orderly development and provision of urban services to such development;

(c) Siting public facilities of a ((~~county-wide~~)) countywide or statewide nature, including transportation facilities of statewide significance;

(d) ((~~County-wide~~)) Countywide transportation facilities and strategies;

(e) The need for affordable housing such as housing for all economic segments of the population and parameters for its distribution;

(f) Joint city/county planning in urban growth areas;

(g) ((~~County-wide~~)) Countywide economic development and employment;

(h) An analysis of fiscal impact; and

(i) Where applicable, policies governing the buildable lands review and evaluation program.

(5) Recommended policies. ((~~County-wide~~)) Countywide planning policies should also include policies addressing the following:

(a) Procedures by which the ((~~county-wide~~)) countywide planning policies will be reviewed and amended; and

(b) A process for resolving disputes regarding interpretation of ((~~county-wide~~)) countywide planning policies or disputes regarding implementation of the ((~~county-wide~~)) countywide planning policies.

(6) Framework for adoption of ((~~county-wide~~)) countywide planning policies. Prior to adopting ((~~county-wide~~)) countywide planning policies, counties and cities must develop a framework. This framework should be in written form and agreed to by the county and the cities within those counties. The framework may be in a memorandum of understanding, an intergovernmental agreement, or as a section of the ((~~county-wide~~)) countywide planning policies. This framework must include the following provisions:

(a) Desired policies;

(b) Deadlines;

(c) Ratification of final agreements and demonstration; and

(d) Financing, if any, of all activities associated with developing and adopting the ((~~county-wide~~)) countywide planning policies.

(7) Forum for ongoing coordination. Counties and cities should establish a method for ongoing coordination of issues associated with implementation of the ((~~county-wide~~)) countywide planning policies and comprehensive plans, which should include both a forum for county and city elected officials and a forum for county and city staff responsible for implementation. Cities and counties should review adopted countywide policies to determine whether they are effectively achieving their objectives. These forums may also include special purpose districts, transit districts, port districts, federal agencies, state agencies, and tribes.

(8) Multicounty planning policies.

(a) Multicounty planning policies must be adopted by two or more counties, each with a population of ((~~four hundred fifty thousand~~)) 450,000 or more, with contiguous urban areas. They may also be adopted by other counties by a process agreed to among the counties and cities within the affected counties.

(b) Multicounty planning policies are adopted by two or more counties and establish a common region-wide framework that ensures consistency among county and city comprehensive plans adopted pursuant to RCW 36.70A.070, and ((~~county-wide~~)) countywide planning policies adopted pursuant to RCW 36.70A.210.

(c) Multicounty planning policies provide a framework for regional plans developed within a multicounty region, including regional transportation plans established under RCW 47.80.023, as well as plans of cities, counties, and others that have common borders or related regional issues as required under RCW 36.70A.100.

(d) Multicounty planning policies should address, at a minimum, the same topics identified for ((~~county-wide~~)) countywide planning as identified in RCW 36.70A.210(3), except for those responsibilities assigned exclusively to counties. Other issues may also be addressed.

(e) Because of the regional nature of multicounty planning policies, counties or cities should use an existing regional agency with the same or similar geographic area, such as a regional transportation planning organization, pursuant to RCW 47.80.020, to develop, adopt, and administer multicounty planning policies.

(f) In order to provide an ongoing multicounty framework, a schedule for reviewing and revising the multicounty planning policies may be established. This schedule should relate to the review and revision deadlines for county and city comprehensive plans pursuant to RCW 36.70A.130.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-305, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-310 Urban growth areas. (1)(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the ((~~one hundred-year~~)) 100-year flood plain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of ((~~one thousand~~)) 1,000 or more cubic feet per second as determined by the department of ecology.

(b) Subsection (1)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;

(ii) Urban growth areas where expansions are precluded outside flood plains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or

(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;

(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; stormwater facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase stormwater runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under (a)(i) of this subsection, "((~~one hundred-year~~)) 100-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(2) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a ((~~county-wide~~)) county-wide 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 ((~~twenty-year~~)) 20-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to

be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, according to the time schedule specified in RCW 36.70A.130(5), periodically its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (see WAC 365-196-610).

(i) 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 ((~~twenty-year~~)) 20-year planning period.

(ii) This review should be conducted jointly with the affected cities.

(iii) 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.

(3) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the ((~~county-wide~~)) 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 ((~~county-wide~~)) 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.

(4) Recommendations for meeting requirements.

(a) Selecting and allocating ((~~county-wide~~)) countywide growth forecasts. This process should involve at least the following:

(i) The total ((~~county-wide~~)) countywide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area. Cities and counties should use consistent growth forecasts, allocations, and planning horizons. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5) and encompass a minimum of 20 years.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low ((~~twenty-year~~)) 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 ((~~county-wide~~)) 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 ((~~twenty-year~~)) 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 ((~~twenty-year~~)) 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 ((~~twenty-year~~)) 20-year forecasts selected.

(iv) Selection of a ((~~county-wide~~)) countywide employment forecast. Counties, in consultation with cities, should adopt a ((~~twenty-year county-wide~~)) 20-year countywide employment forecast to be allo-

cated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The ((~~county-wide~~)) 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 ((~~county-wide~~)) 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 ((~~county-wide~~)) countywide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the ((~~twenty-year~~)) 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 ((~~twenty-year~~)) 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 ((~~twenty-year~~)) 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. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the ((~~twenty-year~~)) 20-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next ((~~twenty~~)) 20 years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are

characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas ((~~issues~~)) 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 ((~~one hundred-year~~)) 100-year flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of ((~~one thousand~~)) 1,000 or more cubic feet per second.

(vii) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding ((~~twenty-year~~)) 20-year period. Counties and cities should identify revenue sources and develop a reasonable financial plan to support operation and maintenance of existing facilities and services, and for new or expanded facilities to accommodate projected growth over the 20-year planning period. The plan should ensure consistency between the land use element and the capital facilities plan, and demonstrate that probable funding does not fall short of the projected needs to maintain and operate public facilities, public services, and open space. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has ((~~county-wide~~)) 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 ((~~county-wide~~)) 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 ((~~county-wide~~)) countywide planning policies, resolving regional issues, and adjusting growth boundaries.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-310, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-310, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-310, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-315 Buildable lands review and evaluation. (1) Purpose. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions contained in the countywide planning policies and comprehensive plans with actual development and determining if actual development is consistent with the ((~~comprehensive~~)) adopted plans. It also determines if there is sufficient commercial, industrial and housing capacity within the adopted urban growth area to accommodate the county's ((~~twenty-year~~)) 20-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cities must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency between what was envisioned in adopted countywide planning policies, comprehensive plans and development regulations, and actual development that has occurred. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

(a) The following counties, and the cities located within those counties, must establish and maintain a buildable lands program as required by RCW 36.70A.215:

(i) Clark;

(ii) King;

(iii) Kitsap;

(iv) Pierce;

(v) Snohomish; ((~~and~~))

(vi) Thurston; and

(vii) Whatcom.

(b) If another county or city establishes a program containing features of the buildable lands program, they are not obligated to meet the requirements of RCW 36.70A.215.

(3) ((~~County-wide~~)) Countywide planning policies and supportive documents.

(a) Buildable lands programs must be established in ((~~county-wide~~)) countywide planning policies.

(b) The buildable lands program must contain policies that establish a framework for implementation and continued administration.

(c) The buildable lands program's framework for implementation and administration may be adopted administratively. The program's framework must contain policies or procedures to:

(i) Provide guidance for the collection and analysis of data;

(ii) Provide for the evaluation of the data no later than ((~~one year~~)) the date specified in RCW 36.70A.215, prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, commonly referred to as the buildable lands report;

(iii) Provide for the establishment of methods to resolve disputes among jurisdictions regarding inconsistencies in collection and analysis of data; and

(iv) Provide for the amendment of the ((~~county-wide~~)) countywide policies and county and city comprehensive plans as needed to remedy inconsistencies identified through the evaluation required by this section, or to bring these policies and plans into compliance with the requirements of the act.

(d) The program's framework for implementation and administration should, in addition to the above, address the following:

(i) Establishment of the lead agency responsible for the overall coordination of the program;

(ii) Establishment of criteria and timelines for each county or city to:

(A) Make a determination as to consistency or inconsistency between what was envisioned in adopted ((~~county-wide~~)) countywide planning policies, comprehensive plans and development regulations and actual development that has occurred;

(B) Determine whether there is sufficient suitable land to accommodate the countywide population projection, and the subsequent population allocations within the county and between the county and its cities;

(C) Adopt and implement reasonable measures, if necessary;

((~~(C)~~)) (D) Report on the monitoring of the effectiveness of reasonable measures that have been adopted and implemented. Such reporting could be included in the subsequent buildable lands report;

((~~(D)~~)) (E) Transmit copies of any actions taken under (d)(ii)(A), ((~~(B)~~)) (C) and ((~~(C)~~)) (D) of this subsection to the department.

(iii) Providing opportunities for the public to review and comment on the following:

(A) Refinement of data collection and analysis methods for the review and evaluation elements of the program;

(B) Determinations as to consistency or inconsistency between what was envisioned in adopted ((~~county-wide~~)) countywide planning policies, comprehensive plans and development regulations and actual development that has occurred; and

(C) Adoption of reasonable measures, and reports on the monitoring of their effectiveness.

(iv) Public involvement may be accommodated during review and evaluation of a county or city comprehensive plan in consideration of the buildable land report information. This would generally include public review and comment opportunities before the planning commission or legislative body during the normal local government planning process.

(4) Buildable lands program reporting.

(a) No later than ((~~one year~~)) the date specified in RCW 36.70A.215, prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, the buildable

lands program must compile and publish an evaluation, known as the buildable lands report. Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the ((~~county-wide~~)) countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred since the adoption of the comprehensive plan or the last required buildable lands report. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "*Buildable Lands Program Guidelines*," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency. ((~~(a)~~)) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3). At a minimum, the evaluation component of the program shall determine whether there is sufficient land suitable for development or redevelopment within the 20-year planning period:

((~~(i)~~)) (a) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110; the zoned capacity of land alone is not a sufficient standard to deem land suitable for development or redevelopment within the 20-year planning period.

((~~(ii)~~)) (b) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for commercial, industrial and residential land uses with the assumed densities that were envisioned in the applicable ((~~county-wide~~)) countywide planning policies, and the comprehensive plan, including:

(i) A review and evaluation of the land use designation and zoning/development regulations; environmental regulations (such as tree retention, stormwater, or critical area regulations) impacting development; and other regulations that could prevent assigned densities from being achieved; infrastructure gaps (including, but not limited to, transportation, water, sewer, and stormwater); and

(ii) Use of a reasonable land market supply factor when evaluating land suitable to accommodate new development or redevelopment of land for residential development and employment activities. The reasonable market supply factor identifies reductions in the amount of land suitable for development and redevelopment. The methodology for conducting a reasonable land market factor shall be determined through the guidance developed in RCW 36.70A.217.

((~~(iii)~~)) (c) Evaluation under RCW 36.70A.215 (3)(c) should ((~~determine, based on actual development densities determined in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan.~~

~~(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation~~)) provide an analysis of county and/or city development assumptions, targets, and ob-

jectives contained in the countywide planning policies and the county and city comprehensive plans when growth targets and assumptions are not being achieved. It is not appropriate to make a finding that assumed growth contained in the countywide planning policies and the county or city comprehensive plan will occur at the end of the current comprehensive planning 20-year planning cycle without rationale;

(d) Evaluation under RCW 36.70A.215 (3)(d) should determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by RCW 36.70A.215(1); and

(e) Evaluation under RCW 36.70A.215 (3)(e) should, based on the actual density, along with current trends and other documented factors relevant to patterns of actual growth and development as determined under RCW 36.70A.215 (3)(b), review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the 20-year planning period used in the most recently adopted comprehensive plan.

(6) Measures to address inconsistencies.

(a) The legislative bodies of counties and cities are responsible for the adoption of reasonable measures requiring legislative action to amend their individual comprehensive plans and development regulations. Counties, in consultation with cities, are responsible for amending the ((~~county-wide~~)) countywide planning policies reasonably likely to increase consistency. Annual monitoring and reporting is the responsibility of the adopting jurisdiction, but may be carried out by either the adopting jurisdiction or other designated agency or person.

(b) If a county or city determines an inconsistency exists, the county or city should establish a timeline for adopting and implementing measures that are reasonably likely to increase consistency during the succeeding review and evaluation period. The responsible county or city may utilize its annual review or periodic update under RCW 36.70A.130((~~(2)~~)) to make adjustments to its comprehensive plan and development regulations that are necessary to implement reasonable measures. Information regarding the adoption, implementation, and monitoring of reasonable measures should be made available to the public. Counties and cities may not rely on expansion of the urban growth area as a measure to address the inconsistency.

(i) Each county or city is responsible for implementing reasonable measures within its jurisdiction and must adopt measures that are designed to remedy the inconsistency within the remaining planning horizon of the adopted comprehensive plan;

(ii) Each county or city adopting reasonable measures is responsible for documenting its methodology and expectations for monitoring to provide a basis to evaluate whether the adopted measures have been effective in increasing consistency during the subsequent review and evaluation period;

(iii) If the monitoring of reasonable measures fails to show increased consistency relative to adopted policies, plans and development regulations during the subsequent review and evaluation period, the county or city should evaluate whether the measures in question should be revised, replaced, supplemented or rescinded;

(iv) If monitoring of reasonable measures demonstrates that such measures have remedied the inconsistency, the adopting county or city may discontinue monitoring;

(v) A copy of any action taken to adopt, amend, or rescind reasonable measures should be submitted to the department.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-315, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-315, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-320 Providing urban services. (1) Urban governmental services.

(a) Urban services are defined by RCW 36.70A.030(18) as those public services and public facilities at an intensity historically and typically provided in cities. Urban services specifically include:

(i) Sanitary sewer systems;

(ii) Storm drainage systems;

(iii) Domestic water systems;

(iv) Street cleaning services;

(v) Fire and police protection services;

(vi) Public transit services; and

(vii) Other public utilities associated with urban areas and normally not associated with rural areas.

(b) RCW 36.70A.030 (12) and (13) define public facilities and public services, which in addition to those defined as urban services, also include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, parks and recreational facilities, and schools, public health and environmental protection, and other governmental services.

(c) Although some of these services may be provided in rural areas, urban areas are typically served by higher capacity systems capable of providing adequate services at urban densities. Storm and sanitary sewer systems are the only services that are generally exclusively for urban growth areas. Outside of urban growth areas storm and sanitary sewer systems are appropriate in limited circumstances when necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

(d) At a minimum, adequate public facilities in urban areas should include sanitary sewer systems, and public water service from a Group A public water system under chapter ((~~70.119 or 70.119A~~)) 70A.120 or 70A.125 RCW because these services are usually necessary to support urban densities. The services provided must be adequate to allow development at urban densities and serve development at densities consistent with the land use element, and meet all regulatory obligations under state and federal law.

(e) If potable water demand is expected to exceed a public water system's available water rights within the 20-year planning horizon, cities and counties should develop strategies to obtain sufficient water to meet anticipated demand. Strategies may include, but are not limited to, decreasing water demand through conservation, securing additional water rights and establishing an intertie agreement with another water purveyor to purchase the necessary water.

(f) The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must

include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.

((~~(f)~~)) (g) The use of on-site sewer systems within urban growth areas may be appropriate in limited circumstances where there is no negative effect on basic public health, safety and the environment; and the use of on-site sewer systems does not preclude development at urban densities. Such circumstances may include:

(i) Use of on-site sewer systems as a transitional strategy where there is a development phasing plan in place (see ((~~WAC 365-195-330 [WAC 365-196-330]~~)) WAC 365-196-330); or

(ii) To serve isolated pockets of urban land difficult to serve due to terrain, critical areas or where the benefit of providing an urban level of service is cost-prohibitive; or

(iii) Where on-site systems are the best available technology for the circumstances and are designed to serve urban densities.

(2) Appropriate providers. RCW 36.70A.110(4) states that, in general, cities are the units of government most appropriate to provide urban governmental services. However, counties, special purpose districts and private providers also provide urban services, particularly services that are regional in nature. Counties and cities should plan for a transformation of governance as urban growth areas develop, whereby annexation or incorporation occurs, and nonregional urban services provided by counties are generally transferred to cities. See WAC 365-196-305.

(3) Coordination of planning in urban growth areas.

(a) The capital facilities element and transportation element of the county or city comprehensive plan must show how adequate public facilities will be provided and by whom. If the county or city with land use authority over an area is not the provider of urban services, a process for maintaining consistency between the land use element and plans for infrastructure provision should be developed consistent with the ((~~county-wide~~)) countywide planning policies.

(b) If a city is the designated service provider outside of its municipal boundaries, the city capital facilities element must also show how urban services will be provided within their service area. This should include incorporated areas and any portion of the urban growth area that it is assigned as a service area or potential annexation area designated under RCW 36.70A.110(7). See WAC 365-196-415 for information on the capital facilities element.

(4) Level of financial certainty required when establishing urban growth areas.

(a) Any amendment to an urban growth area must be accompanied by an analysis of what capital facilities investments are necessary to ensure the provision of adequate public facilities.

(b) If new or upgraded facilities are necessary, counties and cities must amend the capital facilities and transportation elements to maintain consistency with the land use element.

(c) The amended capital facilities and transportation elements must identify those new or expanded facilities and services necessary to support development in new urban growth areas. The elements must also include cost estimates to determine the amount of funding necessary to construct needed facilities.

(d) The capital facilities and transportation elements should identify what combination of new or existing funding will be necessary

to develop the needed facilities. Funding goals should be based on what can be raised by using existing resources. Use of state and federal grants should be realistic based on past trends unless the capital facilities element identifies new programs or an increased amount of available funding from state or federal sources.

(e) If funding available from existing sources is not sufficient, counties and cities should use development phasing strategies to prevent the irreversible commitment of land to urban development before adequate funding is available. Development phasing strategies are described in WAC 365-196-330. Counties and cities should then implement measures needed to close the funding gap.

(f) When considering potential changes to the urban growth area, counties should require that any proposal to expand the urban growth area must include necessary information to demonstrate an ability to provide adequate public facilities to any potential new portions of the urban growth area.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-320, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable ((~~county-wide~~)) countywide planning policies and consistent with the ((~~twenty-year~~)) 20-year population forecast from the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets during the review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required no later than one year prior to the deadline for periodic review of comprehensive plans and development regulations required by RCW 36.70A.130, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and

cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the ((~~county-wide~~)) countywide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the ((~~county-wide~~)) countywide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the ((~~twenty-year~~)) 20-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the ((~~twenty-year~~)) 20-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This evaluation must occur as part of the urban growth area review required in RCW 36.70A.130 (3)(a) and as

part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-325, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-325, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-325, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-330 Phasing development within the UGA. (1) Purpose of development phasing. Development phasing is the sequencing of development subareas within a city or urban growth area over the course of the ((~~twenty-year~~)) 20-year planning period. Development phasing should be considered a way to achieve one or more of the following:

(a) Orderly development pursuant to RCW 36.70A.110(3), which states that urban growth should first be located in areas with existing urban development and existing service capacity; second in existing urban development areas where new services can be provided in conjunction with existing services; and third in the remainder of the urban growth area;

(b) Preventing the irreversible commitment of land to urban growth before the provision of adequate public facilities. Within the comprehensive plan, the capital facilities element, transportation element, and parks and recreation element each must contain a plan to provide urban areas with adequate public facilities. The comprehensive plan must identify those facilities needed to achieve and maintain adopted levels of service over the ((~~twenty-year~~)) 20-year planning period, but only requires a six-year financing plan. Development phasing is a tool to address those areas for which capital facility needs have been identified in the ((~~twenty-year~~)) 20-year plan, but financing has not yet been identified. Because no irreversible commitment of land has been made in the zoning ordinance, if provision of urban governmental services ultimately proves infeasible, the area can be removed from the urban growth area when reassessing the land use element if probable funding falls short;

(c) Preventing a pattern of sprawling low density development from occurring or vesting in these areas prior to the ability to support urban densities. Once this pattern has occurred, it is more difficult to serve with urban services and less likely to ultimately achieve urban densities;

(d) Serving as a means of developing more detailed intergovernmental agreements or other plans to facilitate the orderly transition of governance and public services.

(2) Recommended provisions for development phasing. Comprehensive plan and development regulation provisions for development phasing should include the following:

(a) Identification of the areas to be sequenced;

(b) The criteria required to develop these areas at the ultimate urban densities envisioned. Criteria may be based on adequacy of services, existing urban development, and provisions for transition of governance. Timelines may also be used for sequencing;

(c) The densities and uses allowed in identified areas that have not yet met the criteria. Densities and intensities more typical of rural development should be considered to avoid hindering future development at urban densities. Such requirements are not inconsistent with the obligation to permit urban densities if provisions are made for conversion to urban densities over the course of the ((~~twenty-year~~)) 20-year planning period. Regulations should ensure that interim uses do not preclude future development at urban densities; and

(d) The review process for transitioning to ultimate urban densities. This should involve changes to development regulations, and not require amendments to the comprehensive plan.

(3) Additional considerations.

(a) Comprehensive plans may include other tools selected to facilitate phasing.

(b) Counties and cities should coordinate the phasing of development within portions of urban growth areas assigned to cities, and throughout urban growth areas in which cities are located. Development phasing polices may be addressed in ((~~county-wide~~)) countywide planning policies.

(c) Counties and cities must still provide sufficient capacity of land suitable for development as required in RCW 36.70A.115, but lands subject to sequencing requirements should be included in this capacity as long as phasing is implemented during the planning period.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-330, filed 1/19/10, effective 2/19/10.]

NEW SECTION

WAC 365-196-350 Extension of public facilities and utilities to serve school sited in a rural area authorized. (1) Requirements: The Growth Management Act does not prohibit a county planning under RCW 36.70A.040 from authorizing the extension of public facilities and utilities to serve a school sited in a rural area that serves students from a rural area and an urban area so long as the following requirements are met:

(a) The applicable school district board of directors has adopted a policy addressing school service area and facility needs and educational program requirements;

(b) The applicable school district has made a finding, with the concurrence of the county legislative authority and the legislative authorities of any affected cities, that the district's proposed site is suitable to site the school and any associated recreational facilities that the district has determined cannot reasonably be collocated

on an existing school site, taking into consideration the policy adopted in (a) of this subsection and the extent to which vacant or developable land within the growth area meets those requirements;

(c) The county and any affected cities agree to the extension of public facilities and utilities to serve the school sited in a rural area that serves urban and rural students at the time of concurrence in (b) of this subsection;

(d) If the public facility or utility is extended beyond the urban growth area to serve a school, the public facility or utility must serve only the school and the costs of such extension must be borne by the applicable school district based on a reasonable nexus to the impacts of the school, except as provided in subsection (3) of this section; and

(e) Any impacts associated with the siting of the school are mitigated as required by the State Environmental Policy Act, chapter 43.21C RCW.

(2) The act does not prohibit either the expansion or modernization of an existing school in the rural area or the placement of portable classrooms at an existing school in the rural area.

(3) Where a public facility or utility has been extended beyond the urban growth area to serve a school, the public facility or utility may, where consistent with RCW 36.70A.110(4), serve a property or properties in addition to the school if the property owner so requests, provided that the county and any affected cities agree with the request and provided that the property is located no further from the public facility or utility than the distance that, if the property were within the urban growth area, the property would be required to connect to the public facility or utility. In such an instance, the school district may, for a period not to exceed 20 years, require reimbursement from a requesting property owner for a proportional share of the construction costs incurred by the school district for the extension of the public facility or utility.

(4) Counties and cities must identify lands useful for public purposes, such as schools in their comprehensive plan. (See RCW 36.70A.150.) As part of subdivision approval, permitting jurisdictions must ensure appropriate provisions are made for schools and school grounds. (See RCW 58.17.110.)

(5) Recommendations for meeting requirements.

(a)(i) School sites should be considered as communities are being planned, and specifically considered when permitting large developments. (See RCW 36.70A.110(2) and 36.70A.150.)

(ii) Cities, counties, and school districts should first work together to identify potential school sites within urban growth areas. To facilitate the siting of schools within urban areas, cities and counties should work with school districts to assess zoning, height limits, and other factors that may affect the ability of a school to site within an urban growth area, including joint-use facilities. County policies may address schools in the rural area, and set out locational, buffering or screening policies to protect rural character. As schools are considered in the rural area, the long-term plan for the area should be considered, but new school development should not be used to intentionally drive urban development in a rural area.

(b) Cities, counties and school districts should:

(i) Coordinate enrollment forecasts and projections with the city and county's adopted population projections.

(ii) Identify school siting criteria with the county, cities, and regional transportation planning organizations. Such criteria may be included in countywide planning policies.

(iii) Identify suitable school sites with the county and cities, with priority to siting schools in existing cities and towns in locations where students can safely walk and bicycle to the school from their homes and that can effectively be served by transit.

(iv) Consider playgrounds and fields associated with activities during the normal school day (e.g., recess and physical education) for new, expanded, or modernized school sites. Districts may consider joint use of recreational facilities as part of the proposal.

(c) If school impact fees are collected, a jurisdiction's capital facilities element must address school facility needs related to growth. (See RCW 82.02.050 and 82.02.090(7).) Cities and counties should work with school districts to review the relationship of school district enrollment projections with local population growth projections.

(d) A school district policy adopted pursuant to RCW 36.70A.213 may include criteria for siting schools, school grade configuration, educational programming, recreational facility co-location, feeder schools, transportation routes, or other relevant factors that may affect school siting decisions.

(e) If a county or affected city concurs with the school district's finding, the county and any affected cities should also at that time agree to the extension of public facilities and utilities to serve the school. If a county or affected city finds that it cannot concur with the school district's findings regarding the proposed school, the county or city should document the reasons in their decision.

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AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

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.

(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.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the twenty-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 ((~~county-wide~~)) countywide planning policies, along with an explanation of how the ((~~county-wide~~)) 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 ((~~twenty-year~~)) 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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-400, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-400, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-405 Land use element. (1) Requirements. The land use element must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and storm-water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant ((~~county-wide~~)) 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 ((~~county-wide~~)) countywide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

(d) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands of long-term commercial significance.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ground water used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence the aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter ((~~70.116~~)) 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 ((~~twenty-year~~)) 20-year population allocations for their planning area as part of a ((~~county-wide~~)) countywide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis, 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. At a minimum, cities must plan for the population allocated to them, but may plan for additional population 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 to be supported, implementation of regional planning strategies, and needed capital facilities.

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this meets the ((~~twenty-year~~)) 20-year population projection.

(ii) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(j) Wherever possible, counties and cities should consider urban planning approaches that promote physical activity. Urban planning approaches that promote physical activity may include:

(i) Higher intensity residential or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms supporting bicycle and pedestrian transportation.

(v) Policies supporting multimodal approaches to concurrency consistent with other elements of the plan.

(vi) Traditional or main street commercial corridors with street front buildings and limited parking and driveway interruption.

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical

activity for new or existing development should also be removed or lessened where feasible.

(k) Counties and cities may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(l) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element. WAC 365-196-330 provides additional information regarding development phasing.

(m) Counties and cities should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-405, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-405, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-410 Housing element. (1) Requirements. Counties and cities must develop a housing element ensuring vitality and character of established residential neighborhoods. The housing element must contain at least the following features:

(a) An inventory and analysis of existing and projected housing needs.

(b) A statement of the goals, policies, and objectives for the preservation, improvement, and development of housing, including single-family residences.

(c) Identification of sufficient land for housing((~~,~~)) including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, group homes and foster care facilities.

(d) Adequate provisions for existing and projected housing needs of all economic segments of the community.

(2) Recommendations for meeting requirements. The housing element shows how a county or city will accommodate anticipated growth, provide a variety of housing types at a variety of densities, provide opportunities for affordable housing for all economic segments of the community, and ensure the vitality of established residential neighborhoods. The following components should appear in the housing element:

(a) Housing goals and policies.

(i) The goals and policies serve as a guide to the creation and adoption of development regulations and may also guide the exercise of discretion in the permitting process.

(ii) The housing goals and policies of counties and cities should be consistent with ((~~county-wide~~)) countywide planning policies and, where applicable, multicounty planning policies.

(iii) Housing goals and policies should address at least the following:

(A) Affordable housing;

(B) Preservation of neighborhood character; and

(C) Provision of a variety of housing types along with a variety of densities.

(iv) Housing goals and policies should be written to allow the evaluation of progress toward achieving the housing element's goals and policies.

(b) Housing inventory.

(i) The purpose of the required inventory is to gauge the availability of existing housing for all economic segments of the community.

(ii) The inventory should identify the amount of various types of housing that exist in a community. The act does not require that a housing inventory be in a specific form. Counties and cities should consider WAC 365-196-050 (3) and (4) when determining how to meet the housing inventory requirement and may rely on existing data.

(iii) The housing inventory may show the affordability of different types of housing. It may provide data about the median sales prices of homes and average rental prices.

(iv) The housing inventory may include information about other types of housing available within the jurisdiction such as:

(A) The number of beds available in group homes, nursing homes and/or assisted living facilities;

(B) The number of dwelling units available specifically for senior citizens;

(C) The number of government-assisted housing units for lower-income households.

(c) Housing needs analysis.

(i) The purpose of the needs analysis is to estimate the type and densities of future housing needed to serve all economic segments of the community. The housing needs analysis should compare the number of housing units identified in the housing inventory to the projected growth or other locally identified housing needs.

(ii) The definition of housing needs should be addressed in a regional context and may use existing data.

(iii) The analysis should be based on the most recent ((~~twenty-year~~)) 20-year population allocation.

(iv) The analysis should analyze consistency with ((~~county-wide~~)) countywide planning policies, and where applicable, multicounty planning policies, related to housing for all economic segments of the population.

(d) Housing targets or capacity.

(i) The housing needs analysis should identify the number and types of new housing units needed to serve the projected growth and the income ranges within it. This should be used to designate sufficient land capacity suitable for development in the land use element.

(ii) Counties and cities may also use other considerations to identify housing needs, which may include:

(A) Workforce housing which is often defined as housing affordable to households earning between ((~~eighty to one hundred twenty~~)) 80 to 120 percent of the median household income.

(B) Jobs-to-housing balance, which is the number of jobs in a city or county relative to the number of housing units.

(C) Reasonable measures to address inconsistencies found in buildable lands reports prepared under RCW 36.70A.215.

(D) Housing needed to address an observed pattern of a larger quantity of second homes in destination communities.

(iii) The targets established in the housing element will serve as benchmarks to evaluate progress and guide decisions regarding development regulations.

(e) Affordable housing. RCW 36.70A.070 requires counties and cities, in their housing element, to make adequate provisions for existing and projected needs for all economic segments of the community.

(i) Determining what housing units are affordable.

(A) In the case of dwelling units for sale, affordable housing has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than ((~~thirty~~)) 30 percent of the owner's gross annual household income.

(B) In the case of dwelling units for rent, affordable housing has rent and utility costs, as defined by the county or city, that cost no more than ((~~thirty~~)) 30 percent of the tenant's gross annual household income.

(C) Income ranges used when considering affordability. When planning for affordable housing, counties or cities should use income ranges consistent with the applicable ((~~county-wide~~)) countywide or multicounty planning policies. If no such terms exist, counties or cities should consider using the United States Department of Housing and Urban Development (HUD) definitions found in 24 C.F.R. 91.5, which are used to draft consolidated planning documents required by HUD. The following definitions are from 24 C.F.R. 91.5:

(I) Median income refers to median household income.

(II) Extremely low-income refers to a household whose income is at or below ((~~thirty~~)) 30 percent of the median income, adjusted for household size, for the county where the housing unit is located.

(III) Low-income refers to a household whose income is between ((~~thirty percent and fifty~~)) 30 percent and 50 percent of the median income, adjusted for household size, for the county where the housing unit is located.

(IV) Moderate-income refers to a household whose income is between ((~~fifty percent and eighty~~)) 50 percent and 80 percent of the median income where the housing unit is located.

(V) Middle-income refers to a household whose income is between ((~~eighty percent and ninety-five~~)) 80 percent and 95 percent of the median income for the area where the housing unit is located.

(ii) Affordable housing requires planning from a regional perspective. ((~~County-wide~~)) Countywide planning policies must address affordable housing and its distribution among counties and cities. A county's or city's obligation to plan for affordable housing within a regional context is determined by the applicable ((~~county-wide~~)) countywide planning policies. Counties and cities should review ((~~county-wide~~)) countywide affordable housing policies when developing the housing element to maintain consistency.

(iii) Counties and cities should consider the ability of the market to address housing needs for all economic segments of the population. Counties and cities may help to address affordable housing by identifying and removing any regulatory barriers limiting the availability of affordable housing.

(iv) Counties and cities may help to address affordable housing needs by increasing development capacity. In such an event, a county or city affordable housing section should:

(A) Identify certain land use designations within a geographic area where increased residential development may help achieve affordable housing policies and targets;

(B) As needed, identify policies and subsequent development regulations that may increase residential development capacity;

(C) Determine the number of additional housing units these policies and development regulations may generate; and

(D) Establish a target that represents the minimum amount of affordable housing units that it seeks to generate.

(f) Implementation plan.

(i) The housing element should identify strategies designed to help meet the needs identified for all economic segments of the population within the planning area. It should include, but not be limited to, the following:

(A) Consideration of the range of housing choices to be encouraged including, but not limited to, multifamily housing, mixed uses, manufactured houses, accessory dwelling units, and detached houses;

(B) Consideration of various lot sizes and densities, and of clustering and other design configurations;

(C) Identification of a sufficient amount of appropriately zoned land to accommodate the identified housing needs over the planning period; and

(D) Evaluation of the capacity of local public and private entities and the availability of financing to produce housing to meet the identified need.

(ii) The housing element should also address how the county or city will provide for group homes, foster care facilities, and facilities for other populations with special needs. The housing element should provide for an equitable distribution of these facilities among neighborhoods within the county or city

(iii) The housing element should identify strategies designed to ensure the vitality and character of existing neighborhoods. It should show how growth and change will preserve or improve existing residential qualities. The housing element may not focus on one requirement (e.g., preserving existing housing) to the exclusion of the other requirements (e.g., affordable housing) in RCW 36.70A.070(2). It should explain how various needs are reconciled.

(iv) The housing element should include provisions to monitor the performance of its housing strategy. A monitoring program may include the following:

(A) The collection and analysis of information about the housing market;

(B) Data about the supply of developable residential building lots at various land-use densities and the supply of rental and for-sale housing at various price levels;

(C) A comparison of actual housing development to the targets, policies and goals contained in the housing element;

(D) Identification of thresholds at which steps should be taken to adjust and revise goals and policies; and

(E) A description of the types of adjustments and revisions that the county or city may consider.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-410, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, stormwater facilities, 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.

(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).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within the jurisdiction or among jurisdictions within 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 ((~~county-wide~~)) countywide population forecasts within the allowable range, or revising the ((~~county-wide~~)) 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, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities and intensities 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 ((~~twenty-year~~)) 20-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facili-

ties 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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-415, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-415, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-420 Utilities element. (1) Requirements. The utilities element shall contain at least the following features: The general location, proposed location, and capacity of all existing and proposed utilities((~~,~~)) including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(2) Recommendations for meeting requirements. Counties and cities should consider the following:

(a) The general location and capacity of existing and proposed utility facilities should be integrated with the land use element. Proposed utilities are those awaiting approval when the comprehensive plan is adopted.

(b) In consultation with serving utilities, counties and cities should prepare an analysis of the capacity needs for various utilities over the planning period, to serve the growth anticipated at the locations and densities proposed within the jurisdiction's planning area. The capacity needs analysis should include consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The utility element should identify the general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes.

(d) Counties and cities should evaluate whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate siting process established under the comprehensive plan for such facilities.

(e) Counties and cities should evaluate whether any utility facilities within their planning area are subject to ((~~county-wide~~)) countywide planning policies for siting public facilities of a ((~~county-wide~~)) 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) 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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-420, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should consider the adverse impact of wildfires when establishing rural densities. Counties may reduce rural densities in areas vulnerable to wildland fires as a mitigation strategy to protect natural resource lands, critical areas, water quality, or rural character.

(c) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur along with the urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage stormwater and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not

overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDs may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include

roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. 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) 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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-425, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-425, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-425, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-430 Transportation element. (1) Requirements. Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ((~~ten-year~~)) 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 ((~~ten~~)) 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 ((~~ten-year~~)) 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 ((~~ten-year~~)) 10-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements. Coordination of the land use and transportation elements should address how the implementation of the transportation element supports the desired land uses and form established in the land use element. Recognizing that there is a direct relationship between land use and how it is accessed.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans, active transportation plans, and recreation and conservation office state trails plan.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning 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 ((~~county-wide~~)) 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 con-

sistent 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 ((~~70.94.527(5)~~)) 70A.15.4060. Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW ((~~70.94.528~~)) 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 ((~~motorists, transit vehicles and riders, bicyclists, and~~)) pedestrians, bicyclists, transit vehicles and riders, and motorists;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and ((~~multimodal~~)) access to transit stations and stops by people walking, bicycling, or transferring from another vehicle;

(iii) Bicycle and pedestrian travel including measures of facility quality such as level of traffic stress (an indicator used to quantify the stress experienced by a cyclist or pedestrian on the segments of a road network), route directness, and network completeness;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and stormwater impacts on state-owned transportation facilities and services as development occurs.

(c) Inventory and analysis of transportation facilities and services. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, 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.

(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 ((~~other~~)) locally owned roads ((~~or travel modes at their discretion~~)) that are not classified as arterials.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for state-owned highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or

performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area. Level of service standards should also advance the state's vehicle miles per capita reduction goals as identified in RCW 47.01.440.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards for all transportation modes. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes ((~~(motor vehicle, public transportation, bicycle, and pedestrian)~~)) (pedestrian, bicycle, public transportation, motor vehicle), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and ((~~safety levels for users~~)) 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 ((~~ten~~)) 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 ((~~ten-year~~)) 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 ((~~twenty-year~~)) 20-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency. Counties and cities should use the most current traffic forecasting methodologies that better account for the different traffic generating characteristics of different land use patterns. Traffic forecasts are one piece of information and should be balanced with other data and goals in the formation of the transportation element.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards. Such actions and requirements identified should include improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required ((~~ten-year~~)) 10-year forecasting period. If counties and cities use a ((~~twenty-year~~)) 20-year forecasting period, they should also identify needs for the entire ((~~twenty-year~~)) 20-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's ((~~ten-year~~)) 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 ((~~vehicular, transit, bicycle, and pedestrian facilities~~)) pedestrian, bicycle, transit, vehicular facilities; ADA transitions; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(x) State policy goals as outlined in RCW 47.04.280. Growth in travel demand should first be met through improvements to active

transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications. This approach is consistent with statewide goals to reduce per capita vehicle miles traveled and greenhouse gas emissions.

(xi) The transportation element may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070 (6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(A) Multiple modes of transportation with peak and nonpeak hour capacity performance standards for locally owned transportation facilities; and

(B) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(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, ((~~and, as information becomes available,~~)) bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period. Cities and counties 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 and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local, regional, ((~~and~~)) state pedestrian and bicycle planning documents, and ADA transition plans if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local

designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions. This map should also identify the level of traffic stress for each of the facilities. Jurisdictions are encouraged to consider demographic groups that may have special transportation needs, such as older adults, youth, people with low incomes, people with disabilities, and people with limited English proficiency when identifying and designating planned improvements.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services. The plan should consider route directness, network completeness, and level of traffic stress.

(v) The pedestrian and bicycle component should also ((~~review existing pedestrian and bicycle collision data to~~)) 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 ((~~twenty-year~~)) 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 ((~~ten-year~~)) 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 ((~~American Association of State Highway and~~)) 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) ((~~Nonmotorized~~)) 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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-430, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-430, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-435 Economic development element. (1) Requirements.

(a) The economic development element should establish local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. An economic development element should include:

(i) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate;

(ii) A summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and

(iii) An identification of policies, programs, and projects to foster economic growth and development and to address future needs. Identification of these policies, programs, and projects should include a summary of each.

(b) A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(c) The requirement to include an economic development 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 the requirements. Counties and cities should consider using existing economic development plans developed at the county and regional level and may adopt them by reference as a means of including an economic development element within their comprehensive plan. Counties and cities should consider developing partnerships with organizations within the community and with state and federal agencies and the private sector. Because labor markets typically encompass at least one county and may encompass a multicounty region, counties and cities should coordinate economic development activities on a regional basis. The department recommends counties and cities consider the following in preparing an economic development element:

(a) A summary of the local economy.

(i) Economic development begins with information gathering. The purpose of information gathering is to provide a summary of the local

economy. Much of this information is available from regional, state or federal agencies.

(ii) Counties and cities should use population information consistent with the information used in the land use element and the housing element.

(iii) Counties and cities are not required to generate original data, but can rely on available data from the agencies who report the information. Employment, payroll, and other economic information is available from state and federal agencies, such as the Washington state department of employment security, the Bureau of Labor Statistics and the Census Bureau. Some of this information may not be available at the city level, but may be available only at the ((~~county-wide~~)) countywide level. Government agencies that report this data may be prohibited from releasing certain data to avoid disclosing proprietary information. Local governments should also consult with their associate development organization, economic development council and economic development districts. Counties and cities may also use data such as permit volume, local inventories of available land and other data generated from their activities that is useful for economic development planning.

(b) Summary of strengths and weaknesses of the local economy.

(i) Counties and cities should consult with their associated development organization, economic development council and/or economic development district to help with identifying appropriate commercial and industrial sectors.

(ii) Shift-share analysis is one method of identifying strengths and weaknesses of the local economy. This method identifies industrial sectors that have a relatively greater proportion of the local area's employment than exists in the national economy. It is one method of identifying sectors with a local competitive advantage. This is a method that can be employed using readily available existing data.

(iii) Identification of industry clusters is another method of identifying strengths and weaknesses of the local economy. State and local economic development organizations, including some associated development organizations and the department, have identified a number of industry clusters in the state. An industry cluster is a group of related firms that provide interdependent specialized goods or services. The presence of existing suppliers of specialized services and a specialized work force makes attracting additional economic activity in the cluster easier.

(iv) Identifying strong industry sectors or clusters can help determine strengths and weaknesses, help a city or county develop a realistic profile of land and infrastructure needs, and identify ways to focus economic development activities. It does not confer preferred status on any particular firm or industry. Counties and cities should still treat all individuals and firms as equal under the law.

(v) Counties and cities may also refer to information and public input collected during public participation to identify strengths and weaknesses based on community perception of their community. Counties and cities may conduct a separate visioning exercise to help identify strengths and weaknesses.

(vi) Counties and cities may employ asset mapping, which builds from the information gathered. Asset mapping is similar to traditional strengths, weaknesses, opportunities, and threats (SWOT) analysis with several significant distinctions. Under the SWOT analysis, strength and opportunity factors may not be linked together.

(c) Identification of policies, programs, and projects to foster economic growth and development and to address future needs.

(i) After identifying strengths and weaknesses, the economic development element may identify policies, programs and projects that foster economic growth and development and address future needs. The programs and policies should be targeted at addressing weaknesses or capitalizing on strengths identified in the community.

(ii) Counties and cities should consider using specific, quantified, and time-framed performance targets that provide a measurement of the success of an economic development element and serve as a reference point in the economic development process.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-435, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-465 Major industrial developments. (1) General authority for major industrial developments. A county required or choosing to plan under the act may establish, in consultation with cities under the ((~~county-wide~~)) countywide planning policies outlined in RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(2)(a) "Major industrial development" means a master planned location for specific manufacturing, industrial, or commercial businesses that:

(i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or

(ii) Is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent.

(b) The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(3) Establishment of a review process required. Before reviewing an application for a major industrial development, counties, in consultation with cities, must establish a process for reviewing and approving applications.

(4) Criteria for approving a major industrial development. A major industrial development may be approved outside an urban growth area if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The major industrial development plan is consistent with the county's development regulations for critical areas;

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(5) Amendment to the comprehensive plan.

(a) Final approval of an application for a major industrial development is an amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, designating the major industrial development site on the land use map as an urban growth area. The major industrial development is considered urban growth. Urban services may be provided at any scale and intensity. Major industrial developments are not required to be consistent with rural character or limited to the scale and intensity of an existing rural location.

(b) An application for a major industrial development may be considered at any time and is an exception to the general rule that amendments should be considered no more frequently than once per year.

(6) Public participation.

(a) Counties should address public participation procedures for major industrial developments when establishing the process for approval of major industrial developments. Counties should use existing public participation procedures for amending the comprehensive plan and amending the urban growth area as a starting point and modify these procedures, if necessary, to address considerations and requirements particular to major industrial developments.

(b) The public participation process should identify how a project proposal meets the statutory criteria for siting a major industrial development. However, the act does not require these proposals to undergo a greater degree of public participation than any other action.

(7) RCW 36.70A.070 (5)(e) does not prohibit the location of a major industrial development within or adjacent to an existing limited area of more intense rural development (LAMIRD) provided it is approved consistent with RCW 36.70A.365.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-465, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-470 Industrial land banks. (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish a process for designating an industrial land bank consisting of no more than two master planned locations for major industrial activity outside urban growth areas.

(a) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in RCW 36.70A.367 (4)(a), suitable for manufacturing, industrial, or com-

mercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(b) The process of designating industrial land banks must occur in consultation with cities consistent with the ((~~county-wide~~)) countywide planning policies and, where applicable multicounty planning policies.

(c) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3)(f) of this section.

(2) Counties eligible to create an industrial land bank. Only counties that meet one of the following criteria may designate an industrial land bank:

(a) Has a population greater than ((~~two hundred fifty thousand~~)) 250,000 and is part of a metropolitan area that includes a city in another state with a population greater than ((~~two hundred fifty thousand~~)) 250,000;

(b) Has a population greater than ((~~one hundred forty thousand~~)) 140,000 and is adjacent to another country;

(c) Has a population greater than ((~~forty thousand~~)) 40,000 but less than ((~~seventy-five thousand~~)) 75,000 and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent and is:

(i) Bordered by the Pacific Ocean;

(ii) Located in the Interstate 5 or Interstate 90 corridor; or

(iii) Bordered by Hood Canal.

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia River to the east;

(e) Has an average population density of less than ((~~one hundred~~)) 100 persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than ((~~forty thousand~~)) 40,000 but fewer than ((~~eighty thousand~~)) 80,000;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(g) A county's authority to create an industrial land bank expires on the due date for the next periodic update found in RCW 36.70A.130(4) occurring prior to December 31, 2014. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(3) How to create an industrial land bank.

(a) Creation of an industrial land bank requires an amendment to a county's comprehensive plan and the adoption of development regulations.

(b) The comprehensive plan amendment that designates an industrial land bank must be accompanied by or contain an analysis that:

(i) Identifies locations suited to major industrial development due to proximity to transportation or resource assets. This should be based on an inventory of developable land as provided in RCW

36.70A.365. See WAC 365-196-465 for recommendations on major industrial developments.

(ii) Identifies the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section.

(iii) Gives priority to locations that are adjacent to, or in close proximity to, an urban growth area. This should include an analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) The environmental review for amendment of the comprehensive plan should be at the programmatic level.

(d) A comprehensive plan amendment creating an industrial land bank may be considered at any time and is an exception to the requirement in RCW 36.70A.130(1) that the comprehensive plan may be amended no more often than once per year.

(e) Once the industrial land bank is created through the comprehensive plan amendment, approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(f) Development regulations. A county must also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The development regulations governing the master plan process shall ensure, at a minimum, that:

(i) Urban growth will not occur in adjacent nonurban areas;

(ii) Development is consistent with the county's development regulations adopted for protection of critical areas;

(iii) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(iv) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(v) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(vi) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(vii) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development do not exceed ((~~ten~~)) 10 percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(viii) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided

concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(ix) Buffers are provided between the major industrial development and adjacent rural areas;

(x) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(xi) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least ((~~thirty~~)) 30 days before the hearing date and mailed to all property owners within one mile of the site.

(g) Required procedures. In addition to other procedural requirements that may apply, a county seeking to designate an industrial land bank under this section must:

(i) Provide ((~~county-wide~~)) countywide notice, in conformance with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than ((~~thirty~~)) 30 days prior to commencement of consideration by the county legislative body; and

(ii) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-470, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-475 Land use compatibility with military installations. (1) Military installations are of particular importance to the economic health of the state of Washington. It is a priority of the state to protect the land surrounding military installations from incompatible development. Military training, testing, and operating areas are also critical to the mission viability of Washington's military installations.

(2) A comprehensive plan, amendment to a comprehensive plan, a development regulation, or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A county or city may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(3) As part of the requirements of RCW 36.70A.070(1), each county or city planning under the act that has a federal military installation, other than a reserve center, that employs ((~~one hundred~~)) 100 or more personnel and is operated by the United States Department of Defense within or adjacent to its border, must notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to the military installation to ensure those lands are protected from incompatible development.

(4) The notice must request from the commander of the military installation a written recommendation and supporting facts relating to

the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice must provide ((~~sixty~~)) 60 days for a response from the commander. If the commander does not submit a response to such request within ((~~sixty~~)) 60 days, the county or city may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the military installation.

(5) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in subsection (4) of this section, notice shall be provided to the commander of the military installation consistent with subsection (3) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide ((~~sixty~~)) 60 days for a response from the commander to the requesting government. If the commander does not submit a response to such request within ((~~sixty~~)) 60 days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation.

(6) Counties must provide written notification to the Department of Defense upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least 115,000 volts. Counties should consider comprehensive plan policies or development regulations to ensure compliance with the notice requirements in RCW 36.01.320.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-475, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-480 Natural resource lands. (1) Requirements.

(a) In the initial period following adoption of the act, and prior to the development of comprehensive plans, counties and cities planning under the act were required to designate natural resource lands of long-term commercial significance and adopt development regulations to assure their conservation. Natural resource lands include agricultural, forest, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and, where necessary, altered to ensure consistency.

(b) Counties and cities planning under the act must review their natural resource lands designations, comprehensive plans, policies, and development regulations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(c) Counties and cities not planning under RCW 36.70A.040 must review their natural resource lands designations, and if necessary revise those designations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(d) Forest land and agricultural land located within urban growth areas shall not be designated as forest resource land or agricultural

resource land unless the county or city has enacted a program authorizing transfer or purchase of development rights.

(e) Mineral lands may be designated as mineral resource lands within urban growth areas. There may be subsequent reuse of mineral resource lands when the minerals have been mined out. In cases where designated mineral resource lands are likely to be mined out and closed to further mining within the planning period, the surface mine reclamation plan and permit from the department of natural resources division of geology should be reviewed to ensure it is consistent with the adopted comprehensive land use plan.

(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

(2) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of natural resource lands. In all cases, counties and cities must address inconsistencies between plan policies, development regulations and previously adopted natural resource land provisions.

(b) The department issued guidelines for the classification and designation of natural resource lands which are contained in chapter 365-190 WAC. In general, natural resource lands should be located beyond the boundaries of urban growth areas; and urban growth areas should avoid including designated natural resource lands. In most cases, the designated purposes of natural resource lands are incompatible with urban densities. For inclusion in the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance.

(c) As noted in subsection (1)(f) of this section, mineral resource lands are a possible exception to the requirement that natural resource lands be designated outside the urban growth area. This guidance is based on the significant cost savings from using minerals close to their source, and the potential for reusing the mined out lands for other purposes after mining is complete. Counties and cities should consider the potential loss of access to mineral resource lands if they are not designated and conserved, and should also consider the consumptive use of mineral resources when designating specific mineral resource lands.

(d) Counties and cities may also consider retaining local agricultural lands in or near urban growth areas as part of a local strategy promoting food security, agricultural education, or in support of local food banks, schools, or other large institutions.

(e) The review of existing designations should be done on ((~~an area-wide~~)) a countywide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or

timber, or for the extraction of minerals. Counties and cities must defer reviews of resource lands until they are able to conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10).

(f) Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands. Guidance on development regulations ensuring the conservation of designated resource lands is found in WAC 365-196-815.

(g) Counties and cities are encouraged to use a coordinated program that includes nonregulatory programs and incentives to supplement development regulations to conserve natural resource lands. Guidance for addressing the designation of natural resource lands is located under WAC 365-190-040 through 365-190-070.

(h) When adopting comprehensive plan policies on siting energy facilities on or adjacent to natural resource lands, counties and cities must ensure that development does not result in conversion to a use that removes the land from resource production, or interferes with the usual and accustomed operations of the natural resource lands. Counties and cities are encouraged to adopt policies and regulations regarding the appropriate location for siting energy facilities on or adjacent to natural resource lands. Policies and regulations may emphasize dual-use strategies that preserve or improve natural resource lands, provide clarity to developers, and support renewable energy goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-480, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

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; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting 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 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 ((~~should~~)) 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 ((~~should~~)) 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 ap-

plicable, 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 ((~~one hundred-year~~)) 100-year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated. RCW 36.70.110(8) prohibits expansion of the urban growth area into the ((~~one hundred-year~~)) 100-year flood plain 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.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-485, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-485, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-500 Internal consistency. (1) Comprehensive plans must be internally consistent. This requirement means that differing parts of the comprehensive plan must fit together so that no one feature precludes the achievement of any other.

(2) Use of compatible assumptions. A county or city must use compatible assumptions in different aspects of the plan.

(a) A county or city should use common numeric assumptions to the fullest extent possible, particularly in the long-term growth assumptions used in developing the land use, capital facilities and other elements of the comprehensive plan.

(b) If a county or city relies on forecasts, inventories, or functional plans developed by other entities, these plans might have been developed using different time horizons or different boundaries. If these differences create inconsistent assumptions, a county or city should include an analysis in its comprehensive plan of the differen-

ces and reconcile them to create a plan that uses compatible assumptions.

(3) The development regulations must be internally consistent and be consistent with and implement the comprehensive plan.

(4) Consistency review. Each comprehensive plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent. At a minimum, any amendment to the comprehensive plan or development regulations must be reviewed for consistency. The review and update processes required in RCW 36.70A.130 (1) and (3) should include a review of the comprehensive plan and development regulations for consistency.

(5) See WAC 365-196-800 for more information on the relationship between development regulations and the comprehensive plan. See WAC 356-196-305 for more information on the relationship between ((~~county-wide~~)) countywide planning policies and the comprehensive plan. See WAC 365-196-315 (5)(a) for information on consistencies between assumptions and observed development for cities or counties subject to monitoring requirements in RCW 36.70A.215.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-500, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-510 Interjurisdictional consistency. (1) Each county or city comprehensive plan must be coordinated with, and consistent with, the comprehensive plans of other counties and cities that share common borders or related regional issues with that county or city. Determining consistency in this interjurisdictional context is complicated by the differences in timing of comprehensive plan adoption and subsequent amendments.

(2) Initially, interjurisdictional consistency should be met by the adoption of comprehensive plans, and subsequent amendments, which are consistent with and carry out the relevant ((~~county-wide~~)) countywide planning policies and, where applicable, the relevant multicounty planning policies. Adopted ((~~county-wide~~)) countywide planning policies are designed to ensure that county and city comprehensive plans are consistent. More detailed recommendations about ((~~county-wide~~)) countywide planning policies are contained in WAC 365-196-305.

(3) To better ensure consistency of comprehensive plans, counties and cities should consider using similar policies and assumptions that apply to common areas or issues.

(4) Counties and cities should use consistent population projections and planning horizons when completing the periodic review and evaluation of comprehensive plans and development regulations. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5) and encompass a minimum of 20 years.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-510, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-530 State agency compliance. (1) RCW 36.70A.103 requires that state agencies comply with the local comprehensive plans and development regulations, and subsequent amendments, adopted pursuant to the act. An exception to this requirement exists for the state's authority to site and operate a special commitment center and a secure community transition facility to house persons conditionally released to a less restrictive alternative on McNeil Island under RCW 36.70A.200.

(2) The department construes RCW 36.70A.103 to require each state agency to meet local siting and building requirements when it occupies the position of an applicant proposing development, except where specific legislation explicitly dictates otherwise. This means that development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) Under RCW 36.70A.210(4), state agencies must follow adopted ((~~county-wide~~)) countywide planning policies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency, or the exercise by any local government of its responsibilities and authorities under the act.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision making. The discretion they exercise should take into account legislatively mandated local growth management programs. State agencies that approve plans of special purpose districts that are required to be consistent with local comprehensive plans should provide guidance or technical assistance to those entities to explain the need to coordinate their planning with the local government comprehensive plans within which they provide service.

(5) After local adoption of comprehensive plans and development regulations under the act, state agencies should review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-530, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-550 Essential public facilities. (1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with ((~~county-wide~~)) countywide planning policies, counties and cities should

create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:

(A) The interstate highway system;

(B) Interregional state principal arterials including ferry connections that serve statewide travel;

(C) Intercity passenger rail services;

(D) Intercity high-speed ground transportation;

(E) Major passenger intermodal terminals excluding all airport facilities and services;

(F) The freight railroad system;

(G) The Columbia/Snake navigable river system;

(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;

(I) High capacity transportation systems.

(v) Regional transit authority facilities as defined under RCW 81.112.020;

(vi) State and local correctional facilities;

(vii) Solid waste handling facilities;

(viii) In-patient facilities, including substance abuse facilities;

(ix) Mental health facilities;

(x) Group homes;

(xi) Secure community transition facilities;

(xii) Any facility on the state ((~~ten-year~~)) 10-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable ((~~county-wide~~)) countywide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substan-

tially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or ((~~county-wide~~)) countywide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for ((~~county-wide~~)) countywide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where ((~~county-wide~~)) countywide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-550, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-550, filed 1/19/10, effective 2/19/10.]

NEW SECTION

WAC 365-196-585 Tracking eligibility for state grants and loans. (1) This section defines the procedures used by the department to track and report the status of a county or city with completion of the review and revision requirement under RCW 36.70A.130, and to track any compliance orders issued by the growth management hearings board, or board, as defined under WAC 242-03-030 and established under RCW 36.70A.260.

(2) These procedures assure that the department provides timely and accurate reporting to state agencies regarding a county or city's eligibility for state grants or loans, and it assures that a county or city applicant, and the state agency reviewing grant or loan eligibility, understand the role of the department in this process for determining eligibility for state grants or loans, where applicable.

(3) These procedures are also designed to encourage and enable timely redress of overdue periodic updates or noncompliance issues. To accomplish this, a county or city must be aware of its current status so it may take necessary legislative action to achieve compliance with deadlines or board orders.

(4) Under RCW 36.70A.130(7), the act directs state agencies to consider compliance in the award of state financial assistance from a number of state grant and loan programs as follows:

(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70A.135 RCW:

(i) Complying with the deadlines in this section; or

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.

(b) A county or city that is fewer than 12 months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(5) Counties and cities must notify the department in writing that the jurisdiction considers the periodic update complete. WAC 365-196-610 (2)(c) provides recommendations on documenting completion of the periodic update, either in whole or in part.

(a) Counties and cities must take legislative action, in the form of an ordinance or resolution, following a public hearing. The ordi-

nance or resolution should clearly state the periodic update required by RCW 36.70A.130 is complete. If a county or city took multiple legislative actions as part of the periodic update process, the final ordinance or resolution should reference all prior legislative actions.

(b) Counties and cities must submit a notice of adoption to the department after taking legislative action on a comprehensive plan or development regulation amendment. The department considers the notice of adoption, required under RCW 36.70A.106(2), along with the final ordinance or resolution documenting the completion of the periodic update, as written notice.

(c) In lieu of an ordinance or resolution clearly stating that the periodic update required by RCW 36.70A.130 is complete, the department may consider a written letter from the mayor, county executive, or chair of the board of county commissioners stating that the periodic update is complete.

(6) The following state grant and loan programs use GMA compliance in the course of awarding state funds under the following programs under RCW 36.70A.130(7):

(a) Public works trust fund (public works board) under RCW 43.155.070 and WAC 399-30-030;

(b) Centennial clean water fund (department of ecology) under WAC 173-95A-610;

(c) Drinking water state revolving fund (department of health) under RCW 70A.125.070 and WAC 246-296-130;

(d) Recreation and conservation office;

(e) Transportation improvement board funding under RCW 47.26.086 and WAC 479-14-121;

(f) Predisaster mitigation grants (emergency management division, Washington military department); and

(g) Water pollution control facilities grants under RCW 70A.135.070.

The department does not determine eligibility for any particular grant or loan program administered by another state agency or board. Eligibility, including the effect of the compliance status of a city or county may have on eligibility, is determined by the state agency authorized to administer a grant or loan program.

(7) As the designated coordinator for state government regarding implementation of chapter 36.70A RCW, the department tracks local government implementation with the act. A state agency may consult with the department in the course of administering its grant and loan program, regarding the status of a county or city progress implementing the act.

(8) The department does not determine compliance by county or city with the provisions of chapter 36.70A RCW.

(a) For completion of the periodic update under RCW 36.70A.130, compliance with the requirement is determined by the county or city. This determination must be in the form of written notice of completion provided by the county or city to the department.

(b) For all other matters, compliance is determined by the board.

(9) For compliance matters related to a board final decision and order, a county or city may avoid being determined ineligible or otherwise penalized in the award of grants or loans during a period of remand by taking action to delay the effective date of a challenged ordinance or resolution as follows:

(a) A county or city may delay the effective date of the action subject to the petition before the board until after the board issues a final determination; or

(b) Within 30 days of receiving notice of a petition for review by the board, a county or city may delay the effective date of the action subject to the petition before the board until after the board issues a final determination.

(c) To avoid a penalty, a county or city must notify the department in writing that it has delayed the effective date of the challenged ordinance. Notice must be accompanied by the board order and a copy of the ordinance or resolution showing the delay to the effective date.

(d) A delay in the effective date will not prevent a determination of ineligibility or other penalty if the board makes a determination of invalidity.

[]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-600 Public participation. (1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a

county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) The public participation program should include outreach and early coordination with state and tribal agencies with subject matter expertise. Coordination with state agencies and tribes is recommended as draft policies and regulations are being developed.

(vii) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved. Counties and cities should implement innovative techniques that support meaningful and inclusive engagement for people of color and low-income people. Counties and cities should consider potential barriers to participation that may arise due to race, color, ethnicity, religion, age, disability, income, or education level.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet websites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action

taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official website;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-600, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-600, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

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).

((~~(i) Deadlines for completion of periodic review are as follows:~~

~~Table WAC 365-196-610.1~~
~~Deadlines for Completion of Periodic Review~~
~~2015 - 2018~~

~~Update must be complete by June 30 of:~~	~~Affected counties and the cities within:~~
~~2015/2023~~	~~King, Pierce, Snohomish~~
~~2016/2024~~	~~Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom~~
~~2017/2025~~	~~Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima~~
~~2018/2026~~	~~Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman~~))

(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 ((~~fifty thousand~~)) 50,000 and a growth rate of less than ((~~seventeen~~)) 17 percent.

(C) A city is eligible if it has a population of less than ((~~five thousand~~)) 5,000, and either a growth rate of less than ((~~seventeen~~)) 17 percent or a total population growth of less than ((~~one hundred~~)) 100 persons.

(D) Growth rates are measured using the ((~~ten-year~~)) 10-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a city or county 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 identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and pro-

cedures 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 allocated to a city or county during the most recent urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances. The department recommends evaluating the results of plan, regulation, and permit monitoring to determine if changes are needed to ensure efficient and effective implementation of critical areas ordinances (See WAC 365-195-920);

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ((~~ten-year~~)) 10-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) 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 ((~~twenty-year~~)) 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); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430

Requirement	RCW Location	WAC Location
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process. Cities and counties may not conduct the periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, cities and counties 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 ((~~twenty-year~~)) 20-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 17-20-100, § 365-196-610, filed 10/4/17, effective 11/4/17; WSR 15-04-039, § 365-196-610, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-610, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-610, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-630 Submitting notice of intent to adopt to the state. (1) State notification and comment.

(a) The act requires each county or city proposing adoption of an original comprehensive plan or development regulation, or amendment, under the act, ((~~must~~)) to notify the department of its intent at least ((~~sixty~~)) 60 days prior to final adoption pursuant to RCW 36.70A.106. Counties and cities may request expedited review for ((~~changes~~)) amendments to the development regulations pursuant to RCW 36.70A.106 (3)(b).

(b) State agencies, including the department, may provide comments on comprehensive plans, development regulations, and related amendments during the public review process.

(2) Notice to the department ((~~must include~~)) may be in digital format through PlanView, a web-based portal, provided by the department. A complete submittal shall include the following:

(a) A cover letter or cover page that includes an explanation of the proposed amendment, notification that the submittal is intended to begin the ((~~sixty-day~~)) 60-day review process, the planned date of adoption, and the sender's contact information; and

(b) A copy of the proposed amendment ((~~language~~)) text. The drafted amendment text should be in a complete form, and it should clearly identify how the existing language will be modified. ((~~An example of acceptable form includes struck through and underlined text that indicates proposed deleted text and new text, respectively.~~)) Amended text shall show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the proposed amendment are clearly identifiable.

(c) If the proposed amendment changes during the legislative process, ((~~counties and cities~~)) following submittal, then a county or city may submit supplemental materials to the department without initiating a new ((~~sixty-day~~)) 60-day notice period. Counties and cities must identify any materials submitted to the department if they are supplemental to an earlier proposed amendment under a ((~~sixty-day~~)) 60-day review.

(3)(a) The department prefers that notices of proposed amendments, under RCW 36.70A.106, be submitted electronically through PlanView, a web-based portal. The department will provide access and instructions to a county or city for submitting notice through this process. ((~~Expedited review requests should be submitted by email as outlined in subsection (6) of this section. Counties and cities~~)) A county or city may contact the department ((~~by telephone at 360-725-3000 or~~)) by email at reviewteam@commerce.wa.gov to obtain

electronic contact information and procedures for electronic submittals.

(b) Copies submitted by U.S. mail should be sent to:

Department of Commerce,
Growth Management Services
Attn: Review Team
P.O. Box 42525
Olympia, WA 98504-2525

(4) Submitting adopted amendments.

(a) Each county or city planning under the act must transmit to the department, within ((~~ten~~)) 10 days after adoption, one complete and accurate copy of its adopted comprehensive plan or development regulation, or adopted amendment to a comprehensive plan or development regulation, pursuant to RCW 36.70A.106. ((~~Additional copies should be sent to those state agencies that provided comment on the proposed amendment.~~))

(b) The submittal of an adopted amendment must include a copy of the final signed and dated ordinance or resolution identifying the legislative action.

(c) Submittal of an adopted amendment((~~s~~)) should follow the method outlined for submission of the ((~~sixty-day~~)) 60-day notice for review in subsection (3) of this section.

(5) The ((~~sixty-day~~)) 60-day period for determining when an amendment to a comprehensive plan((~~,~~)) or development regulation((~~, or amendment can~~)) may be adopted begins as follows:

(a) When the notice is automatically date-stamped by the department in the PlanView system, or upon receipt ((~~by email attachment~~)) if the submittal is transmitted electronically; or

(b) When the material is stamped upon the date of receipt at the department's planning unit reception desk during regular business hours if the submittal is transmitted by U.S. mail.

(6) Expedited review.

(a) Counties and cities may request expedited review when ((~~they are providing~~)) submitting notice to the department ((~~notice~~)) of intent to adopt an amendment to development regulations under RCW 36.70A.106 (3)(b).

(b) Expedited review is intended for amendments to development regulations for which, without expedited review, the ((~~sixty-day~~)) 60-day state agency review process would needlessly delay the jurisdictions adoption schedule.

(c) Counties and cities may not request expedited review ((~~of~~)) for comprehensive plan amendments.

(d) Certain types of development regulations are very likely to require review by state agencies, and are therefore generally not appropriate for expedited review. Proposed changes to critical areas ordinances or regulations, concurrency ordinances, or ordinances regulating essential public facilities are examples of development regulation amendments that should not be submitted for expedited review.

(e) Department responsibilities:

(i) Requests submitted for expedited review should be ((~~forwarded to other state agencies~~)) identified by the department through the PlanView system within two working days of receipt of request for expedited review.

(ii) State agencies have ((~~ten~~)) 10 working days to determine if the proposal is of interest and requires more time for review.

(iii) If the department is notified by any state agency within ((~~ten~~)) 10 working days that it has an interest in more time for review, the department will not grant expedited review until all agencies have had an opportunity to comment.

(iv) If, after ((~~ten~~)) 10 working days, a state agency does not respond to the department, then the department may grant the request for expedited review.

(v) The department may determine that it has an interest in a proposal that requires more time for review, and it may deny a request for expedited review on that basis.

(vi) The estimated time frame for processing an expedited review request is ((~~fourteen~~)) 14 days, to coincide with the State Environmental Policy Act comment period.

(vii) The expedited review request must include the information required to determine if an item is of state interest, similar to the methods outlined for submission of amendments for ((~~sixty-day~~)) 60-day review.

(f) State agency responsibilities:

(i) If a state agency intends to comment, the agency must respond to requests for expedited review within ((~~ten~~)) 10 working days.

(ii) State agencies should determine how to coordinate an agency response internally to maintain proper notification and information management between its headquarters office and regional offices. The department will work with state agencies if it can be of assistance in this process.

(iii) If a state agency has an interest in a proposed amendment for expedited review, and it has requested the department not grant expedited review, then the state agency requesting denial of the expedited review should contact and provide comment directly to the requesting ((~~jurisdiction~~)) county or city within the ((~~sixty-day~~)) 60-day period specified in RCW 36.70A.106. The state agency should notify the department when it has completed review and provided comments.

(g) County and city responsibilities:

(i) Requests for expedited review should be the exception and not the rule. Expedited review is designed for use with development regulation((~~s~~)) amendments that are unlikely to require state agency review or comment.

(ii) Expedited review should not be used as a substitute for timely notification. Counties and cities should plan for the full ((~~sixty-day~~)) 60-day review period when practicable.

(iii) Counties and cities must request expedited review on a case-by-case basis.

(iv) A request((~~s~~)) for expedited review should be in the form of an electronic submittal in the PlanView system, following the department's submittal requirements for ((~~email submittal for sixty-day~~)) 60-day review in subsection (3) of this section.

(v) The request must be accompanied with enough information, as defined by the department, in consultation with other state agencies and counties and cities, to determine whether it is of state interest.

(vi) Expedited review should not be requested if the normal ((~~sixty-day~~)) 60-day period will not delay adoption.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-630, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

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.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-660, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-730 Federal authorities. (1) Counties and cities drafting or amending comprehensive plans and development regulations under the act should consider the effects of federal authority over land or resource use within the planning area, including:

(a) Treaties with Native Americans;

(b) Jurisdiction on land owned or held in trust by the federal government;

(c) Federal statutes or regulations imposing national standards;

(d) Federal permit programs and plans;

(e) Metropolitan planning organizations, which are also designated as regional transportation planning organizations established in chapter 47.80 RCW; and

(f) The Central Puget Sound economic development district.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act;

(h) State and local consolidated plans required by the Department of Housing and Urban Development under the Code of Federal Regulations (24 C.F.R. 91 and 24 C.F.R. 570);

(i) Historic preservation requirements and standards of the National Historic Preservation Act;

(j) Regulatory requirements of section 4(f) of the Department of Transportation Act; ((~~and~~))

(k) Plans adopted by metropolitan planning organizations to meet federal transportation planning responsibilities established by the U.S. Federal Highway Administration (FHWA) and the U.S. Federal Transit Administration (FTA)~~;~~

(l) Habitat alteration restrictions arising from the Bald and Golden Eagle Protection Act administered by the U.S. Fish and Wildlife Service; and

(m) Habitat alteration restrictions arising from the Migratory Bird Treaty Act administered by the U.S. Fish and Wildlife Service.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-730, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-740 Regional perspective. Some of the authorities in WAC 365-196-730 and 365-196-735 require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the environmental and ecological systems addressed in resource management, service by utilities, fish and wildlife management and pollution control are generally not circumscribed by county and city lines. Planning entities should attempt to identify these geographic areas which require a regional planning approach and, if needed, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach should assist in achieving interjurisdictional consistency, consistency with the ((~~county-wide~~)) countywide planning policies and, where applicable, multicounty planning policies. See WAC 365-196-305 regarding ((~~county-wide~~)) countywide planning policies.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-740, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-825 Potable water. (1) Each applicant for a building permit of a building needing potable water shall provide evidence of an adequate water supply for the intended use of the building. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues. RCW 19.27.097 provides that such evidence may be in the form of

a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(2) Requirements under RCW 90.94.020 and 90.94.030 apply to counties and cities reviewing water adequacy for development.

(3) Counties and cities should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an adequate water supply. ((~~In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.~~

~~(3)~~)) The department of health regulates the maximum number of equivalent residential units (including each domestic unit within a multifamily development) that can be legally and physically served by each public water system. Each water system tracks the current number of available equivalent residential units.

(4) If the department of ecology has adopted rules on this subject, or any part of it, local regulations ((~~should~~)) must be consistent with those rules. Such rules may include instream flow rules, which may limit the availability of additional ground or surface water within a specific geographic area.

((~~(4)~~)) (5) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-825, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

WAC 365-196-830 Protection of critical areas. (1) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected 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) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. Avoidance is the most effective way to protect critical areas. If development regulations allow harm to critical areas, they must re-

quire compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Ecosystem functions ((~~are the conditions and processes that support the ecosystem. Conditions and processes~~)) and values operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs.

(a) When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(b) Local governments must review and, if needed, revise their development regulations to assure the protection of critical areas where agricultural activities take place.

(c) Local governments shall not broadly exempt agricultural activities from their critical areas regulations.

(d) 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).

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 17-20-100, § 365-196-830, filed 10/4/17, effective 11/4/17; WSR 10-03-085, § 365-196-830, filed 1/19/10, effective 2/19/10.]

WSR 22-13-134
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed June 17, 2022, 4:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-045.

Title of Rule and Other Identifying Information: WAC 182-554-400 Enteral nutrition—Provider requirements.

Hearing Location(s): On July 26, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_okdBEytITLCb2dmAjv3rBA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 26, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by July 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to add an additional section to clarify overlap in dates of service for the processing of claims for refills prior to the client exhausting their supply.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Erin Mayo, P.O. Box 55081, Olympia, WA 98504-5081, 360-725-1729.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed filing does not impose a disproportionate cost impact on small businesses.

June 17, 2022
Wendy Barcus
Rules Coordinator

OTS-3859.1

AMENDATORY SECTION (Amending WSR 17-08-009, filed 3/24/17, effective 5/1/17)

WAC 182-554-400 Enteral nutrition—Provider requirements. (1) The following providers are eligible to enroll or contract with the medicaid agency to provide orally administered and tube-delivered enteral nutrition products, equipment, and related supplies:

(a) A pharmacy provider; or

(b) A durable medical equipment provider.

(2) To receive payment for orally administered or tube-delivered enteral nutrition products, equipment and related supplies, a provider must:

(a) Meet the requirements under chapters 182-501 and 182-502 WAC.

(b) Provide only those services that are within the scope of the provider's license.

(c) Obtain prior authorization from the agency, if required, before delivery to the client and before billing the agency.

(d) Deliver enteral nutritional products in quantities sufficient to meet the client's authorized needs, not to exceed a one-month supply.

(e) Confirm with the client or the client's caregiver that the next month's delivery of authorized orally administered enteral nutrition products is necessary and document the confirmation in the client's file. The agency does not pay for automatic periodic delivery of products.

(f) Furnish clients with new or used equipment that includes full manufacturer and dealer warranties for at least one year.

(g) Notify the client's primary care provider if the client has indicated the enteral nutrition product is not being used as prescribed and document the notification in the client's file.

(h) Have a valid prescription. To be valid, a prescription must be:

(i) Written, dated and signed (including the prescriber's credentials) by the prescriber on or before the date of delivery of the product, equipment or related supplies;

(ii) No older than one year from the date the prescriber signed the prescription; and

(iii) State the specific item or service requested, the client's diagnosis and estimated length of need, quantity and units of measure, frequency and directions for use.

(i) Have proof of delivery.

(i) When a client or the client's authorized representative receives the product directly from the provider, the provider must furnish the proof of delivery upon agency request. The proof of delivery must:

(A) Be signed and dated by the client or the client's authorized representative. The date of the signature must be the date the item was received by the client; and

(B) Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name.

(ii) When a provider uses a shipping service to deliver items, the provider must furnish proof of delivery upon agency request. The proof of delivery must include:

(A) The client's name or other client identifier;
(B) The delivery service package identification number;
(C) The delivery address; and
(D) The quantity, a detailed description, and brand name of the item being shipped.

(j) Bill the agency ((~~with~~)) in accordance with agency rules and billing instructions using one of the following dates of service:

(i) If the provider used a shipping service, the provider must use the shipping date as the date of service; or

(ii) If the client or the client's authorized representative received the product directly from the provider, the provider must use the date of receipt as the date of service.

(k) The agency allows up to a 10-day overlap in dates of service for the processing of claims for refills delivered/shipped prior to the client exhausting their supply.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-08-009, § 182-554-400, filed 3/24/17, effective 5/1/17. WSR 11-14-075, recodified as § 182-554-400, filed 6/30/11, effective 7/1/11. Statutory Authority: 2009 c 564 § 1109, RCW 74.04.050, and 74.08.090. WSR 10-01-138, § 388-554-400, filed 12/21/09, effective 1/21/10. Statutory Authority: RCW 74.08.090, 74.09.530 and chapter 74.09 RCW. WSR 05-04-059, § 388-554-400, filed 1/28/05, effective 3/1/05.]

WSR 22-13-136
PROPOSED RULES
WALLA WALLA
COMMUNITY COLLEGE
[Filed June 20, 2022, 5:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-071.

Title of Rule and Other Identifying Information: Chapter 132T-04 WAC, Bylaws.

Hearing Location(s): On August 8, 2022, at 2:30 - 3:30 p.m., https://wwcc-edu.zoom.us/j/87308073308. Remotely via Zoom link.

Date of Intended Adoption: August 29, 2022.

Submit Written Comments to: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362, email WACrevisions@gmail.com, by July 18, 2022.

Assistance for Persons with Disabilities: Contact Jean Hernandez, email WACrevisions@gmail.com, doreen.kennedy@wwcc.edu, by July 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repealing chapter 132T-04 WAC. Current board policies address the content of this WAC.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 28B.19.030; and chapter 28B.50 RCW.

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

Name of Proponent: Walla Walla Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362; Implementation and Enforcement: Office of the President, Walla Walla Community College, 509-527-4274.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 20, 2022
Jean Hernandez
Contract Consultant

OTS-3789.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132T-04-001	Promulgation.
WAC 132T-04-010	Offices.
WAC 132T-04-020	Meetings.
WAC 132T-04-030	Executive sessions.
WAC 132T-04-040	Order of agenda.
WAC 132T-04-050	Records of board action.
WAC 132T-04-060	Parliamentary procedure.
WAC 132T-04-070	Adoption or revision of policies.
WAC 132T-04-080	Officers of the board.
WAC 132T-04-090	Committees.
WAC 132T-04-100	Fiscal year.
WAC 132T-04-110	Official seal.
WAC 132T-04-120	Changes to bylaws.

WSR 22-13-137
PROPOSED RULES
WALLA WALLA
COMMUNITY COLLEGE
[Filed June 20, 2022, 5:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-072.

Title of Rule and Other Identifying Information: Chapter 132T-09 WAC, Practice and procedure.

Hearing Location(s): On August 8, 2022, at 1:00 - 2:00 p.m., https://wwcc-edu.zoom.us/j/87397197417. Remotely via Zoom link.

Date of Intended Adoption: August 29, 2022.

Submit Written Comments to: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362, email WACrevisions@gmail.com, by July 18, 2022.

Assistance for Persons with Disabilities: Contact Jean Hernandez, email WACrevisions@gmail.com, doreen.kennedy@wwcc.edu, by July 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 132T-09 WAC to update with current state statutes and align with Walla Walla Community College's rules and regulations.

Reasons Supporting Proposal: See purpose above. Also explains model adjudicative regulations and how they are applied by the college.

Statutory Authority for Adoption: Chapters 28B.50, 34.05, 28B.19 RCW.

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

Name of Proponent: Walla Walla Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362; Implementation and Enforcement: Office of the President, Walla Walla Community College, 509-527-4274.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 20, 2022
Jean Hernandez
Contract Consultant

OTS-3796.1

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-001 ((~~Formal hearing policy.~~)) Adoption of model rules of procedure. ((~~In each instance that a formal hearing is required by institutional policy, regulation or chapter 28B.19 RCW, the provisions of WAC 132T-09-001 through 132T-09-480 shall be applicable.~~)) The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereby amended, are adopted for use at Walla Walla Community College District 20. Those rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules previously adopted by this college, the model rules prevail.

[Order 72-8, § 132T-09-001, filed 5/2/72.]

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-005 ((~~Definitions.~~)) Appointment of presiding officers. ((~~As used herein, the term "agency" shall mean the board of trustees of Community College District No. 20 and Walla Walla Community College.~~)) The president or designee shall appoint a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the president or designee, or any combination of the above. Where more than one individual is appointed to be the presiding officer, the president or designee shall designate one person to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

[Order 72-8, § 132T-09-005, filed 5/2/72.]

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-010 ((~~Appearance and practice before agency.~~)) Method of recording. ((~~No person may appear in a representative capacity before the agency other than the following:~~

~~(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.~~

~~(2) Attorneys at law duly 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 our state law.~~

~~(3) Persons otherwise qualified as possessing the requisite skill to appear and expertly represent others who have applied to the agency and have been duly authorized by the agency to appear in a representative capacity before the agency.~~

~~(4) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership or corporation.~~)) Proceedings will be recorded by a method determined by the presiding officer, among those available under the model rules of procedure.

[Order 72-8, § 132T-09-010, filed 5/2/72.]

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-080 ((~~Notice and opportunity for hearing in contested cases.~~)) Application for adjudicative proceeding. ((~~In any contested case all parties shall be served with a notice at least ten days before the date set for the hearing. The notice shall be signed by the president of Walla Walla Community College or his designee and shall state the time, place and issues involved as required by RCW 28B.19.120.~~)) An application for adjudicative proceeding shall be in writing. Application forms are available at the following address:

Office of the President
Walla Walla Community College
500 Tausick Way
Walla Walla, WA 99362.

Written application for an adjudicative proceeding shall be submitted to the above address within 20 calendar days of the date of the agency action that gave rise to the application, unless provided for otherwise by statute or rule.

[Order 72-8, § 132T-09-080, filed 5/2/72.]

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-090 ((~~Service of process—By whom served.~~)) Brief adjudicative procedures. ((~~The agency shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.~~)) This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are adopted by reference. In addition to those proceedings specified elsewhere in college regulations, brief adjudicative procedures shall be used in all matters related to:

(1) Residency determinations;
(2) Challenges to content of education records; or
(3) Outstanding debts owed by students or employees.

[Order 72-8, § 132T-09-090, filed 5/2/72.]

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-100 ((~~Service of process—Upon whom served.~~)) Discovery. ((~~All papers served by either the agency or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.~~)) Discovery in adjudicative proceedings may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall refer to the civil rules of procedure. The presiding officer may control the frequency and nature of discovery permitted and order discovery conferences to discuss discovery issues.

[Order 72-8, § 132T-09-100, filed 5/2/72.]

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-110 ((~~Service of process—Service upon parties.~~)) Procedure for closing parts of the hearings. ((~~The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record.~~)) Any party may apply for a protective order to close part of the hearing. The party making the request shall state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within 10 calendar days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed and state the reasons in writing within 20 calendar days of receiving the request.

[Order 72-8, § 132T-09-110, filed 5/2/72.]

AMENDATORY SECTION (Amending Order 72-8, filed 5/2/72)

WAC 132T-09-120 ((~~Service of process—Method of service.~~)) Recording devices. ((~~Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail or by telegraph.~~)) No cameras or recording devices are allowed in those parts of the proceedings that the presiding officer has determined shall be closed under WAC 132T-09-010, except for the method of official recording selected by the college.

[Order 72-8, § 132T-09-120, filed 5/2/72.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132T-09-130	Service of process—When service complete.
WAC 132T-09-140	Service of process—Filing with agency.
WAC 132T-09-230	Depositions and interrogatories in contested cases—Right to take.
WAC 132T-09-240	Depositions and interrogatories in contested cases—Scope.
WAC 132T-09-250	Depositions and interrogatories in contested cases—Officer before whom taken.
WAC 132T-09-260	Depositions and interrogatories in contested cases—Authorization.
WAC 132T-09-270	Depositions and interrogatories in contested cases—Protection of parties and deponents.
WAC 132T-09-280	Depositions and interrogatories in contested cases—Oral examination and cross-examination.
WAC 132T-09-290	Depositions and interrogatories in contested cases—Recordation.
WAC 132T-09-300	Depositions and interrogatories in contested cases—Signing attestation and return.
WAC 132T-09-310	Depositions and interrogatories in contested cases—Use and effect.
WAC 132T-09-320	Depositions and interrogatories in contested cases—Fees of officers and deponents.
WAC 132T-09-330	Depositions upon interrogatories—Submission of interrogatories.
WAC 132T-09-340	Depositions upon interrogatories—Interrogation.
WAC 132T-09-350	Depositions upon interrogatories—Attestation and return.
WAC 132T-09-360	Depositions upon interrogatories—Provisions of deposition rule.
WAC 132T-09-400	Hearing officers.
WAC 132T-09-410	Hearing procedures.
WAC 132T-09-420	Duties of hearing officers.
WAC 132T-09-430	Stipulations and admissions of record.
WAC 132T-09-440	Definition of issues before hearing.
WAC 132T-09-450	Continuances.

WAC 132T-09-460	Rules of evidence—Admissibility criteria.
WAC 132T-09-470	Tentative admission—Exclusion—Discontinuance—Objections.
WAC 132T-09-480	Form and content of decisions in contested cases.

WSR 22-13-138
PROPOSED RULES
WALLA WALLA
COMMUNITY COLLEGE
[Filed June 20, 2022, 5:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-073.

Title of Rule and Other Identifying Information: Chapter 132T-90 WAC, Implementation of the Family Rights and Privacy Act of 1974.

Hearing Location(s): On August 1, 2022, at 1:00 - 2:00 p.m., https://wwcc-edu.zoom.us/j/85437551986. Remotely via Zoom link.

Date of Intended Adoption: August 29, 2022.

Submit Written Comments to: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362, email WACrevisions@gmail.com, by July 18, 2022.

Assistance for Persons with Disabilities: Contact Jean Hernandez, email WACrevisions@gmail.com, doreen.kennedy@wwcc.edu, by July 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 132T-90 WAC to update with current state and federal statutes and align with Walla Walla Community College's rules and regulations.

Reasons Supporting Proposal: See purpose above. Also explains Family Educational Rights and Privacy Act (FERPA) regulations and how they are applied by the college.

Statutory Authority for Adoption: RCW 28B.50.140; chapters 34.05 and 42.56 RCW. Washington Higher Education Administrative Procedure Act, FERPA (20 U.S.C. § 1232g) and its implementing regulation (34 C.F.R. § 99).

Rule is necessary because of federal law, FERPA (20 U.S.C. § 1232g) and its implementing regulation (34 C.F.R. § 99).

Name of Proponent: Walla Walla Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362; Implementation and Enforcement: Office of the President, Walla Walla Community College, 509-527-4274.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 20, 2022

Jean Hernandez
Contract Consultant

OTS-3797.1

Chapter 132T-90 WAC ((~~IMPLEMENTATION OF THE~~)) FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

AMENDATORY SECTION (Amending Order 75-5, filed 5/20/75)

WAC 132T-90-010 ((~~Purpose.~~)) The Family Educational Rights and Privacy Act (FERPA). ((~~The purpose of this chapter is to comply~~)) Walla Walla Community College District 20 complies with the requirements of Public Law 93-380, § 513, of 1974, also annotated as 20 U.S.C.A. 1232, which law represents amendments to the General Education Provisions Act. As indication in the aforesaid law, its purpose is to assure that students attending institutions of higher education ((~~such as Walla Walla Community College~~)) shall have a right to inspect certain records and files intended for school use or made available to parties outside the college.

The student policy called confidentiality of student records (FERPA) provides additional information on student rights under FERPA, what directory information may be released by the college, and contact information for the U.S. Department of Education. The college catalog has a link for the release of information form and additional information on this student policy. Copies of the catalog and policy are available online at www.wwcc.edu. Questions and inquiries about FERPA policy and procedures should be directed to the college registrar.

[Order 75-5, § 132T-90-010, filed 5/20/75.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132T-90-020	Definitions.
WAC 132T-90-030	Right of inspection.
WAC 132T-90-040	Availability of directory information.
WAC 132T-90-050	Access permitted to college and certain other officials without consent.
WAC 132T-90-060	Distribution of information to others.
WAC 132T-90-070	Notice of rights given under Family Educational Rights and Privacy Act of 1974.

WAC 132T-90-080	Requests for access to student records.
WAC 132T-90-090	Determination regarding records.
WAC 132T-90-100	Hearing procedure.
WAC 132T-90-110	Right of students to register objections.

WSR 22-13-139
PROPOSED RULES
WALLA WALLA
COMMUNITY COLLEGE
[Filed June 20, 2022, 5:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-074.

Title of Rule and Other Identifying Information: Chapter 132T-100 WAC, Student code of conduct.

Hearing Location(s): On August 1, 2022, at 2:30 - 3:30 p.m., https://wwcc-edu.zoom.us/j/88099076890. Remotely via Zoom link.

Date of Intended Adoption: August 29, 2022.

Submit Written Comments to: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362, email WACrevisions@gmail.com, by July 18, 2022.

Assistance for Persons with Disabilities: Contact Jean Hernandez, email WACrevisions@gmail.com, doreen.kennedy@wwcc.edu, by July 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New chapter 132T-100 WAC to align with statutes and Walla Walla Community College's rules and regulations.

Reasons Supporting Proposal: See purpose above. Also explains regulations on student conduct at the college and how these policies and procedures are applied by the college.

Statutory Authority for Adoption: RCW 34.05.250 and 28B.50.140.

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

Name of Proponent: Walla Walla Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362; Implementation and Enforcement: Office of the President, Walla Walla Community College, 509-527-4274.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 20, 2022
Jean Hernandez
Contract Consultant

OTS-3834.1

Chapter 132T-100 WAC
STUDENT CODE OF CONDUCT

NEW SECTION

WAC 132T-100-010 Preamble. Walla Walla Community College District 20 is supportive of diversity among ideas, cultures, and student characteristics in the pursuit of advancing one's education. A responsibility to secure, respect, and protect such opportunities and conditions is shared by all members of the academic community. As a member of this community, students are expected to uphold and be accountable for this student code of conduct both on and off campus and acknowledge that the college has the authority to take disciplinary action when a student violates these policies. As an agency of the state of Washington, the college must respect and adhere to all laws established by local, state, and federal authorities. This student code of conduct has been developed to educate students and protect the welfare of the community.

[]

NEW SECTION

WAC 132T-100-020 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community. The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, and are deemed necessary to achieve the educational goals of the college, including:

(1) Academic freedom - Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public. Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b). Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors. Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and all harassment, including sexual harassment. Chapter 132T-105 WAC describes the college's student conduct procedures for handling Title IX complaints.

(2) Due process - The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed. No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges. A student accused of violating this student code of conduct is entitled, upon request, to procedural due process as set forth in this chapter.

[]

NEW SECTION

WAC 132T-100-030 Definitions. The following definitions shall apply for the purpose of this student code of conduct unless such terms are defined otherwise herein:

Advisor - A person of the complainant's or respondent's choosing who can accompany the complainant or respondent to any conduct-related meeting or proceeding. This person cannot be involved in the case either as a witness or a college employee who has been involved in the matter. Chapter 132T-105 WAC describes the college's student conduct procedures for handling Title IX complaints.

Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

Board of trustees - The five member governance board appointed by the governor of the state of Washington for Walla Walla Community College District 20.

Business day - A weekday, excluding weekends, college holidays, or other days the college is closed, most often used to represent a timeline of 10 days or less.

Calendar day - A calendar day includes weekdays and weekends, most often used to represent a timeline of more than 10 days.

College - This chapter is specific to Walla Walla Community College District 20.

College employee - Any person employed by the college or volunteering at the college performing assigned duties.

College facilities - Any and all real and personal property controlled, rented, leased, or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to distance education classroom environments and agencies or institutions that have educational agreements with the college.

College premises - 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 including parking lots, adjacent streets, and sidewalks.

Complainant - A person who reports that a violation of the student code of conduct has occurred towards themselves, another person, a group of people, or college property. In matters of sexual misconduct outside of the Title IX definition, a complainant is an alleged victim of sexual misconduct. Chapter 132T-105 WAC describes the college's student conduct procedures for handling Title IX complaints.

Complaint - A description of facts that allege a violation of the student code of conduct or other college policy.

Conduct review officer - The vice president of student services or designee responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

Controlled substance - Any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

Disciplinary action - The process by which the student conduct officer imposes discipline against a student for a violation of the student code of conduct. Disciplinary action does not include instructional decisions and actions that are under the authority of faculty members and instructional administrators, such as determination of academic credit and grading. These determinations and any review or appeal of these are outside the scope of this chapter.

Disciplinary appeal - The process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 business days or an expulsion or dissolution of a student organization are heard by the student conduct board. Appeals of all other appealable disciplinary action shall be reviewed by the conduct review officer through brief adjudicative proceedings.

Policy - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

Preponderance of the evidence - The standard of proof used with all student disciplinary matters at the college that are within the jurisdiction of the student code of conduct, which means that the amount of evidence must be at 51 percent or more likely than not before a student is found responsible for a violation.

President - The chief executive officer of the college appointed by the board of trustees or, in such president's absence, the acting president or designee. The president is authorized to delegate any of their responsibilities and reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

RCW - Revised Code of Washington can be accessed at http://apps.leg.wa.gov/rcw/.

Respondent - The student(s) or student organization alleged to have violated a college policy, including this student code of conduct, and against whom disciplinary action is being taken or initiated. Chapter 132T-105 WAC describes the college's student conduct procedures for handling Title IX complaints.

Rules of the student code of conduct - The rules contained herein as now exist or which may be hereafter amended.

Service or filing - The process by which a document is officially delivered to a party. Service or filing is deemed complete and computation of time for deadlines begins upon personal delivery of the document or upon the date the document is electronically mailed and/or deposited into the mail. Documents required to be filed with the college such as requests for appeals, are deemed filed upon actual receipt by the office as designated herein during office hours.

Student - Any person taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, continuing education courses, contract courses, or otherwise. Persons are considered students for purposes of this chapter who withdraw after allegedly violating the student code of conduct, including individuals who are:

(a) Not officially enrolled for a particular term but who have a continuing relationship with the college; or

(b) Who have been notified of their acceptance for admission.

Student conduct board - Also referred to as the SCB is a three member panel which presides over cases that could result in a sanction of expulsion, suspension for more than 10 business days, revocation of a degree, and/or loss of recognition of a student organization using the full adjudicative process pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student conduct meeting - The conduct meeting with the student conduct officer using the brief adjudicative process to determine responsibility for violations of the student code of conduct.

Student conduct officer - Referred to as SCO, is the person designated by the college president to be responsible for the administration of the student code of conduct or designee. The SCO is authorized to delegate their responsibilities as may be reasonably necessary.

Student organization - Any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

Visitors - Guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

WAC - The Washington Administrative Code can be accessed at http://app.leg.wa.gov/wac/.

[]

NEW SECTION

WAC 132T-100-040 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures may be delegated by the president. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

[]

NEW SECTION

WAC 132T-100-045 Statement of jurisdiction. Refer to chapter 132T-105 WAC for Title IX violations jurisdiction as it applies to student conduct procedures related to Title IX.

(1) The student code of conduct shall apply to student conduct that occurs on college premises; at or in connection with college-sponsored activities; or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

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

activities. Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a 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. These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student code of conduct will be applied to conduct that occurs off campus.

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

[]

NEW SECTION

WAC 132T-100-050 Good standing. The award of a degree or certificate is conditioned upon the student's good standing in the college and satisfaction of all program requirements. Good standing means the student has resolved any acts of academic or behavioral misconduct and has complied with all sanctions imposed because of any misconduct. The college shall deny award of a degree or certificate if the student is dismissed from the college based on their misconduct. The college may withhold awarding a degree or certificate until the completion of the process set forth in the student code of conduct, including the completion of all sanctions imposed, if any.

[]

NEW SECTION

WAC 132T-100-060 Student conduct board. The college will have a student conduct board (SCB) composed of three members who shall be vice presidents, deans, or directors as designated by the college and trained to conduct the full adjudicative process. The SCB will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened. Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision, will be recused from the proceedings. One member, acting as the chair, will preside at the disciplinary hearing and will provide administrative oversight throughout the hearing process. Any three members constitute a quorum of the student conduct board and may act accordingly. The college may retain an advisor to the SCB, including an assistant attorney general. The conduct review officer (CRO) will convene the members of the SCB when necessary to adjudicate student code of conduct decisions. All SCB members will receive annual training in investigating and adjudicating student conduct matters in a manner that protects the safety and due process rights of the parties.

[]

NEW SECTION

WAC 132T-100-070 Decisions. All student conduct decisions in this chapter are made using the preponderance of evidence standard of proof. These decisions become final after 21 calendar days from the date of notification to the student unless a written appeal is filed prior to that final date. Decisions to document a complaint without a sanction are not eligible for appeal. All decision notifications by the student conduct officer, student conduct board, or president will include a statement of the decision, a summary of relevant facts upon which the decision was based, and the procedures for appealing that decision if applicable. The notification will be personally delivered, sent electronically to the student's college email address, or by mail to the student's most recent address on file with the college within 20 calendar days of the student conduct proceeding. Students are responsible for promptly notifying the college of changes to their mailing address.

(1) Decisions of findings or sanctions by the student conduct officer (SCO) which do not include sanctions of expulsion, suspension for more than 10 business days, withholding or revocation of a degree, or loss of recognition of a student organization may be appealed to the conduct review officer (CRO).

(2) Decisions of findings on all violations of the student code of conduct which include sanctions of expulsion, suspension for more than 10 business days, revocation of a degree, or loss of recognition of a student organization can be appealed to the student conduct board (SCB).

(3) Decisions of findings or sanctions from the CRO or SCB may be appealed to the college president. Decisions made by the college president are final.

[]

NEW SECTION

WAC 132T-100-100 Conduct—Rules and regulations. The attendance of a student at the college is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

(1) Conduct themselves in a responsible manner;

(2) Comply with rules and regulations of the college and its departments;

(3) Respect the rights, privileges, and property of other members of the academic community;

(4) Maintain a high standard of integrity and honesty; and

(5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

A student or student organization is responsible for the conduct of their invited guests, advisors, and representatives on or in college-owned or controlled property and at activities sponsored by the college or sponsored by any recognized college organization. All student clubs or organizations shall comply with the student code of conduct. When a member or members of a student club or organization violate the student code of conduct, the members and/or individual member may be subject to appropriate sanctions authorized by this student code of conduct. Any student or student organization that, either as a principal or participator or by aiding or abetting, commits or attempts to commit or who incites, encourages, or assists another person to commit a violation of any of the prohibited conduct, rules and regulations, or college policy will be subject to disciplinary action.

[]

NEW SECTION

WAC 132T-100-105 Abusive conduct. Physical and/or verbal abuse, threats, intimidation, harassment, online harassment, coercion, bullying, cyberbullying, retaliation, stalking, cyberstalking, and/or other conduct which threatens or endangers the health or safety of any person or which has the purpose or effect of creating a hostile or intimidating environment.

[]

NEW SECTION

WAC 132T-100-108 Abuse of the student conduct process. Abuse of the student conduct process which includes, but is not limited to:

(1) Failure to comply with any notice from a college employee to appear for a meeting or hearing as part of the student conduct process.

(2) Willful falsification, distortion, or misrepresentation of information during the conduct process.

(3) Disruption or interference with the orderly conduct of a college conduct proceeding.

(4) Filing fraudulent charges or initiating a college conduct proceeding in bad faith.

(5) Attempting to discourage an individual's proper participation in, or use of, the student conduct process.

(6) Attempting to influence the impartiality of a member of the college conduct process prior to, during, and/or after any college conduct proceeding.

(7) Harassment (written, verbal, or physical), retaliation, and/or intimidation of any person or persons involved in the conduct process prior to, during, or after any college conduct proceeding.

(8) Failure to comply with the sanction(s) imposed under the student code of conduct.

[]

NEW SECTION

WAC 132T-100-111 Academic integrity. Walla Walla Community College District 20 has adopted administrative policy 6010 - academic integrity and administrative procedure 6010 - academic integrity to enforce the institution's academic integrity rules. Please refer to them for additional information on the college's processes for handling academic integrity violations.

[]

NEW SECTION

WAC 132T-100-114 Dishonesty. Any acts of dishonesty that include, but are not limited to:

(1) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(2) Tampering with an election conducted by or for college students; or

(3) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college employee.

[]

NEW SECTION

WAC 132T-100-117 Obstructive or disruptive conduct. Conduct that is disorderly, lewd, indecent, or assisting or encouraging another person to obstruct or disrupt, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(1) 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

(2) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

[]

NEW SECTION

WAC 132T-100-120 Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal (written or oral) 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. For purposes of this code, bullying is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

[]

NEW SECTION

WAC 132T-100-123 Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

[]

NEW SECTION

WAC 132T-100-126 Property violation. Damage to, theft, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this section includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

[]

NEW SECTION

WAC 132T-100-129 Failure to comply with directive. Failure to comply with the directive of a college employee who is acting in the legitimate performance of their duties, including conduct directives contained in a program student handbook, and failure to properly identify oneself to such a college employee when requested to do so.

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NEW SECTION

WAC 132T-100-132 Weapons violations. A weapons violation includes the possession, exhibiting, displaying, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably

perceived as causing alarm for the safety of any person. The term weapons violation includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes a possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160. Examples include, but are not limited to:

(1) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on campus premises, except for authorized campus purposes, or unless prior written approval has been obtained from the college president or designee. Exceptions include:

(a) Commissioned law enforcement personnel or legally authorized military personnel acting within the scope of their employment;

(b) Private contracted security with expressed prior written permission from the college president or designee to possess firearms or dangerous weapons while employed by the college or for a permitted or contracted event;

(c) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view;

(d) Knives, tools, and other objects that are being used for a legitimate educational purpose as part of a college instructional program; or

(e) The president or designee may authorize permission of 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.

(2) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:

(a) The action of gunpowder or other explosives;

(b) The action of compressed air; or

(c) The power of springs or other forms of propulsion.

(3) The exhibition or display of a replica or a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

[]

NEW SECTION

WAC 132T-100-135 Hazing. Walla Walla Community College District 20 complies with RCW 28B.10.900 through 28B.10.903 and prohibits any hazing activities on or off the college premises. Hazing includes, but is not limited to, any individual or group initiation into a student organization or any pastime or amusement engaged in by said individual or with respect to such an organization that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm, to any student, employee, or visitor of the college. Refer to

RCW 28B.10.900 through 28B.10.903 for additional information on definitions of hazing and penalties under Washington state law.

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NEW SECTION

WAC 132T-100-138 Alcohol, drug, and tobacco violations. (1) Alcohol. The use, possession, delivery, sale of any alcoholic beverage except as permitted by law and applicable college policies or being observably under the influence of any alcoholic beverage.

(2) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(3) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(4) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, smoking devices, and related products on or in any college facility is prohibited. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, smokeless tobacco, vaporizers, and snuff. Exceptions include the person being in a designated smoking area or in a closed private vehicle when in compliance with applicable Washington state laws and college policies.

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NEW SECTION

WAC 132T-100-144 Discriminatory conduct. Conduct which harms or adversely affects any member of the college community or visitor because of the person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification as defined by the college's policies or local, state, or federal laws and regulations.

[]

NEW SECTION

WAC 132T-100-147 Sexual misconduct. The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence.

For a description of prohibited sexual conduct under Title IX refer to WAC 132T-105-020.

(1) Sexual harassment. Sexual harassment outside of the Title IX definition or is a one-time offense is included in this chapter. For this chapter, the term sexual harassment means:

(a) Unwelcome conduct of a sexual nature that is sufficiently serious as to deny or limit, or that does deny or limit based on sex, the ability of a student to participate in or benefit from the college's educational or social programs;

(b) Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature or that creates an intimidating, hostile, or offensive environment for students, employees, or visitors; and/or

(c) Alters the terms or conditions of employment for a college employee.

(2) Sexual intimidation. The term sexual intimidation outside of the Title IX definition means threatening or emotionally distressing conduct based on sex and including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(3) Sexual violence. Sexual violence outside of the Title IX definition is a type of sexual discrimination and sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

(a) Nonconsensual sexual intercourse outside of the Title IX definition is any sexual intercourse (anal, oral, or vaginal), however slight, that is without consent and/or by force by a person upon another person or with any object. 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 outside of the Title IX definition is any intentional sexual touching, however slight, by a person upon another person or with an object that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Domestic violence outside of the Title IX definition includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under the domestic or family violence laws of the state of Washington, or anyone else protected under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(d) Intimate partner violence outside of the Title IX definition is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.

(e) Stalking outside of the Title IX definition is intentional and repeated harassment or following another person which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed even if the perpetrator lacks such intent.

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NEW SECTION

WAC 132T-100-150 Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, or that does deny or limit, the ability of a student to participate in or benefit from the college's educational or social programs; that changes the terms or conditions of employment for a college employee; or that creates an intimidating, hostile, or offensive environment for students, employees, or visitors.

Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

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NEW SECTION

WAC 132T-100-153 Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person or their property as reprisal because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding. Retaliation may include adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

[]

NEW SECTION

WAC 132T-100-156 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:

(1) Unauthorized use of such resources or opening of a file, message, or other item;

(2) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(3) Unauthorized use or distribution of someone else's password or other identification;

(4) Use of such time or resources to interfere with someone else's work;

(5) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(6) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(7) Use of such time or resources in violation of applicable copyright or other laws;

(8) Adding to or altering the infrastructure of the college's electronic information resources without authorization; or

(9) Failure to comply with the college's electronic use policy.

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NEW SECTION

WAC 132T-100-159 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.

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NEW SECTION

WAC 132T-100-162 Safety violations. Nonaccidental conduct that interferes with or compromises any college policy, equipment, or procedure relating to the safety and security of the campus community or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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NEW SECTION

WAC 132T-100-165 Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or college rules or policies, including college traffic and parking rules.

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NEW SECTION

WAC 132T-100-168 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 program.

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NEW SECTION

WAC 132T-100-200 Student conduct process. As an agency of the state of Washington, the college's student conduct officer (SCO), student conduct board (SCB), conduct review officer (CRO), or president may be advised or represented by an assistant attorney general in any student code of conduct proceeding.

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NEW SECTION

WAC 132T-100-210 Violation of law and college discipline. College disciplinary proceedings may be used to determine a student's responsibility for conduct that potentially violates criminal law and this student code of conduct (that is, if both alleged violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code of conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings. Determinations made or sanctions imposed under this student code of conduct will not be subject to change because criminal charges arising out of the same facts that gave rise to violation of college rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant. In addition to initiating discipline proceedings for violation of the student code of conduct, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(1) Initiation of disciplinary action. A request for disciplinary action for violation(s) of the student code of conduct must be made to the student conduct officer (SCO) as soon as possible following the violation. Conduct proceedings may be initiated when the SCO receives any direct or indirect report of conduct that may violate this code, which includes, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party.

(a) The college may initiate disciplinary action under the student code of conduct regardless of whether or not the incident in question is the subject of criminal or civil proceedings.

(b) Any member of the college's administration, faculty, staff, or any student or nonstudent may make a request for disciplinary action, and it must be a good faith claim.

(c) Formal rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable persons would rely upon in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.

(2) The student conduct officer (SCO), student conduct board (SCB), or college president will determine the admissibility of evidence and may seek clarification from witnesses as needed.

(a) If the complaint indicates that the matter involves sexual misconduct as defined by chapter 132T-105 WAC, the SCO will forward

the complaint to the Title IX coordinator for review in accordance with chapter 132T-105 WAC.

(b) The SCO or designee will conduct an initial investigation of a complaint to determine whether it alleges conduct that may be prohibited by the student code of conduct. If it is determined through the initial investigation that the report has merit, the SCO will investigate to determine responsibility.

(c) Except in cases of sexual assault or sexual violence outside of the Title IX definition, the parties may elect to mediate the dispute, which shall be facilitated by the SCO or delegate.

(d) If the SCO has a conflict of interest or is the subject of a complaint by the student, the president or designee shall, upon request and at their discretion, designate another person to fulfill any such disciplinary responsibilities relative to the request for disciplinary action.

(3) Notification requirements.

(a) If it is determined through the initial investigation that an alleged violation of the student code of conduct might have occurred and which is not eligible for referral to the Title IX coordinator, the SCO will provide the following written notification:

(i) That a report has been submitted alleging conduct which violates the student code of conduct and that a conduct investigation has been initiated to determine responsibility;

(ii) The specific sections of the student code of conduct which are alleged to have been violated;

(iii) That the student may either accept responsibility for the alleged violations or request a conduct meeting with the SCO to present evidence to refute the report;

(iv) That the student may provide evidence such as names and contact information of witnesses to aid the conduct investigation;

(v) The possible sanction outcomes and that the actual sanctions will depend on the determination of responsibility pending the results of the investigation; and

(vi) That if the student fails to participate in any stage of the conduct proceedings or to request a conduct meeting within 15 calendar days from the date of the notice, the college may move forward with the conduct proceeding without their participation.

(b) If the student requests a conduct meeting within 15 calendar days of the notice, the student will be provided a written notice to appear for a conduct meeting. The notice to appear will be personally delivered, sent electronically to the student's college email address, or sent by mail to the most recent address in the student's record on file with the college, not later than 15 calendar days after the request for a conduct meeting. The notice will not be ineffective if presented later due to the student's absence. Such notice will:

(i) Set forth the specific provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violation(s), and a description of evidence, if any, of the violation.

(ii) Notify the student of the SCO's investigation and possible sanctions, if any.

(iii) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three business days, but within 30 calendar days of the date on the notice that was sent to the student to appear before the SCO. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.

(iv) Inform the student that failure to attend the conduct meeting will not stop the disciplinary process and may result in a transcript/registration hold being placed on the student's account and disciplinary action(s).

(v) Inform the student that they may be accompanied at the meeting by an advisor at their expense. The advisor cannot be a college employee or witness. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their advisor.

(vi) Inform the student that they may present evidence to support their assertions during the meeting.

(4) Student conduct meeting - Brief adjudicative process will follow WAC 132T-100-230.

(a) During the student conduct meeting, the student will be informed of the following:

(i) The specific acts and the provision(s) of college policy that the student is alleged to have violated;

(ii) The disciplinary process;

(iii) The range of sanctions which might result from the disciplinary process and that the actual sanctions will depend on the findings of responsibility; and

(iv) The student's right to appeal.

(b) The student will have the opportunity to review and respond to the allegation(s) and evidence and provide the SCO with relevant information, evidence and/or witnesses to the alleged violation(s), and/or explain the circumstances surrounding the alleged violation(s).

(c) The advisor may assist the student during the conduct meeting; however, the student is responsible for presenting their own information and evidence. The advisor may only communicate with the student they are advising. Any disruptions or failure to follow the conduct process and/or directions of the SCO may result in the advisor being excused from the meeting.

(5) Decision by the SCO.

(a) After interviewing the student or students involved and/or other individuals as appropriate, and considering the evidence, the SCO may take any of the following actions:

(i) Determine that the student is not responsible for a violation of the student code of conduct and thereby terminate the student conduct process;

(ii) Determine that the student is responsible for a violation of the student code of conduct and impose disciplinary sanctions as provided herein; or

(iii) Determine that further inquiry is necessary and schedule another meeting for reasonable cause.

(b) Notification of the decision by the SCO will be issued pursuant to WAC 132T-100-070 within 30 calendar days of the final student conduct meeting. Due to federal privacy law, the college may not disclose to the complainant any sanctions imposed on the responding student unless the complainant was the alleged victim of a violent crime as defined under the Federal Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and chapter 132T-90 WAC Implementation of the Family Educational Rights and Privacy Act, or the responding student consents to such disclosure. A copy of the decision notification will be filed with the office of the SCO.

(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal as provided herein.

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NEW SECTION

WAC 132T-100-220 Appeal process. The student may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer (CRO) within 10 business days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision shall be deemed final.

(1) The request for appeal must include a brief statement explaining the grounds for the appeal or why the student is seeking review. Disagreement with the finding and/or with the sanction(s) does not, by itself, represent grounds for appeal. Decisions may be appealed for one or more of the following:

(a) To determine whether there was a procedural error that substantially affected the outcome of the finding or sanctioning. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the sanction(s) imposed was appropriate and not excessively lenient or excessively severe for the violation of the student code of conduct for which the student was found responsible.

(c) To consider new information, sufficient to alter a decision, or other relevant facts not brought during fact finding, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation or fact-finding. The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(2) The parties to an appeal shall be the respondent and the conduct review officer.

(3) A student who timely appeals a disciplinary action has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(4) 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.

(5) Imposition of disciplinary action for violation of the student code of conduct shall be stayed pending appeal unless respondent has been summarily suspended.

(6) The student conduct board shall hear appeals from:

(a) The imposition of disciplinary suspension in excess of 10 business days;

(b) Dismissal;

(c) Withholding or revocation of a degree or certificate; or

(d) Loss of recognition of a student organization.

(7) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of 10 business days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and are not subject to appeal.

(9) Disciplinary decisions of the student conduct officer (SCO) may be appealed for review by the conduct review officer (CRO) using the brief adjudicative process. Disciplinary decisions of the CRO may be appealed for review by the college president using the brief adjudicative process.

(10) Appeals of disciplinary decisions of the SCO pursuant to sexual misconduct that is outside of the Title IX definition will be referred to the student conduct board (SCB) for a full adjudicative process in accordance with WAC 132T-100-240. The sanctions considered for appeal are:

(a) Suspension for more than 10 business days;

(b) Expulsion;

(c) Withholding or revocation of a degree or certificate; or

(d) Loss of recognition of a student organization.

(11) Disciplinary decisions by the SCB may be appealed for review by the college president using the brief adjudicative process. The college president's decision(s) is final.

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NEW SECTION

WAC 132T-100-230 Brief adjudicative process. (1) The brief adjudicative process is conducted in accordance with RCW 34.05.482 through 34.05.494.

(2) The student conduct officer (SCO) and conduct review officer (CRO) will use the brief adjudicative process to make decisions of findings of responsibility as provided in this code of conduct.

(3) The president will use the brief adjudicative process to review appeals of all disciplinary decisions made by the student conduct board (SCB).

(4) Within 20 calendar days of filing the appeal, the CRO or president, as applicable, shall review the record of the preceding conduct decision and all relevant information provided by the parties. Based on a preponderance of the evidence, the CRO or president shall decide to affirm, reverse, or modify the findings and/or sanctions. The CRO and president shall have the discretion to seek clarification from witnesses as needed.

(5) Notification of the decision will be issued pursuant to WAC 132T-100-070.

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NEW SECTION

WAC 132T-100-240 Full adjudicative process. The student conduct board (SCB) will use the following full adjudicative process to determine responsibility for serious violations which include sanctions of

suspension for more than 10 business days, expulsion, withholding or revocation of a degree or certificate, or loss of recognition of a student organization.

(1) The parties will be sent written notification of the SCB adjudication proceedings within 90 calendar days from the date of the filing of the appeal. The notification will contain the following:

(a) The time, date, and location of the hearing, which shall not be less than seven business days from the date of the notice of the hearing;

(b) The specific acts alleged and the provision(s) of college policy which those acts violated;

(c) The SCB procedures;

(d) The name and contact information for the SCB and their advisor, if any, representing the college. The notice will include the official title, work mailing address, and telephone number of each of these individuals;

(e) Unless otherwise ordered by the SCB chair, the name and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their advisors; and

(f) A statement that if a party fails to attend or participate in a hearing or other stage of this adjudicative proceeding, they may be held in default in accordance with chapter 34.05 RCW and/or the college may continue the student conduct process, including the hearing, despite the party's absence.

(2) The respondent and complainant have the right to be assisted by one advisor of their choice and at their own expense. The advisor must be someone who is not employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five business days prior to the hearing. The SCB hearing may not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chair. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their advisor. The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or advisor invited by the parties to the hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chair. The advisor may not disrupt or interfere with any aspect of the proceeding. The SCB chair shall have the right to impose reasonable conditions upon the participation of the advisor.

(3) The SCB and the parties will be provided reasonable access to the documentation and evidence which will be reviewed by the SCB, as well as the case file that will be retained by the SCO in accordance with applicable privacy laws.

(4) Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings. A party may make a written request to the SCB chair for the recusal of a SCB member no less than five business days prior to the hearing. The request must be for good cause, which must be shown by the party making the request. The SCB chair will consider the request and notify the student of their decision regarding the recusal prior to the hearing. If the SCB chair grants the recusal, a replacement for the recused SCB member will be made without unreasonable delay.

(5) The parties involved in the hearing will be required to submit their witness list and any evidence to be discussed at the hearing to the SCB chair no less than five business days prior to the hearing.

(a) Each party is allowed a maximum of three character witnesses to appear on their behalf.

(b) The parties must submit a witness list which contains a written statement from each witness that includes a brief description of the relevant information the witness will provide during the hearing.

(c) Witnesses not listed will not participate in the hearing.

(6) Discovery in the form of depositions, interrogatories, and medical examinations of parties are not permitted in student conduct adjudications. Other forms of discovery which ensure the prompt and thorough completion of the adjudication process may be permitted at the discretion of the SCB chair.

(7) Hearings will be closed to the public except if consented to by all parties and at the discretion of the SCB chair. Witnesses may be allowed in the hearing room only during the time in which they provide their statements to the SCB. The complainant and respondent, depending on their preference and subject to orders of a court of law, such as protection orders, may be present for and observe the entire hearing. At the discretion of the SCB chair, and where the rights of the parties will not be prejudiced, all or part of the hearing may be conducted by telephone, video conference, or other electronic means. Each party shall have the opportunity to hear and, if technically and economically feasible, to see the entire hearing while it is taking place. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the student conduct board (SCB).

(8) The SCB chair will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent and complainant, who disrupts a hearing or who fails to follow the directions of the SCB chair, may be excluded from the proceedings and may be subject to disciplinary action.

(9) Questions posed by any party to be answered by each other or by witnesses must be appropriate and respectful. The SCB chair may require any participant of the hearing to provide all questions in writing to the SCB chair. The SCB chair, if appropriate and at their sole discretion, will read the question to the individual to whom it is directed. Any question which the SCB chair has chosen not to read will be documented on record and kept within the case file. The SCB chair will decide matters related to the order of the proceedings.

(10) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed, except for the deliberations of the SCB. The record will be the property of the college.

(11) After weighing and considering the evidence, the SCB will decide by majority vote whether the respondent is responsible or not responsible for a violation of the student code of conduct. If there is a finding of responsibility for a violation, the SCB shall impose sanctions as set forth herein.

(12) The SCB's decision is made based on a preponderance of the evidence standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.

(13) The notice of decision of the SCB will be issued pursuant to WAC 132T-100-070. A copy of the SCB's decision will also be filed with the office of the SCO.

(14) Disciplinary action taken by the SCB is final unless the student exercises their right of appeal to the college president as provided herein.

[]

NEW SECTION

WAC 132T-100-290 Disciplinary sanctions and terms and conditions. The following disciplinary sanctions may be imposed upon students found to have violated the student code of conduct. If the respondent is found responsible for any violation, the student's past disciplinary record may be considered in determining an appropriate sanction.

(1) Sanctions.

(a) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) Loss of privileges. Denial of specified privileges for a designated period of time. Services and approval to be withdrawn may include, but are not limited to, intramural sports, information technology services, library and/or tutoring services, club activities, student leadership roles, college facility use and rental, and involvement in organizational activities.

(d) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn may include, but are not limited to, funding, information technology services, college facility use, and involvement in organizational activities.

(e) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which their continued enrollment is contingent.

(i) Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extracurricular activities or access to specific areas of the college's facilities.

(ii) Disciplinary probation may be for a specified term or for a period which may extend to graduation or award of a degree or certificate or other termination of the student's enrollment in the college.

(f) Removal from class. Behavior which has been disruptive to a class to the extent that the continued presence of the student in that class will impair, interrupt, or interfere with the instructor's ability to deliver instruction or other students' abilities to obtain instruction, will result in a withdrawal from that class without a refund or grade penalty.

(g) Disciplinary suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may apply. Students who are suspended may be denied access to all or any part of the campus or other facilities for the duration of the period of suspension. There will be no refund of tuition or fees for the quarter in which the action is taken.

(h) Expulsion. Permanent separation of the student from the college. Students who are expelled may be permanently denied access to all or any part of the campus or other facilities. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(i) Not in good standing. A student may be deemed not in good standing with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function or any forms of intercollegiate competition or representation.

(j) Revocation of admission and/or degree or certificate. Admission to the college or a degree or certificate awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining admission or the degree or certificate, or for other serious violations committed by a student prior to the award of a degree or certificate.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. A student may be required to make restitution for damage, loss, injury, or reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within 30 calendar days or any period set by the SCO, CRO, SCB, or president will result in an administrative hold being placed on the student's registration, which will prevent future enrollment until the restitution is complete.

(b) Discretionary conditions. Work assignments, essays, service to the college, or other related discretionary assignments.

(c) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessa-

ry releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until a future evaluation recommends that the student can reenter the college and comply with the rules of conduct.

(d) No contact order. An order that prohibits direct or indirect physical, verbal, written, and/or any other form of communication or contact with an individual or group. Direct and indirect contact includes, but is not limited to, phone calls, letters, going within sight of places of work or residence, email, social media, and modes of transportation.

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NEW SECTION

WAC 132T-100-292 Failure to comply. A student who fails to complete a sanction within the specified time frame may be charged with the student code of conduct violation named failure to comply. It is the student's responsibility to notify the student conduct officer if there are mitigating circumstances that prevent the student from completing the sanction(s) by a specified time frame. The student conduct officer (SCO) may extend the deadline time, at the SCO's discretion. It is the student's responsibility to complete all sanctions within the specified time frame to avoid a hold and/or a charge of failure to comply.

[]

NEW SECTION

WAC 132T-100-295 Disciplinary holds. A disciplinary hold will be placed on the records and registration of any student who:

(1) Fails to respond to a disciplinary notice by a judicial body. Any pending disciplinary matters must be resolved prior to reregistration or a student's graduation. No student will be allowed to register, graduate, obtain transcripts, or receive financial aid until the pending disciplinary case is completed;

(2) Is under an interim suspension from the college. The disciplinary hold will not be removed until the pending disciplinary case is completed;

(3) Is under suspension from the college. The disciplinary hold will not be removed until the student's suspension status has expired and/or the requirements as set forth by the judicial/appellate body for readmission have been successfully met; or

(4) Is under expulsion from the college. The disciplinary hold will only be removed, upon written request, for a student to obtain their transcript.

[]

NEW SECTION

WAC 132T-100-300 Interim measures. (1) Interim measures may be taken pending an investigation or adjudication if there is cause to believe that a student or student organization poses an imminent risk of harm to anyone in the college community; to property; or if the misconduct is so severe, persistent, or pervasive as to substantially disrupt or materially interfere with the college's operations and/or activities or with an individual's education/work activities. Interim measures may include counseling, extensions of time or other course related adjustments, modifications of class schedules, campus escort services, restrictions on contact between the parties, increased security and monitoring of certain areas of campus, restrictions on access to college-owned or operated property and/or events (notice of trespass), including classes, activities, and privileges, or any similar measures while the conduct process is pending.

(2) The student must adhere to the conditions of the interim restriction. If an interim restriction includes campus wide restricted access, the SCO may provide written permission for the student to enter campus for specific purposes such as meeting with the SCO or designee, faculty, staff, witnesses to prepare for an appeal, or to participate in the student conduct process.

(3) Notice of interim measure. The student will be provided written notice of the interim measure(s), stating:

(a) The time, date, place, and nature of the circumstances which created the need for interim measures.

(b) A description of any relevant evidence.

(c) The interim measure.

(d) The possible sanctions that could result from violation of the interim measure including arrest for criminal trespass if the student has been trespassed from campus.

(e) The student's right to either accept the interim measure or submit a written appeal of the interim measure within three business days to the conduct review officer (CRO). An appeal is waived if not submitted within the prescribed time. If the student appeals within the time frame, the interim measure shall remain in place during the appeal process. The CRO will provide written notification to the student of the decision to either maintain or discontinue the interim measure within five business days of receipt of the appeal.

(f) If the student has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter or remain on college premises has been withdrawn, that they shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the SCO as arranged by an appointment, or to attend a disciplinary hearing. The interim measure shall not replace the regular discipline process which shall proceed as quickly as feasible considering the interim restriction.

[]

NEW SECTION

WAC 132T-100-350 Summary suspension. Summary suspension is a temporary exclusion from specified college premises or denial of ac-

cess to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending. The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent has violated any provision of the student code of conduct; presents an immediate danger to the health, safety, or welfare of members of the college community; or poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(1) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice. The written notification shall be entitled notice of summary suspension and shall include the reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student code of conduct or the law allegedly violated; the date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and the conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer, conduct review officer, or to attend a disciplinary hearing.

(2) Hearing. The conduct review officer (CRO) shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. 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. 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. If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings. As soon as practicable following the hearing, the CRO shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal. To the extent permissible under applicable law, the CRO shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(3) Sexual misconduct. In cases involving allegations of sexual misconduct outside of the Title IX definition, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

[]

NEW SECTION

WAC 132T-100-400 Records of disciplinary action. (1) Records of all disciplinary actions will become part of the student's disciplinary record and kept by the office of the SCO. Disciplinary records are education records as defined by the Family Educational Rights and Privacy Act (FERPA) and shall be maintained and disclosed consistent with federal, state, and local laws; chapter 132T-90 WAC; and the college's educational records retention policies. All documentation of the student conduct proceedings will be preserved for at least seven years, except in disciplinary actions where no violation(s) of the student code of conduct was found. In such cases, only a record of the finding of no violation shall be maintained in the student's file or other college repository until:

(a) After the date of the student's graduation or award of a degree or certificate; or

(b) For one calendar year, whichever is shorter. All records of expulsion will be kept for 25 years from the date of the decision.

(2) The office of the SCO will keep accurate records of all disciplinary actions taken by that office. Such records will be placed in the student's disciplinary records. A student has a disciplinary record only after notification of a decision is made, and the student is found responsible for a violation of the student code of conduct. A case that is currently under investigation or is classified as documentation only is not a disciplinary record.

(3) The Family Educational Rights and Privacy Act provides that an educational institution may notify a student's parent or legal guardian if the student is under the age of 21 and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance.

[]

WSR 22-13-140
PROPOSED RULES
WALLA WALLA
COMMUNITY COLLEGE
[Filed June 20, 2022, 5:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-076.

Title of Rule and Other Identifying Information: Chapter 132T-105 WAC, Supplemental Title IX student conduct rules.

Hearing Location(s): On August 2, 2022, at 9:00 - 10:00 a.m. https://wwcc-edu.zoom.us/j/81670008195. Remotely via Zoom link.

Date of Intended Adoption: August 29, 2022.

Submit Written Comments to: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362, email WACrevisions@gmail.com, by July 18, 2022.

Assistance for Persons with Disabilities: Contact Jean Hernandez, email WACrevisions@gmail.com, doreen.kennedy@wwcc.edu, by July 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New chapter 132T-105 WAC to align with state/federal statutes and Walla Walla Community College's rules and regulations.

Reasons Supporting Proposal: See purpose above. Also explains Title IX rules for student alleged misconduct and how these regulations are applied by the college.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140; 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Name of Proponent: Walla Walla Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362; Implementation and Enforcement: Office of the President, Walla Walla Community College, 509-527-4274.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 20, 2022
Jean Hernandez

Contract Consultant

OTS-3855.1

Chapter 132T-105 WAC
SUPPLEMENTAL TITLE IX STUDENT CONDUCT RULES

NEW SECTION

WAC 132T-105-010 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 Walla Walla Community College District 20's standard disciplinary procedures, WAC 132T-100-200 through 132T-100-350, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132T-105-020 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Act Amendments 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:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of Walla Walla Community College District 20 on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that 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 18.

(d) Statutory rape. Consensual intercourse between a person who is 18 years of age or older and a person who is under the age of 16.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking 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.

(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.

[]

NEW SECTION

WAC 132T-105-030 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the Title IX coordinator determines that one or all of the

requirements under subsection (1) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student code of conduct, chapter 132T-100 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

NEW SECTION

WAC 132T-105-040 Initiation of discipline. (1) Upon receiving the 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 disciplinary 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 the 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);

(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) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

WAC 132T-105-050 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 10-08-040. In no event will the hearing date be set less than 10 business 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 business days before the hearing, the attorney files a notice of appearance with the student conduct 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.

[]

NEW SECTION

WAC 132T-105-060 Rights of parties. (1) The college's student code of conduct, chapter 132T-100 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. These parties are entitled to an advisor of their own choosing, and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 132T-105-070 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance. The student conduct 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 student conduct committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference. The student conduct committee may not make an inference regarding responsibility solely on a witness' or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence. The student conduct 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.

[]

NEW SECTION

WAC 132T-105-080 Initial order. (1) In addition to complying with this chapter, 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, including notices 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;

(e) Contains a statement of, and rationale for, the student conduct committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction(s) or condition(s) imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The student conduct committee chair will serve the initial order on the parties simultaneously.

[]

NEW SECTION

WAC 132T-105-090 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 132T-100-070 and 132T-100-220.

(2) The president or designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and if amended, set forth any new disciplinary sanction(s) and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

[]

WSR 22-13-141
PROPOSED RULES
WALLA WALLA
COMMUNITY COLLEGE
[Filed June 20, 2022, 5:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-077.

Title of Rule and Other Identifying Information: Chapter 132T-190 WAC, Policy on the use of [the] college facilities.

Hearing Location(s): On August 9, 2022, at 9:00 - 10:00 a.m., https://wwcc-edu.zoom.us/j/85358430820. Remotely via Zoom link.

Date of Intended Adoption: August 29, 2022.

Submit Written Comments to: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362, email WACrevisions@gmail.com, by July 18, 2022.

Assistance for Persons with Disabilities: Contact Jean Hernandez, email WACrevisions@gmail.com, doreen.kennedy@wwcc.edu, by July 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 132T-190 WAC to update with current statutes and align with Walla Walla Community College's rules and regulations.

Reasons Supporting Proposal: See purpose above. Also explains college's use of facilities regulations.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140.

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

Name of Proponent: Walla Walla Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Jean Hernandez, 500 Tausick Way, Walla Walla, WA 99362; Implementation and Enforcement: Office of the President, Walla Walla Community College, 509-527-1274.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 20, 2022
Jean Hernandez
Contract Consultant

OTS-3805.2

Chapter 132T-190 WAC
((~~POLICY ON THE~~)) USE OF THE COLLEGE FACILITIES

AMENDATORY SECTION (Amending Order 78-6, filed 10/24/77)

WAC 132T-190-010 Use of college facilities. ((~~Because the~~)) Walla Walla Community College ((~~is an educational institution provided and maintained by the people of the state, its campus, buildings, properties, and facilities shall be reserved at all times for those activities which either~~)) District 20 provides continued educational opportunities that are related directly to its educational mission or are justifiable on the basis of their contributions to the cultural, social, or economic development of ((~~the state~~)) its service district. In keeping with this general purpose, the college believes that facilities should be available for a variety of uses that are of benefit to the general public, provided said uses do not interfere with the educational mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

[Order 78-6, § 132T-190-010, filed 10/24/77.]

AMENDATORY SECTION (Amending Order 78-6, filed 10/24/77)

WAC 132T-190-020 Limitation of use to school activities. The college buildings, properties, and facilities, including those of the associated student body, may be used only for:

(1) The regularly established teaching, research, or public service activities of the college and its departments or related agencies.

(2) Cultural, educational, or recreational activities of the students ((~~or of the~~)), faculty, or staff.

(3) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the advancement of specific departmental professional interests, when arranged under the sponsorship of the college or its departments.

(4) Public events of a cultural or professional nature brought to the campus at the request of college departments or committees ((~~and presented with their active~~)), official sponsorship, and active participation.

(5) Activities or programs sponsored by educational institutions, by state or federal agencies, by charitable agencies ((~~or~~)), civic groups, or community organizations whose activities are of widespread public service and of a character appropriate to the college.

(6) College facilities may be assigned to college recognized student organizations for regular business meetings, social functions, and for programs open to the public. Any college recognized student organization may invite speakers from outside the college community to speak on campus subject to the availability of facilities and in compliance with administrative policies and procedures. The appearance of

an invited speaker on campus does not represent an endorsement by the college, its students, employees, or board of trustees, implicitly or explicitly, of the speaker's views.

(7) Reasonable conditions may be imposed to regulate the appropriateness of requests, of space assigned, time of use, and to ensure the proper maintenance of the facilities. Subject to the same limitations, individuals or groups within the college community may request use of college facilities. Arrangements by both organizations and individuals must be made through the designated administrative officer per the college's administrative policies and procedures.

(8) The college may restrict an individual's or group's use of college facilities if that person or group has, in the past, damaged or destroyed college facilities. Charges may be imposed for any damage or theft during the use of the facilities. The individual, group, or organization requesting space will be required to state in advance the general purpose of any meeting.

[Order 78-6, § 132T-190-020, filed 10/24/77.]

NEW SECTION

WAC 132T-190-025 Statement of intentions. The college neither intends nor desires to compete with any local agency or private enterprise in making its facilities available to the community. Privately operated facilities exist which are well qualified to best meet many community needs. The college encourages the community to patronize local businesses or agencies. With this approach, the college will work cooperatively with local private enterprise to the mutual benefit of all concerned.

[]

AMENDATORY SECTION (Amending WSR 82-24-021, filed 11/22/82)

WAC 132T-190-030 Limitation of use. (1) Primary consideration shall be always given ((~~at all times~~)) to activities specifically 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, research, or public service programs.

(2) ((~~In general, the~~)) College facilities ((~~of the college~~)) shall not be rented to((~~,~~)) or used by((~~,~~)) private or commercial organizations or associations, nor shall the facilities be rented to persons or organizations conducting programs for private gain.

(3) ((~~College facilities may not be used for commercial sales, advertising or promotional activities except when such activities clearly serve educational objectives (as in display of books of interest to the academic community or in the display or demonstration of technical or research equipment) and when they are conducted under the sponsorship or at the request of a college department or office or of the associated student body.~~

~~(4)~~)) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities. ((~~Rules, regulations, poli-~~

~~cies, procedures and practices regarding the use of college facilities shall not discriminate or promote discrimination among political parties, groups or candidates solely on the basis of their particular political viewpoint.~~

~~(5) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside rooms or facilities to which access by be granted.~~

~~(6) Because of limitations imposed by the constitution of the state of Washington, the facilities of the college may not be used for the purpose of religious worship, exercise or instruction, except as provided in WAC 132T-190-030(7).~~

~~(7) College facilities are available to all recognized student groups and faculty or staff organizations, subject to these general policies, except as provided in WAC 132T-190-030(6), and to the rules and regulations of the college governing student, faculty and staff affairs.~~

~~(8) Handbills, leaflets and similar materials, except those which are commercial, obscene, or unlawful in character, may be distributed on the campus by regularly enrolled students, members of recognized student organizations or college personnel.~~)) (4) Religious groups shall not, under any circumstances, use college facilities as a permanent meeting place. Use may be intermittent only.

(5) These rules shall apply to students, employees, and recognized student groups using college facilities.

(6) Materials may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the ((~~college~~)) college's affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or board of trustees. Persons and organizations not connected with the college may not distribute handbills and similar materials.

((~~(9)~~)) (7) Exterior audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer. Any sound amplification device may only be used at a volume that does not disrupt the normal use of classrooms, offices, laboratories, or any previously scheduled college event or activity.

((~~(10)~~)) (8) No person or group may use or enter onto college facilities having in their possession firearms, even ((~~though~~)) if licensed to do so, except commissioned police officers as prescribed by law.

(9) The right of peaceful dissent within the college community will be preserved. The college retains the right to take steps to ensure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent. Should any person, group, or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.

(10) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises; however, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.

(11) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions, or service related activities), groups must obey or comply with directions of the designated administrative officer, campus public safety officer, or individual in charge of the meeting.

(12) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions on the student(s) although remedies might be available through local law enforcement agencies.

[Statutory Authority: RCW 28B.50.140 and chapter 28B.19 RCW. WSR 82-24-021 (Resolution No. 83-4), § 132T-190-030, filed 11/22/82; Order 78-6, § 132T-190-030, filed 10/24/77.]

NEW SECTION

WAC 132T-190-035 Use of facilities for expressive activities. Walla Walla Community College District 20 provides guidelines for expressive activity on the college premises within this chapter and through its administrative policy and procedure on use of college facilities for expressive speech.

Students, employees, student organizations, and the public may use prespecified locations on college facilities for expressive activities between the hours of 7:00 a.m. and 10:00 p.m., Monday through Friday, when the college is open to the public and in accordance with the college's administrative policy and procedure on use of college facilities for expressive speech.

(1) The activity must be conducted in accordance with any other applicable board policies, college policies, and regulations at the college, including at the local, state, and federal levels.

(2) Expressive activities do not include obscene, lewd, or indecent conduct.

[]

AMENDATORY SECTION (Amending Order 78-6, filed 10/24/77)

WAC 132T-190-040 Administrative control. The board hereby delegates to the president authority to set up administrative policies and procedures for ((~~proper review of~~)) the use of college facilities; to establish, within the framework of these policies, regulations governing such use; and to establish rental schedules where appropriate. The college reserves the right to determine if an infraction of these rules has been committed.

[Order 78-6, § 132T-190-040, filed 10/24/77.]

AMENDATORY SECTION (Amending Order 78-6, filed 10/24/77)

WAC 132T-190-050 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate these regulations will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the ((~~campus~~)) president((~~,~~)) or ((~~his~~)) designee((~~,~~)) to leave the college property. Such a request ((~~will be deemed to~~)) prohibits the entry of, withdraws the license, or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW ((~~9.88.080~~)).

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) Any person who violates or is in violation of a district policy may have the license or privilege to be on district property revoked and ordered to withdraw from and refrain from entering upon any district property. Remaining on or reentering district property after one's license or privilege to be on district property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass.

[Order 78-6, § 132T-190-050, filed 10/24/77.]

NEW SECTION

WAC 132T-190-060 Control of pets on college facilities. Pets on the grounds of Walla Walla Community College District 20 shall be in the physical control of their owner in accordance with local and state laws, on a leash, and all waste must be removed from the college premises. Animals are prohibited from entering buildings operated by the college, except for service animals as an accommodation for a disability in accordance with the college's administrative policies and procedures.

[]

NEW SECTION

WAC 132T-190-070 Fee schedule and application process. The college's fee schedule for use of facilities and application process are available on its website.

[]

WSR 22-13-147
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed June 21, 2022, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-086.

Title of Rule and Other Identifying Information: Proposed fee increase for the following factory assembled structures (FAS) rules: WAC 296-150C-3000 Commercial coach fees, 296-150F-3000 Factory-built housing and commercial structure fees, 296-150I-3000 Penalties, fees, and refunds, 296-150M-3000 Manufactured/mobile home fees, 296-150P-3000 Recreational park trailer fees, 296-150T-3000 Factory-built temporary worker housing fees, and 296-150V-3000 Conversion vendor units and medical units—Fees.

Hearing Location(s): On July 27, 2022, at 9:00 a.m. Virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) by visiting https://teams.microsoft.com/l/meetup-join/19%3ameeting_YWQ5ZjkxNmMtMzRhOC00MWNiLTllZGMtYWFiNTY3Mjk1ODE3%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22acb1df6f-3588-43aa-b503-63aebce21ddc%22%7d; or calling (audio only) 1-253-372-2181, Phone Conference ID 572 550 411# (pound sign must be entered). The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: September 20, 2022.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m. on July 27, 2022.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by July 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose changes to FAS rules to increase fees by 5.86 percent and housekeeping changes. The fee increase is the maximum allowed by the state office of financial management for fiscal year 2023.

Reasons Supporting Proposal: A fee increase is needed to cover the operating expenses of the FAS program. The current fee levels are insufficient to cover current program expenses. The increase will ensure that revenues match expenditures, otherwise service levels may need to be reduced. Additionally, a housekeeping change is needed to correct a typo for rule clarity.

Statutory Authority for Adoption: Chapter 43.22 RCW, L&I; and chapter 43.22A WAC, Mobile and manufactured home installation.

Statute Being Implemented: Chapter 43.22 RCW, L&I; and chapter 43.22A WAC, Mobile and manufactured home installation.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Dale Partin, Acting Program Manager, Tumwater, Washington, 360-575-6933; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act, RCW 34.05.328 (5)(b)(vi) rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

June 21, 2022
Joel Sacks
Director

OTS-3806.1

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150C-3000 Commercial coach fees.

GENERAL INFORMATION			
Manufacture:		Manufacturer #	
1. Building use:		2. Building occupancy:	
3. Type of construction: VB		4. Square footage of building:	
5. Valuation of the building shall be based on the following: • Square footage of the building multiplied by the amount in the BVD valuation table			$ .....
6. **Total** valuation:			$ .....
PERMIT FEE			
7. Calculate from building permit fee table using the total valuation			$ .....
STRUCTURAL PLAN REVIEW FEE*			
8. One year design review:	(Valid for one year) multiply the total on line 7 by ((~~0.404~~)) 0.428		$ .....
9. Master plan review:	(Valid for the code cycle) multiply the total on line 7 by ((~~0.578~~)) 0.611		$ .....
* Minimum plan review fee is 2 1/2 hours x ((~~$87.90~~)) $93.00 per hour			
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)			
10. Fire and life-safety plan review:			
a. One year design—Multiply the total on line 7 by ((~~0.173~~)) 0.183			$ .....
b. Master plan design—Multiply the total on line 7 by ((~~0.289~~)) 0.305			$ .....
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy			
PLUMBING PLAN-REVIEW FEE			

11.	Plumbing ((~~$20.70 + $6.80~~)) $21.90 + $7.10 per fixture	$	.....
12.	Medical gas ((~~$20.70 + $6.80~~)) $21.90 + $7.10 per gas outlet	$	.....
DESIGN RENEWAL OR ADDENDUM			
13.	((~~11.56%~~)) 12.23% of building permit + ((~~$87.90~~)) $93.00	$	.....
RESUBMITTAL			
14.	((~~11.56%~~)) 12.23% of building permit + ((~~$87.90~~)) $93.00	$	.....
ELECTRICAL PLAN-REVIEW FEE			
15.	See WAC 296-46B-906(9) for electrical review fees		
INSIGNIA FEES			
16.	FIRST SECTION	$	((~~26.30~~)) 27.80
17.	EACH ADDITIONAL SECTION	$	((~~16.20~~)) 17.10
TOTAL FEES			
18.	**Total** plan review fees: Add lines 8 or 9 and 10 through 15	$	.....
19.	**Total fees due:** Includes plan fees and insignia fees	$	.....
20.	**Total amount paid**	$	.....

Square Foot Construction Costs (BVD Table)[a, b, c, and d]

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/ assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

a Private garages use utility, miscellaneous
b Unfinished basements (all use group) = $15.00 per sq. ft.
c For shell only buildings deduct 20 percent
d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
$1.00 to $500.00	$23.50
$501.00 to $2,000.00	$23.50 for the first $500.00 plus $3.05 for each additional $100.00, or fraction thereof, to and including $2,000.00
$2,001.00 to $25,000.00	$69.25 for the first $2,000.00 plus $14.00 for each additional $1,000.00, or fraction thereof, to and including $25,000.00
$25,001.00 to $50,000.00	$391.25 for the first $25,000.00 plus $10.10 for each additional $1,000.00, or fraction thereof, to and including $50,000.00
$50,001.00 to $100,000.00	$643.75 for the first $50,000.00 plus $7.00 for each additional $1,000.00, or fraction thereof, to and including $100,000.00
$100,001.00 to $500,000.00	$993.75 for the first $100,000.00 plus $5.60 for each additional $1,000.00, or fraction thereof, to and including $500,000.00
$500,001.00 to $1,000,000.00	$3,233.75 for the first $500,000.00 plus $4.75 for each additional $1,000.00, or fraction thereof, to and including $1,000,000.00
$1,000,001.00 and up	$5,608.75 for the first $1,000,000.00 plus $3.65 for each additional $1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((~~$43.40~~)) $45.90
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((~~1.156~~)) 1.223*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((~~1.156~~)) 1.223*	
RENEWAL FEE - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$87.90~~)) $93.00
RESUBMIT FEE - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$87.90~~)) $93.00
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$87.90~~)) $93.00
ELECTRONIC PLAN SUBMITTAL FEE ((~~$6.10~~)) $6.40 per page for the first set of plans and $1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, ((~~$20.70~~)) $21.90 + PER FIXTURE FEE of	((~~$6.80~~)) $7.10
MEDICAL GAS PLAN FEE, ((~~$20.70~~)) $21.90 + PER OUTLET FEE of	((~~$6.80~~)) $7.10
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((~~1.156~~)) 1.223	
One year design 15% of the permit fee × ((~~1.156~~)) 1.223	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	((~~$87.90~~)) $93.00 per hour

INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	((~~$87.90~~)) $93.00 per hour
RENEWAL FEE (minimum 1 hour)	((~~$87.90~~)) $93.00 per hour
ADDENDUM (minimum 1 hour)	((~~$87.90~~)) $93.00 per hour
PLANS APPROVED BY PROFESSIONALS - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$87.90~~)) $93.00
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee × ((~~1.156~~)) 1.223 +	((~~$87.90~~)) $93.00
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	((~~$87.90~~)) $93.00
TRAVEL (Per hour)	((~~$87.90~~)) $93.00
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	((~~$87.90~~)) $93.00
TRAVEL (Per hour**)	((~~$87.90~~)) $93.00
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	((~~$114.20~~)) $120.80
INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	((~~$26.30~~)) $27.80
EACH ADDITIONAL SECTION (NEW or ALTERATION)	((~~$16.20~~)) $17.10
REISSUED-LOST/DAMAGED	((~~$16.20~~)) $17.10
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((~~$87.90~~)) $93.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((~~$16.20~~)) $17.10
REFUND FEE	((~~$28.90~~)) $30.50

*Minimum plan review fee is 2 1/2 hours at the field technical service rate
**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments
***Per state guidelines
****Actual charges incurred

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150C-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150C-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150C-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150C-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150C-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapter 43.22 RCW. WSR 07-19-086, § 296-150C-3000, filed 9/18/07, effective 10/19/07. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150C-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150C-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150C-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150C-3000,

filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150C-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150C-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150C-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150C-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150C-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150C-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150C-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 70.87.030, 18.27.070, [18.27.]075, 43.22.350, [43.22.]355, [43.22.]434 and [43.22.]480(2). WSR 97-11-053, § 296-150C-3000, filed 5/20/97, effective 6/30/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150C-3000, filed 10/23/96, effective 11/25/96.]

OTS-3807.1

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION			
Manufacture:		Manufacturer #	
1.	Building use:	2. Building occupancy:	
3.	Type of construction:	4. Square footage of building:	
5.	Valuation of the building shall be based on the following: • Square footage of the building multiplied by the amount in the BVD valuation table		$ . . . . .
6.	**Total** valuation:		$ . . . . .
PERMIT FEE			
7.	Calculate from building permit fee table using the total valuation		$ . . . . .
STRUCTURAL PLAN REVIEW FEE*			
8.	One year design review:	(Valid for one year) multiply the total on line 7 by ((~~0.404~~)) 0.428	$ . . . . .
9.	Master plan review:	(Valid for the code cycle) multiply the total on line 7 by ((~~0.578~~)) 0.611	$ . . . . .
*	Minimum plan review fee is 2 1/2 hours x ((~~$98.90~~)) $104.60 per hour		

FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)		
10. Fire and life-safety plan review:		
a. One year design—Multiply the total on line 7 by ((~~0.173~~)) 0.183	$	. . . . .
b. Master plan design—Multiply the total on line 7 by ((~~0.289~~)) 0.305	$	. . . . .
• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy		
PLUMBING PLAN-REVIEW FEE		
11. Plumbing ((~~$20.70 + $6.80~~)) $21.90 + $7.10 per fixture	$	. . . . .
12. Medical gas ((~~$20.70 + $6.80~~)) $21.90 + $7.10 per gas outlet	$	. . . . .
DESIGN RENEWAL OR ADDENDUM		
13. ((~~11.56%~~)) 12.23% of building permit + ((~~$98.90~~)) $104.60	$	. . . . .
RESUBMITTAL		
14. ((~~11.56%~~)) 12.23% of building permit + ((~~$98.90~~)) $104.60	$	. . . . .
ELECTRICAL PLAN-REVIEW FEE		
15. See WAC 296-46B-906(9) for electrical review fees		
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)		
16. Notification to local enforcement agency fee:	$	((~~42.60~~)) 45.00
INSIGNIA FEES		
17. FIRST SECTION	$	((~~316.30~~)) 334.80
18. EACH ADDITIONAL SECTION	$	((~~28.20~~)) 29.80
TOTAL FEES		
19. **Total** plan review fees: Add lines 8 or 9 and 10 through 15	$	. . . . .
20. **Total fees due:** Includes plan fees, insignia fees, and NLEA fees	$	. . . . .
21. **Total amount paid**	$	. . . . .

Square Foot Construction Costs (BVD Table)[a, b, c, and d]

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/ assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

[a] Private garages use utility, miscellaneous
[b] Unfinished basements (all use group) = $15.00 per sq. ft.
[c] For shell only buildings deduct 20 percent
[d] N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
$1.00 to $500.00	$23.50
$501.00 to $2,000.00	$23.50 for the first $500.00 plus $3.05 for each additional $100.00, or fraction thereof, to and including $2,000.00
$2,001.00 to $25,000.00	$69.25 for the first $2,000.00 plus $14.00 for each additional $1,000.00, or fraction thereof, to and including $25,000.00
$25,001.00 to $50,000.00	$391.25 for the first $25,000.00 plus $10.10 for each additional $1,000.00, or fraction thereof, to and including $50,000.00
$50,001.00 to $100,000.00	$643.75 for the first $50,000.00 plus $7.00 for each additional $1,000.00, or fraction thereof, to and including $100,000.00
$100,001.00 to $500,000.00	$993.75 for the first $100,000.00 plus $5.60 for each additional $1,000.00, or fraction thereof, to and including $500,000.00
$500,001.00 to $1,000,000.00	$3,233.75 for the first $500,000.00 plus $4.75 for each additional $1,000.00, or fraction thereof, to and including $1,000,000.00
$1,000,001.00 and up	$5,608.75 for the first $1,000,000.00 plus $3.65 for each additional $1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((~~$77.20~~)) $81.70
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((~~1.156~~)) 1.223*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((~~1.156~~)) 1.223*	
RENEWAL FEE - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$98.90~~)) $104.60
RESUBMIT FEE - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$98.90~~)) $104.60
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$98.90~~)) $104.60

ELECTRONIC PLAN SUBMITTAL FEE ((~~$6.10~~)) $6.40 per page for the first set of plans and $1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, ((~~$20.70~~)) $21.90 + PER FIXTURE FEE of	((~~$6.80~~)) $7.10
MEDICAL GAS PLAN FEE, ((~~$20.70~~)) $21.90 + PER OUTLET FEE of	((~~$6.80~~)) $7.10
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((~~1.156~~)) 1.223	
One year design - 15% of the permit fee × ((~~1.156~~)) 1.223	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	((~~$98.90~~)) $104.60 per hour
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	((~~$98.90~~)) $104.60 per hour
RENEWAL FEE (minimum 1 hour)	((~~$98.90~~)) $104.60
ADDENDUM (minimum 1 hour)	((~~$98.90~~)) $104.60 per hour
PLANS APPROVED BY DESIGN PROFESSIONALS - 10% of permit fee × ((~~1.156~~)) 1.223 +	((~~$98.90~~)) $104.60
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee × ((~~1.156~~)) 1.223 +	((~~$98.90~~)) $104.60
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	((~~$98.90~~)) $104.60
TRAVEL (Per hour**)	((~~$98.90~~)) $104.60
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour**)	((~~$98.90~~)) $104.60
TRAVEL (Per hour**)	((~~$98.90~~)) $104.60
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	((~~$316.30~~)) $334.80
EACH ADDITIONAL SECTION	((~~$28.20~~)) $29.80
REISSUED-LOST/DAMAGED	((~~$77.20~~)) $81.70
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((~~$98.90~~)) $104.60
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	((~~$42.60~~)) $45.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((~~$15.70~~)) $16.60
REFUND FEE	((~~$28.90~~)) $30.50

*Minimum plan review fee is 2 1/2 hours at the field technical service rate.
**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
***Per state guidelines.
****Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150F-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150F-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, §

296-150F-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150F-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150F-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150F-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapter 43.22 RCW. WSR 07-05-063, § 296-150F-3000, filed 2/20/07, effective 4/1/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150F-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150F-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150F-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150F-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150F-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.340, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485, 2002 c 268, and chapter 43.22 RCW. WSR 03-12-044, § 296-150F-3000, filed 5/30/03, effective 5/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150F-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150F-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150F-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 70.87.030, 18.27.070, [18.27.]075, 43.22.350, [43.22.]355, [43.22.]434 and [43.22.]480(2). WSR 97-11-053, § 296-150F-3000, filed 5/20/97, effective 6/30/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150F-3000, filed 10/23/96, effective 11/25/96.]

OTS-3808.1

AMENDATORY SECTION (Amending WSR 22-01-193, filed 12/21/21, effective 1/31/22)

WAC 296-150I-3000 Penalties, fees, and refunds.

Penalties

(1) Monetary penalties for infractions listed in WAC 296-150I-0210 may be assessed for each violation of chapter 43.22A RCW in the following amount:

(a) **Failure to have a certified installer on the installation site whenever installation work is being performed:**	
First Final Violation	$250.00
Each Additional Final Violation	$1,000.00

(b) **Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:**

First Final Violation	Warning
Second Final Violation	$250.00
Third Final Violation	$500.00
Each Additional Final Violation	$1,000.00

(c) **Failure by a certified installer to affix a certification tag to an installed manufactured or mobile home:**

First Final Violation	Warning
Second Final Violation	$250.00
Third Final Violation	$500.00
Each Additional Final Violation	$1,000.00

(d) **Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:**

First Final Violation	Warning
Each Additional Final Violation	$250.00

(e) **Transfer of certification tag(s) from a certified installer to a noncertified installer:**

First Final Violation to Each Contractor in Violation	$250.00
Each Additional Final Violation to Each Contractor in Violation	$1,000.00

Fees and Refunds

The following fees are payable to the department in advance:

Installer test and certification	((~~$286.30~~)) $303.00
Homeowner test and approval	((~~$143.10~~)) $151.40
Manufactured home installation inspector test and certificate	((~~$143.10~~)) $151.40
Refund	((~~$28.50~~)) $30.10
Certification renewal	((~~$143.10~~)) $151.40
Continuing education class	((~~$57.10~~)) $60.40
Retake failed examination and training at scheduled class	((~~$42.80~~)) $45.30
Manufactured home installer training manual (on thumb drive)	((~~$14.20~~)) $15.00
Installer certification tag	((~~$9.90~~)) $10.40
L&I manufactured home installation inspection permit*	See WAC 296-150M-3000 for fee

* Only available when L&I has an interagency agreement with the local enforcement agency in accordance with WAC 296-150I-0370.

(2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer

if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

(a) Change to another scheduled training and examination; or

(b) Request a refund.

(4) An applicant who fails the examination shall not be entitled to a refund.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-01-193, § 296-150I-3000, filed 12/21/21, effective 1/31/22; WSR 21-07-126, § 296-150I-3000, filed 3/23/21, effective 4/23/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150I-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22A RCW. WSR 17-23-173, § 296-150I-3000, filed 11/21/17, effective 1/1/18. Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-3000, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-3000, filed 5/30/08, effective 6/30/08.]

OTS-3809.1

AMENDATORY SECTION (Amending WSR 22-01-193, filed 12/21/21, effective 1/31/22)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	((~~$192.20~~)) $203.40
RESUBMITTAL FEE	((~~$84.90~~)) $89.80
ADDENDUM (Approval expires on the same date as original plan.)	((~~$84.90~~)) $89.80
ELECTRONIC PLAN SUBMITTAL FEE ((~~$5.90~~)) $6.20 per page for the first set of plans and $1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	((~~$210.00~~)) $222.30
Heat pump	((~~$210.00~~)) $222.30
Air conditioning	((~~$210.00~~)) $222.30
Air conditioning with replacement furnace	((~~$210.00~~)) $222.30
Gas furnace installation includes gas piping	((~~$210.00~~)) $222.30
Fire safety inspection	((~~$210.00~~)) $222.30
MECHANICAL	
Gas*** piping	((~~$93.30~~)) $98.70
Wood stove	((~~$93.30~~)) $98.70
Pellet stove	((~~$93.30~~)) $98.70
Gas*** Room heater	((~~$93.30~~)) $98.70
Gas*** Decorative appliance	((~~$93.30~~)) $98.70
Range: Changing from electric to gas***	((~~$93.30~~)) $98.70
Gas*** Water heater replacement	((~~$69.90~~)) $73.90
ELECTRICAL	
Electric water heater replacement	((~~$116.80~~)) $123.60
Electric water heater ((~~ipeplacing~~)) replacing gas*** water heater	((~~$116.80~~)) $123.60
Each added or modified 120 volt circuit (maximum charge is two circuits)	((~~$116.80~~)) $123.60

Each added 240 volt circuit (for other than heat pumps, air conditioners, furnaces, water heaters, ranges, hot tubs or spas)	((~~$116.80~~)) $123.60
Hot tub or spa (power from home electrical panel)	((~~$116.80~~)) $123.60
Replace main electrical panel/permanently installed transfer equipment	((~~$116.80~~)) $123.60
Low voltage fire/intrusion alarm	((~~$116.80~~)) $123.60
Any combination of furnace, range and water heater changing from electric to gas***	((~~$116.80~~)) $123.60
PLUMBING	
Fire sprinkler system	((~~$262.40~~)) $277.70
Each added fixture	((~~$69.90~~)) $73.90
Replacement of water piping system (this includes two inspections)	((~~$234.20~~)) $247.90
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	((~~$104.70~~)) $110.80
Reroofs (may require a plan review)	((~~$187.10~~)) $198.00
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	((~~$187.10~~)) $198.00
Other structural changes (may require a plan review)	((~~$187.10~~)) $198.00
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (per hour*)	((~~$76.60~~)) $81.00
ALL REINSPECTIONS (per hour*)	((~~$76.60~~)) $81.00
Manufactured home installation inspection permit (only available in cities and counties with L&I inspection contract)	((~~$536.20~~)) $567.60
Refund	((~~$23.10~~)) $24.40
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	((~~$23.10~~)) $24.40
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	((~~$38.40~~)) $40.60
Second and succeeding inspections of unlabeled sections (per hour*)	((~~$84.90~~)) $89.80
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (per hour* separate from other fees)	((~~$84.90~~)) $89.80
Red tag removal at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Increased frequency surveillance (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Attendance at manufacturers training classes (per hour* only)	((~~$84.90~~)) $89.80
Subpart "I" investigations (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Alterations to a labeled unit (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
IPIA Issues/Responses (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Monthly surveillance during a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Monthly surveillance at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Plant certifications, recertifications and addenda updates (per hour* plus travel time* and mileage** per each inspector)	((~~$84.90~~)) $89.80
Response to HBT audit during a regularly scheduled IPIA audit (per hour*)	((~~$84.90~~)) $89.80
Response to HBT audit at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Alternative construction (AC) letter inspections at placement site (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
Replacement of HUD labels (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
State administrative agency (SAA) inspection fee (per hour* plus travel time* and mileage**)	((~~$84.90~~)) $89.80
State administrative agency (SAA) dispute resolution filing fee	((~~$84.90~~)) $89.80
State administrative agency (SAA) dispute resolution (per hour*)	((~~$84.90~~)) $89.80
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour plus travel time* and mileage**)	((~~$78.90~~)) $83.50
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (one free copy per year upon request)	((~~$15.40~~)) $16.30
VARIANCE INSPECTION FEE	((~~$187.10~~)) $198.00
HOMEOWNER REQUESTED INSPECTION	((~~$187.10~~)) $198.00
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	((~~$187.10~~)) $198.00
DEMOLITION OF A MOBILE/MANUFACTURED HOME	((~~$187.10~~)) $198.00
ENERGY CONSERVATION PERMIT	((~~$31.80~~)) $33.60

NOTE: Local jurisdictions may have other fees that apply.

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
**Per state guidelines.
***Gas means all gases; natural, propane, etc.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-01-193, § 296-150M-3000, filed 12/21/21, effective 1/31/22; WSR 21-07-126, § 296-150M-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150M-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150M-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150M-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150M-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150M-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapter 43.22 RCW. WSR 07-05-063, § 296-150M-3000, filed 2/20/07, effective 4/1/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150M-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW and 2005 c 399. WSR 05-24-020, § 296-150M-3000, filed 11/29/05, effective 1/1/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150M-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150M-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.340, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485, 2002 c 268, and chapter 43.22 RCW. WSR 03-12-044, § 296-150M-3000, filed 5/30/03, effective 5/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150M-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150M-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150M-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150M-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 70.87.030, 18.27.070, [18.27.]075, 43.22.350, [43.22.]355, [43.22.]434 and [43.22.]480(2). WSR 97-11-053, § 296-150M-3000, filed 5/20/97, effective 6/30/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150M-3000, filed 10/23/96, effective 11/25/96.]

OTS-3810.1

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	((~~$40.00~~)) $42.30
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	((~~$113.50~~)) $120.10
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	((~~$150.10~~)) $158.80
RESUBMITTAL FEE	((~~$81.20~~)) $85.90
ADDENDUM (Approval expires on same date as original plan.)	((~~$81.20~~)) $85.90
ELECTRONIC PLAN SUBMITTAL FEE ((~~$5.90~~)) $6.20 per page for the first set of plans and $1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((~~$81.20~~)) $85.90
TRAVEL (per hour)*	((~~$81.20~~)) $85.90
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	((~~$81.20~~)) $85.90
TRAVEL (per hour)*	((~~$81.20~~)) $85.90
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((~~$121.20~~)) $128.30
INSIGNIA FEES:	
STATE CERTIFIED	((~~$28.90~~)) $30.50
ALTERATION	((~~$40.00~~)) $42.30
REISSUED-LOST/DAMAGED	((~~$14.80~~)) $15.60
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((~~$81.20~~)) $85.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((~~$15.00~~)) $15.80
REFUND FEE	((~~$28.90~~)) $30.50

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
**Per state guidelines.
***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150P-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150P-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150P-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150P-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150P-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150P-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150P-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150P-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075,

70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150P-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150P-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150P-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150P-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150P-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150P-3000, filed 7/31/97, effective 12/1/97.]

OTS-3811.1

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	((~~$60.80~~)) $64.30
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	((~~$176.60~~)) $186.90
RENEWAL FEE	((~~$60.80~~)) $64.30
RESUBMIT FEE	((~~$87.90~~)) $93.00
ADDENDUM (Approval expires on same date as original plan)	((~~$87.90~~)) $93.00
ELECTRONIC PLAN SUBMITTAL FEE ((~~$6.00~~)) $6.30 per page for the first set of plans and $1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	((~~$104.20~~)) $110.30
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	((~~$16.20~~)) $17.10
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	((~~$87.90~~)) $93.00
TRAVEL (Per hour)*	((~~$87.90~~)) $93.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	((~~$87.90~~)) $93.00
TRAVEL (Per hour*)	((~~$87.90~~)) $93.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	

AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	((~~$247.80~~)) $262.30
EACH ADDITIONAL SECTION	((~~$23.80~~)) $25.10
REISSUED-LOST/DAMAGED	((~~$60.80~~)) $64.30
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	((~~$256.70~~)) $271.70
Additional Feeder	((~~$48.60~~)) $51.40
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	((~~$136.00~~)) $143.90
Additional Feeder	((~~$34.40~~)) $36.40
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	((~~$87.90~~)) $93.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free per year)	((~~$16.20~~)) $17.10
REFUND FEE	((~~$28.90~~)) $30.50

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
**Per state guidelines.
***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150T-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150T-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150T-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150T-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150T-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150T-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150T-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150T-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150T-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150T-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150T-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150T-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150T-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.480. WSR 99-12-079, § 296-150T-3000, filed 5/28/99, effective 6/28/99.]

OTS-3812.1

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150V-3000 Conversion vendor units and medical units—Fees.

INITIAL FILING FEE	((~~$43.40~~)) $45.90
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	((~~$301.40~~)) $319.00
INITIAL FEE - ONE YEAR DESIGN	((~~$123.10~~)) $130.30
RENEWAL FEE	((~~$52.20~~)) $55.20
RESUBMIT FEE	((~~$87.90~~)) $93.00
ADDENDUM (Approval expires on same date as original plan)	((~~$87.90~~)) $93.00
ELECTRONIC PLAN SUBMITTAL FEE ((~~$6.00~~)) $6.30 per page for the first set of plans and $1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	((~~$134.20~~)) $142.00
INITIAL FEE - ONE YEAR DESIGN	((~~$81.10~~)) $85.80
RENEWAL FEE	((~~$81.10~~)) $85.80
ADDENDUM	((~~$81.10~~)) $85.80
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	((~~$16.20~~)) $17.10
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	((~~$87.90~~)) $93.00
TRAVEL (Per hour)*	((~~$87.90~~)) $93.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((~~$131.60~~)) $139.30
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	((~~$25.20~~)) $26.60
REISSUED-LOST/DAMAGED	((~~$16.20~~)) $17.10
EXEMPT	((~~$43.40~~)) $45.90
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	((~~$87.90~~)) $93.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((~~$16.20~~)) $17.10
REFUND FEE	((~~$28.90~~)) $30.50

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
**Per state guidelines.
***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150V-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150V-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150V-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150V-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150V-3000, filed 5/30/08, effective 6/30/08. Statutory Authority:

Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150V-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150V-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150V-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150V-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150V-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150V-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150V-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150V-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150V-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapter 43.22 RCW. WSR 99-18-069, § 296-150V-3000, filed 8/31/99, effective 10/1/99.]

WSR 22-13-151
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed June 21, 2022, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-074.

Title of Rule and Other Identifying Information: WAC 458-20-145 State and local sales and use tax—Sourcing retail sales—Sourcing for use tax purposes, is the rule that explains how to determine where sales of tangible personal property, retail services, extended warranties, digital products, digital codes, and leases of tangible personal property are sourced for purposes of the business and occupation tax, retail sales tax, and use tax.

Hearing Location(s): On July 27, 2022, at 1:00 p.m., virtual meeting. Contact Sierra Crumbaker at SierraC@dor.wa.gov for log-in/dial-in information.

Date of Intended Adoption: August 19, 2022.

Submit Written Comments to: Patrick Watkins, P.O. Box 47453, Olympia, WA 98504-7453, email patrickw@dor.wa.gov, fax 360-534-1539, by August 5, 2022.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating this rule for a number of reasons, including the following: (a) Incorporating existing provisions for sourcing sales of tangible personal property found in WAC 458-20-193 (Part 2), (b) incorporating provisions and examples that clarify the department's existing historical policies for use tax sourcing, (c) reorganizing and reformatting to current standards, (d) clarifying existing provisions and examples in the rule to ensure the department's existing historical policies are clearly represented, (e) retitling the rule to better represent the content and scope of the rule, and (f) clarifying or incorporating any other relevant or related information based on external stakeholder comments.

Reasons Supporting Proposal: Taxpayers will find that the updates to the rule will clarify statutory language while providing examples that will assist with reporting requirements for business and occupation tax, retail sales tax, and use tax.

Statutory Authority for Adoption: RCW 82.01.060(2), 84.32.300.

Statute Being Implemented: RCW 82.32.730, 82.04.040, 82.04.050, 82.08.020, 82.12.010, 82.12.020, 82.12.0255, 82.14.010, 82.14.030, 82.14.490.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick Watkins, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1539; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how

costs were calculated. The proposed rule does not impose more-than-minor costs on taxpayers, as it does not propose any requirements not already provided for in statute. The proposed rule does not impose new fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

June 21, 2022
Atif Aziz
Rules Coordinator

OTS-3481.5

AMENDATORY SECTION (Amending WSR 08-12-035, filed 5/30/08, effective 6/30/08)

WAC 458-20-145 ((~~Local sales and use tax.~~)) Sourcing retail sales for business and occupation tax and state and local retail sales tax—Sourcing of use tax for purchasers.

Part 1. General Information.

((~~(1)~~)) (101) **Introduction.** ((~~Effective July 1, 2008, Washington implements new rules governing how local retail sales taxes are sourced within Washington. See RCW 82.32.730 and 82.14.490. These rules govern where the local retail sales tax attributable to the sale of tangible personal property, retail services, extended warranties, and the lease of tangible personal property is sourced.~~)) This rule explains how to determine where sales of tangible personal property, retail services, extended warranties, digital products, digital codes, and leases of tangible personal property are sourced for purposes of the business and occupation (B&O) tax and the combined state and local retail sales tax. See RCW 82.32.730. This rule also explains how to determine where use occurs for purposes of sourcing combined state and local use tax.

(102) **Organization of rule.** This rule is divided into five parts as follows:

Part 1. General information.

Part 2. General sourcing rules for most retail sales of tangible personal property, extended warranties, digital products, digital codes, and other retail services.

Part 3. Special sourcing rules for retail sales of certain goods and services.

Part 4. Sourcing rules for leases and rentals of tangible personal property.

Part 5. Sourcing rules for use tax purposes - Purchasers.

(103) **Other rules may apply.** Readers may also want to refer to the following rules:

(a) WAC 458-20-153 Funeral establishments.

(b) WAC 458-20-15502 Taxation of computer software.

(c) WAC 458-20-15503 Digital products.

(d) WAC 458-20-158 Florists and nurserymen.

(e) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(f) WAC 458-20-245 Taxation of competitive telephone service, telecommunications service, and ancillary service.

(104) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(105) **Definitions.** The following definitions apply to this rule:

(a) **"Extended warranty"** means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or at a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).

(b) **"Florist"** means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes. See RCW 82.32.730 (9)(e). "Primary business activity" means more than 50 percent of a person's gross sales revenue is derived from the activity.

(c) **"Lease"** and **"rental"** mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. See RCW 82.04.040 for a complete definition of the term "lease or rental."

(d) **"Motor vehicle"** generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. See RCW 46.04.320. A vehicle is a device capable of being moved upon a public highway. See RCW 46.04.670.

(e) **"Primary property location"** means the property's physical address as provided by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith. The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple jurisdictions.

(f) **"Purchaser"** has the same meaning as in RCW 82.08.010 and 82.12.010, and includes the purchaser's agent.

(g) **"Purchaser's donee"** means a person, other than the purchaser, to whom the purchaser directs shipment of goods (e.g., a gift recipient).

(h) **"Receive"** and **"receipt"** mean taking possession of, or having dominion and control over, tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730 (9)(f). The term also means making first use of digital automated services, or taking possession or making first use of digital goods or digital codes, whichever comes first.

(i) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes, but is not limited to, sales and leases of tangible personal property, sales of retail services, sales of extended warranties, digital goods, digital codes, and digital automated services.

(j) **"Retail service"** means those services described in RCW 82.04.050 as retail sales. This definition includes retail sales of labor and services rendered with respect to tangible personal property.

(k) **"Semi-trailer"** means every vehicle without motive power designed to be drawn by a vehicle, motor vehicle, or truck tractor and so constructed that an appreciable part of its weight and that of its load rests upon and is carried by such other vehicle, motor vehicle, or truck tractor. See RCW 46.04.530.

(l) **"Shipping company"** means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated or unaffiliated with the seller or purchaser. A "shipping company" is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively.

(m) **"Source," "sourced,"** or **"sourcing"** refer to the location (as in a local taxing district, jurisdiction, or authority) where a sale or lease is deemed to occur and is subject to retail sales tax. It also, for purposes of this rule, refers to the location where "use" is deemed to occur for purposes of use tax paid by purchaser as a consumer. The department assigns location codes to identify the specific taxing locations that receive the local taxes. These location codes are used on tax returns to accurately identify the correct taxing location and tax rate.

Sellers and their agents are responsible for determining the appropriate tax rate for all their taxable retail sales ((~~taxable~~)) in Washington. Sellers and their agents are also responsible for collecting from their purchasers the correct amount of tax due upon each sale and remitting that tax to the department.

((~~Throughout this section the department provides a number of examples that identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined separately after a review of all of the facts and circumstances.~~

~~This section is divided into four subsections. Subsection (1) contains this introduction, a description of department resources available to assist taxpayers in performing local sales tax sourcing, and certain key terms. Subsection (2) describes Washington's sourcing rules that become effective July 1, 2008. Subsection (3) provides information relating to the sourcing of telecommunication services. Finally, subsection (4) briefly explains Washington's use tax rule.~~

~~(a) **What resources does the department offer to help sellers determine their local retail sales tax sourcing?** The department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:~~

~~(i) **The "*Local Sales & Use Tax Flyer*."** This publication is updated every quarter and is mailed to select taxpayers reporting on paper returns. It is also available online on the department's website at www.dor.wa.gov under "get a form or publication." It provides a listing of all local taxing jurisdictions, location codes, and their corresponding tax rates.~~

~~(ii) **The online sales and use tax rate look up application (GIS).** This is an online application that provides current and past sales and use tax rates and location codes based on an address or a selected location on a map. It also allows users to download data that they can~~

~~incorporate into their own systems to retrieve the proper tax rate for a specific address.~~

~~(iii) **Taxing jurisdiction maps.** The department has a selection of maps of various taxing jurisdictions that identify the boundaries of a specific taxing jurisdiction.~~

~~(b) **Of what key terms should I be aware when reading this section?**~~

~~(i) **"Receipt"** and **"receive"** mean taking possession of tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730 (8)(d).~~

~~(ii) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes the following three types of retail sales: Sales and leases of tangible personal property; sales of retail services; and sales of extended warranties.~~

~~(iii) **"Retail service"** means those services described in RCW 82.04.050 as retail sales. This definition includes retail sales of labor and services rendered with respect to tangible personal property.~~

~~The following is a nonexclusive list of retail services, many of which are addressed in detail in other rules adopted by the department:~~

~~• Constructing, remodeling, or painting buildings (e.g., see WAC 458-20-170);~~

~~• Land clearing and earth moving (e.g., see WAC 458-20-172);~~

~~• Landscape maintenance and horticultural services (e.g., see WAC 458-20-226);~~

~~• Repairing or cleaning equipment (e.g., see WAC 458-20-173);~~

~~• Lodging provided by hotels and motels (e.g., see WAC 458-20-166);~~

~~• Amusement and recreation services such as golf, bowling, swimming, and tennis (e.g., see WAC 458-20-183);~~

~~• Physical fitness services such as exercise classes, personal trainer services, and the use of exercise equipment (e.g., see WAC 458-20-183); and~~

~~• Abstract, title insurance, or escrow services (e.g., see WAC 458-20-156).~~

~~(iv) **"Tangible personal property"** means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses and includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.~~

~~(v) **"Extended warranty"** is an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).~~

~~(vi) **"Motor vehicle"** generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. Motor vehicles are vehicles capable of being moved upon public ways. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW~~

~~46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. For more information see RCW 46.04.320 "Motor vehicle" and RCW 46.04.670 "Vehicle."~~

~~(vii) **"Primary property location"** is the property's physical address as provided by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith. The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple jurisdictions.~~

~~(viii) **"Transportation equipment"** refers to:~~

~~(A) Locomotives and railcars used to carry people or property in interstate commerce; and~~

~~(B) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses registered through an international registration plan and operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation (or other federal authority) to engage in carrying people or property in interstate commerce (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions); and~~

~~(C) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and~~

~~(D) Containers designed for use on and component parts attached or secured on the items described in (b)(viii)(A) through (C) of this subsection (1). RCW 82.32.730 (8)(e).~~

~~(2)~~)) (n) **"Tangible personal property"** means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses and, for sales and use tax purposes, includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.

(o) **"Trailer"** means every vehicle without motive power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests upon or is carried by such motor vehicle, but does not include a municipal transit vehicle, or any portion thereof. See RCW 46.04.620.

(p) **"Transportation equipment"** means:

(i) Locomotives and railcars used to carry people or property in interstate commerce;

(ii) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses that are:

(A) Registered through an International Registration Plan (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions);

(B) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation (or other federal authority) to engage in carrying people or property in interstate commerce;

(iii) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and

(iv) Containers designed for use on, and component parts attached or secured on, the items described in (p)(i) through (iii) of this subsection. RCW 82.32.730 (8)(e).

(106) **Other resources.** The department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:

(a) **The "*Local Sales & Use Tax Flyer*."** This publication is updated every quarter and is available online on the department's website at www.dor.wa.gov. The publication provides a listing of all local taxing jurisdictions, location codes, and their corresponding tax rates.

(b) **The online sales and use tax rate look up application (GIS).** This is an online application that provides current and past sales and use tax rates and location codes based on an address or a selected location on a map. It also allows users to download data that they can incorporate into their own systems to retrieve the proper tax rate for a specific address. Visit the department's website at dor.wa.gov for more information on this topic.

Part 2. General Sourcing Rules for Most Retail Sales.

(201) **State and local retail sales tax sourcing rules for most retail sales.** ((~~This subsection~~)) Part 2 of this rule describes Washington's retail sales tax general sourcing rules((~~. Subsection (2)(a) of this section lists the general sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties. Subsection (2)(b) of this section provides special sourcing rules related to certain "florist sales" and the sale of watercraft; mobile, modular, and manufactured homes; and motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. Subsection (2)(c) of this section addresses the sourcing rules applicable to leases of tangible personal property.~~

~~(a) **Sales of tangible personal property, retail services, and extended warranties.** This subsection describes the sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties.~~

~~These~~)) for sales of tangible personal property, extended warranties, other retail services, and transportation equipment. The sourcing provisions for Washington's retail sales tax in this Part 2 also apply to retailing B&O tax for retail sales. Part 3 of this rule details exceptions to the general sourcing guidance in this Part 2.

This part also generally applies to retail sales of digital products and digital codes. Readers should refer to WAC 458-20-15503, which extensively addresses the sourcing of digital products and codes. This rule does not address sourcing under facts that are unique to sales of digital products and codes.

General sourcing rules apply in a descending order of priority((~~. This means that the seller first should determine if (a)(i) of this subsection (Rule 1 below) applies. If it does apply, then the seller must source the sale under Rule 1. If Rule 1 does not apply, then the seller must source the sale to the location required under sourcing Rule 2 (below), and so forth until the applicable sourcing rule is determined.~~

~~If the seller ships or delivers tangible personal property to a customer who receives that property outside Washington, the sale is deemed to have taken place outside Washington and is not subject to Washington state or local retail sales tax.~~

~~The following rules apply when sourcing retail sales in Washington:~~

~~(i)~~ **~~Rule 1: Seller's business location.~~** ~~If a purchaser receives tangible personal property, a retail service, or an extended warranty at the seller's business location, the sale is sourced to that business location.~~

~~In the case of retail services, this sourcing rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop, a hotel or motel, a health club providing physical fitness services, an auto parking service, a dry-cleaning service, and a storage garage. While these types of retail services are usually received at the seller's place of business, if services are received at a location other than the seller's place of business, then alternate sourcing rules will apply.~~

~~(A)~~ **~~Examples: Rule 1 - Tangible Personal Property.~~**

~~(1) Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location. The seller must source the sale to the Renton location.~~

~~(2) Mary, a Walla Walla resident, buys a prewritten software program from a store located in Cheney. Mary receives a compact disc containing the software at the Cheney location. The seller must source the sale to the Cheney location.~~

~~(3) Trains, Inc., an Auburn business, buys a locomotive that qualifies as transportation equipment. Trains, Inc. receives the locomotive in Fife at the seller's place of business. The seller must source the sale to the Fife location.~~

~~(B)~~ **~~Examples: Rule 1 - Retail Services.~~**

~~(1) Barbara, a Longview resident, takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later Barbara picks up the car from the Centralia location. The services are received in Centralia. The mechanic must source the sale to the Centralia location.~~

~~(2) Rex, a Seattle resident, drops off a roll of film at a photo developer located in Bellevue. Rex picks up the developed film from the Bellevue location. The services are received in Bellevue. The developer must source the sale to the Bellevue location.~~

~~(3) Bob, a Pasco resident, takes shirts to a drycleaner located in Kennewick. The drycleaner cleans and presses the shirts. Bob then picks up the shirts in Kennewick the following week. The services are received in Kennewick. The seller must source the sale to the Kennewick location.~~

~~(C)~~ **~~Example: Rule 1 - Extended Warranties.~~**

~~(1) Saffron, a Des Moines resident, buys a computer from a Burien computer outlet. When purchasing the computer Saffron also purchases and receives a five-year extended warranty for the computer at the Burien outlet. The seller must source the sale of the extended warranty and computer to the Burien location.~~

~~(ii)~~ **~~Rule 2: Tangible personal property, retail services, or extended warranties received at a location other than the seller's place of business.~~** ~~If the purchaser receives tangible personal property, retail services, or an extended warranty at a location other than the seller's place of business (and sourcing Rule 1 therefore does not ap-~~

~~ply), then the sale must be sourced to the location where the purchaser, or the purchaser's donee (e.g., a gift), receives such property, retail service, or extended warranty. This location can be a location indicated in instructions, known to the seller, for delivery to the purchaser or donee.~~

~~Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell), earth movers, and house wreckers are the types of retail service providers that typically will source sales under this sourcing Rule 2 (presuming they provide their services at a location other than their place of business).~~

~~(A) **Examples: Rule 2 - Tangible Personal Property.**~~

~~(1) Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence. Wade receives the furniture at his location in Seattle. The seller must source the sale to Wade's Seattle residence.~~

~~(2) Joanne, a Port Angeles business owner, purchases a prewritten software program online from a store located in Sequim. Joanne receives the software at her home address in Port Angeles. The seller has information identifying the location where the software is electronically received by Joanne in Port Angeles. The seller must source the sale to Joanne's Port Angeles home location.~~

~~(3) Jean, a Tumwater resident, buys prewritten software to detect online security threats. The seller is a store located in Bothell. As part of the purchase price, Jean receives prewritten software updates. All software is electronically delivered. The seller does not know where the software is electronically delivered. However, the purchase order discloses a ship-to address where the software will be received in Tumwater. The seller must source the sale to Jean's ship-to address as this address represents a delivery location indicated in instructions for delivery to Jean. The seller must source the sale to the Tumwater location according to the ship-to address.~~

~~(4) Karl, a Spokane Valley resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Karl's home in Spokane Valley. Karl receives the mattress at his home location in Spokane Valley. The seller must source the sale to the Spokane Valley home location.~~

~~(5) George, an Olympia resident, orders a pizza from a restaurant located in Tumwater. The restaurant obtains George's Olympia address when taking the order. George receives the pizza at the Olympia address. The seller must source the sale to Olympia according to George's Olympia address.~~

~~(6) Gunther, a Sumner resident, places an order for towels with a catalog mail order outlet located in Tacoma. The seller delivers the towels to Gunther's home at a Sumner location from a warehouse in Fife. Gunther receives the towels at the Sumner location. The seller must source the sale to Gunther's Sumner home location.~~

~~(B) **Examples: Rule 2 - Retail Services.**~~

~~(1) Brett, a Tacoma resident, contracts with an Olympia painting firm to have his house repainted. The Olympia firm sends employees to Brett's home in Tacoma where they perform the painting. Brett receives the painting services at his home in Tacoma. The painting firm must source the sale of painting services to Brett's Tacoma home location.~~

~~(2) Julie, an Aberdeen resident, hires a construction contractor to build a new business facility in Kelso. Julie receives the construction services at the Kelso location. The contractor must source the services to the Kelso construction location.~~

~~(3) Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline. Gabe receives the services at the Shoreline location. The repair service must source the sale to Gabe's Shoreline home location.~~

~~(C)~~ **~~Example: Rule 2 - Extended Warranties.~~**

~~(1) Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan. The sale of the extended warranty is sourced to the Chelan home location where Tara receives the warranty documents.~~

~~(D)~~ **~~Additional Examples: Rule 2 - Delivery Outside Washington, Gifts, and Receipt by a Shipping Company.~~**

~~(1) Alan, a Spokane resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Alan's vacation home in Idaho. The mattress was received outside of Washington and is not subject to Washington state and local sales tax. The seller does not source the sale to Washington.~~

~~(2) Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller to ship the computer to Tim's home address in Pullman. Tim receives the computer at the Pullman location. The merchant will source the sale based on the ship-to address in Pullman.~~

~~(3) Martha, a Wenatchee resident, travels to a gift shop in Leavenworth. Martha buys five (5) items for herself and five (5) gifts for friends. Martha takes possession of the five (5) items for herself at the gift shop. Martha then has the gift shop deliver the five (5) gifts to addresses located in Wenatchee. The seller will source the sale of the five (5) items purchased by Martha for herself to Leavenworth. The seller must source the five (5) gifts to Wenatchee according to the ship-to address where each donee receives its gift.~~

~~(4) Sheila, a Yakima resident, buys equipment from a Pasco retailer. Sheila arranges to have a shipping company pick up the equipment and deliver that equipment to Sheila in Yakima. In the purchase order Sheila notifies the seller that the equipment will be received at a ship-to address in Yakima. Tangible personal property is not considered received at the seller's place of business in cases where the purchaser arranges to have the goods picked up by a shipping company on its behalf. The seller must source this sale to Sheila's ship-to Yakima location where the equipment is received.~~

~~(iii)~~ **~~Rule 3: Purchaser's address maintained in the seller's ordinary business records.~~** ~~If neither sourcing Rule 1 nor Rule 2 apply, a retail sale is sourced to the purchaser's address as indicated in the seller's records maintained in the ordinary course of the seller's business, provided use of this address does not constitute bad faith.~~

~~Example - Rule 3.~~

~~(1) Shannon buys prewritten software from a Bellevue seller by downloading the software from the seller's website. Shannon's location is unknown at the time of sale. However, the seller maintains a Seabeck address for Shannon in its business records. Because Shannon does not receive the software at the seller's place of business and the location of receipt is unknown, sourcing Rules 1 and 2 do not apply. The seller must source the sale to the address maintained in its ordinary business records for Shannon (the Seabeck address).~~

~~(iv) **Rule 4: Purchaser's address obtained at the consummation of sale.** If any of sourcing Rules 1 through 3 do not apply, the sale is sourced to the purchaser's address obtained during the consummation of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.~~

~~**Example - Rule 4.**~~

~~(1) Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits the prewritten software to an email address designated by Eric. The email address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed. Sourcing Rules 1 and 2 do not apply because Eric does not receive the software at the seller's business location and the seller does not know where the software is being received. Sourcing Rule 3 does not apply because the retail outlet does not have Eric's address on file in its ordinary business records. Therefore, the retail outlet must source the sale to the address related to the customer's credit card information given during the consummation of the sale. The retail outlet must source the sale to Eric's Port Angeles location.~~

~~(v) **Rule 5: Origin sourcing default rule.** If a seller is unable to source a sale under any of the sourcing Rules 1 through 4 above, or the seller has insufficient information to apply those rules, the default origin sourcing rule applies. Subsection (2)(b)(v)(A) through (C) of this section describes sourcing Rule 5 as it applies to the sale of tangible personal property, retail services, and extended warranties.~~

~~(A) **Origin sourcing: Tangible personal property.** If any of sourcing Rules 1 through 4 do not apply, the seller must source sales of tangible personal property to the address from which the property was shipped.~~

~~(B) **Origin sourcing: Electronically delivered prewritten software.** If any of the sourcing Rules 1 through 4 do not apply, the seller must source sales of electronically delivered prewritten computer software to the address location from which the computer software was first available for transmission by the seller. Locations that merely provide for the transfer of computer software are not address locations from which the computer software is first available for transmission.~~

~~(C) **Origin sourcing: Retail services and extended warranties.** If any of sourcing Rules 1 through 4 do not apply, the seller must source retail services and extended warranties to the address from which it provides the service or warranty.~~

~~(D) **Examples: Rule 5 - Prewritten Software.**~~

~~(1) Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified email address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale. Thus, none of sourcing Rules 1 through 4 apply. This sale must be sourced under the default sourcing rule. The seller first made the prewritten software available for transmission at its Tacoma location. The seller will source the sale to that Tacoma location from which the~~

~~prewritten software was first available for transmission. This result will not change if the software is routed from a Tacoma server through a second server (either operated by the seller or some third party) located outside of the Tacoma location. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.~~

~~(2) Assume the facts in Example (1) directly above, except that Rebecca's order is submitted to the Tacoma location and the prewritten software is first available for transmission from a Bellevue location. The seller will source the sale to the Bellevue location.~~

~~(b)~~ **Special sourcing rule: Florist sales and**~~))~~, meaning that if the seller has information necessary to satisfy the requirement in (a) of this subsection, then those sourcing provisions must be applied. If the requirement in (a) of this subsection does not apply, the seller must consider whether the requirement in (b) of this subsection applies, and apply those sourcing provisions to the sale. If the requirement in (b) of this subjection does not apply, then the seller must use the same method in determining whether the requirements first in (c), second (d), or third (e) of this subsection apply respectively, and then apply the applicable sourcing provision. Retail sales must be sourced in this manner as follows:

(a) Business location of the seller;

(b) Other location of receipt by the purchaser;

(c) Purchaser's address maintained in the seller's ordinary business records;

(d) Purchaser's address obtained at the consummation (i.e., completion) of the sale;

(e) Origin sourcing.

(202) **Business location of the seller.** If a purchaser or a purchaser's donee receives tangible personal property, a retail service, an extended warranty, or a digital product at the seller's business location, the sale is sourced to that business location.

In the case of retail services, this sourcing rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop where purchasers pick up the repaired goods at the repair shop location.

Example 1. Tangible personal property received at seller's Washington business location.

Facts: Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location.

Conclusion: The seller must source the sale to its Renton business location.

Example 2. Tangible personal property received at seller's Washington business location, purchaser is a resident of another state.

Facts: Jane, an Idaho resident, purchases and takes receipt of a mattress at a retailer's physical store in Spokane, Washington.

Conclusion: Even though Jane takes the mattress back to Idaho for her use, the seller must source the sale to its Spokane business location.

Example 3. Tangible personal property received at seller's out-of-state business location, purchaser is a Washington resident.

Facts: Luggage Retailer has retail stores located in Washington and Oregon. John, a Washington resident, goes to Luggage Retailer's

store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store.

Conclusion: The seller must source the sale to its Portland business location where John took possession of the luggage. John is subject to use tax on the luggage upon his use of the luggage in Washington. Refer to Part 5 of this rule for more information regarding sourcing requirements for use tax imposed on the purchaser as a consumer.

Example 4. Tangible personal property received at seller's Washington business location using purchaser's own trucks, purchaser is an out-of-state business.

Facts: An out-of-state purchaser takes possession of tangible personal property in Vancouver, Washington and immediately delivers the tangible personal property to the purchaser's out-of-state location.

Conclusion: The sale is sourced to Washington because the purchaser received the tangible personal property in Washington.

Example 5. Tangible personal property received at seller's Washington business location by an affiliated shipping company (separate legal entity), receipt by purchaser is outside of Washington.

Facts: The purchaser in Example 4 uses a wholly owned "shipping company" (a legal entity separate from the purchaser) to receive purchased goods in Vancouver, Washington and immediately deliver them to the purchaser's out-of-state location.

Conclusion: Because "receive" and "receipt" do not include possession by the "shipping company," including a "shipping company" that is affiliated with the purchaser, the sale is sourced to the location where the purchaser receives the goods outside of Washington. The seller should maintain records that support the sourcing of the sale outside of Washington. See subsection (203)(b) of this rule for more details on recordkeeping requirements.

Example 6. Retail service received at seller's Washington business location.

Facts: Barbara, a Longview resident, takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later Barbara picks up the car from the Centralia location.

Conclusion: The seller must source the sale to its Centralia business location.

Example 7. Extended warranty received at seller's Washington business location.

Facts: Saffron, a Des Moines resident, buys a computer from a Burien computer retailer. When purchasing the computer, Saffron also purchases and receives a five-year extended warranty for the computer at the Burien location.

Conclusion: The seller must source the sale of the extended warranty and computer to its Burien business location.

(203) **Other location of receipt by the purchaser.** If the purchaser receives tangible personal property, retail services, digital products or codes, or an extended warranty at a location other than the seller's place of business, then the sale must be sourced to the location where the purchaser, or the purchaser's donee, receives the property, retail service, digital product or code, or extended warranty. This location may be indicated in instructions, known to the seller, for delivery to the purchaser or the purchaser's donee.

(a) Delivery terms, such as "FOB shipping point" and "FOB origin," and the Uniform Commercial Code's provisions defining sale or

where risk of loss passes, do not determine where the place of receipt occurs.

(b) The seller must retain documents used in the ordinary course of the seller's business to show how the seller knows the location where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(i) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(ii) If shipped by a shipping company, a waybill, bill of lading, or other contract of carriage indicating where delivery occurs; or

(iii) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

(A) The seller's name and address;

(B) The purchaser's name and address;

(C) The place of delivery, if different from the purchaser's address; and

(D) The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 8. Tangible personal property delivered to purchaser's address.

Facts: Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence, where he will receive it.

Conclusion: The seller must source the sale to Seattle, the location where the purchaser received the furniture.

Example 9. Remotely accessed prewritten software.

Facts: Joanne, a Port Angeles business owner, purchases a prewritten software program online from a store located in Sequim. Joanne receives access to the software remotely, at her home address in Port Angeles. The seller has information identifying Port Angeles as the location where the software is accessed by the customer.

Conclusion: The seller must source the sale to Joanne's Port Angeles home location.

Example 10. Tangible personal property delivered to purchaser via third-party shipping company.

Facts: An out-of-state seller uses a third-party shipping company to ship goods to a customer located in Ellensburg. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. The shipping company delivers the goods to Ellensburg.

Conclusion: The seller must source the sale to Ellensburg, the location of receipt by the purchaser. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes.

Example 11. Tangible personal property received by purchaser's affiliated shipping company outside Washington then delivered to purchaser.

Facts: A purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller's business location and deliver the goods to the purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer.

Conclusion: The seller must source the sale to Yakima, the location of receipt by the purchaser. Possession by a shipping company on behalf of a purchaser, including a shipping company affiliated with the purchaser, is not receipt for purposes of this rule. A shipping company's authority to accept and inspect goods on behalf of a buyer does not constitute receipt by the buyer.

Example 12. Purchaser exercises dominion and control over tangible personal property outside Washington, prior to receiving the tangible personal property in Washington.

Facts: An out-of-state manufacturer with nexus in Washington sells coffee mugs to a Washington-based purchaser in the business of selling small quantities of the goods under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant.

Conclusion: The purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The seller must source the sale to the location of the out-of-state packaging plant.

Example 13. Retail service received at location of the purchaser.

Facts: Brett, a Tacoma resident, hires ABC Painting Co., located in Olympia, to paint his home. ABC's employees perform the painting services at Brett's home in Tacoma.

Conclusion: The seller must source the sale to Tacoma, the location where the customer received the retail service.

Example 14. Retail repair service received at the location where repaired goods are received.

Facts: Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline.

Conclusion: The seller must source the sale to Shoreline, the location where the customer received the repaired clock.

Example 15. Retail repair service received at the location where repaired goods are received (repair service in state, receipt of repaired goods out-of-state).

Facts: Assume the facts in Example 14, except that Gabe is a resident of Nevada, and that the repaired clock will be delivered by the seller to Gabe's home in Las Vegas.

Conclusion: The seller must source the sale to Las Vegas, NV, the location where the customer received the repaired clock.

Example 16. Extended warranty delivered to location of the purchaser.

Facts: Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five-year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan.

Conclusion: The seller must source the sale to Chelan, the location where the customer received the extended warranty documents.

Example 17. Tangible personal property delivered to location of purchaser's donee.

Facts: Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller

to ship the computer to Tim's home address in Pullman. Tim receives the computer at the Pullman location.

Conclusion: The seller must source the sale to Pullman, the location of receipt by the purchaser's donee.

(204) **Purchaser's address maintained in the seller's ordinary business records.** If the sourcing rules described in subsections (202) and (203) of this rule do not apply, a retail sale is sourced to the purchaser's address as indicated in the seller's records maintained in the ordinary course of the seller's business, provided use of this address does not constitute bad faith.

Example 18. Tangible personal property picked up by unaffiliated shipping company from seller's business location, no delivery information available.

Facts: A hotel located in Shelton purchases bathroom towels from a seller located in Bremerton. Rather than having the towels delivered by the seller, the purchaser uses an unaffiliated shipping company to pick up the towels at the seller's business location and deliver them to the purchaser in Shelton. The seller is not able to obtain delivery information for the purchase; however, the seller maintains the address of the purchaser for billing purposes.

Conclusion: The seller must source the sale to Shelton using the purchaser's address information retained in the seller's ordinary business records.

(205) **Purchaser's address obtained at the consummation of sale.** If the sourcing rules described in subsections (202), (203), and (204) of this rule do not apply, the sale must be sourced to the purchaser's address obtained during the consummation of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.

Example 19. Prewritten software delivered electronically, location of purchaser's receipt is unknown, billing address information available to seller.

Facts: Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits the prewritten software to an email address designated by Eric. The email address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed.

Conclusion: The seller must source the sale to Port Angeles, the purchaser's credit card billing address obtained by the seller at the consummation of the sale.

(206) **Origin sourcing.** If the sourcing rules described in subsections (202), (203), (204), and (205) of this rule do not apply, the sale must be sourced to the physical address from which the:

(a) Tangible personal property was shipped;

(b) Digital product, digital code, or computer software was first available for transmission by the seller; or

(c) Extended warranty, digital automated service, or other retail service was provided, disregarding any location that merely provided the digital transfer of the product sold.

Example 20. Prewritten software delivered electronically, location of purchaser's receipt is unknown, purchaser address information is not available.

Facts: Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified email

address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale.

Conclusion: The seller must source the sale to Tacoma, the location where the computer software was first available for transmission by the seller. This result will not change if the software is routed from a Tacoma server through a second server (either operated by the seller or some third party) located outside of Tacoma. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.

Part 3. Special Sourcing Rules for Retail Sales of Certain Goods and Services.

(301) **Sales of watercraft; sales of modular, mobile, and manufactured homes; and sales of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment.** ((~~If you are a "florist" making sales or you are making a retail sale of watercraft; modular, mobile, or manufactured homes; or motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment (excluding leases and rentals), you must source the sale to the location at or from which delivery is made. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules see RCW 82.32.730 (6)(d) and (8)(c) as amended by Senate Bill No. 6799, chapter 324, Laws of 2008.~~

~~When the sale of goods is delivered into Washington from a point outside the state and a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, the seller's agent or the seller's representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax must be determined by the location of the customer.~~

~~**Example: Special Sourcing Rule.**~~

~~(1) Ben, a Federal Way purchaser, buys a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. Ben asks to have the car delivered to the Federal Way location. The dealer must source the sale of the car to the dealer's location in Fife from which the car was delivered.~~

~~(c) **Leases of tangible personal property.** "Lease" and "rental" mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. For more information concerning "leases" and "rentals" see RCW 82.04.040.~~))

(a) **Seller's location within Washington.** Sales of the types of tangible personal property described in this subsection must be sourced to the location at or from which delivery is made in cases where the seller's location is within Washington.

(b) **Seller's location outside Washington, participating seller representative within Washington.** Sales of the types of tangible personal property described in this subsection that are delivered into

Washington from a point outside the state, where a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, must be sourced to the location of the local facility, etc., for purposes of the local sales tax.

(c) **Seller's location outside Washington, no participating seller representative within Washington.** Sales of the types of tangible personal property described in this subsection that are delivered into Washington from a point outside the state, where no local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction, must be sourced to the location of the customer for purposes of the local sales tax.

Example 21. Motor vehicle delivered to the location of the purchaser.

Facts: Ben, a Federal Way purchaser, buys a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. Ben asks to have the car delivered to the Federal Way location.

Conclusion: The seller must source the sale to Fife, the dealer's location from which the car was delivered.

(302) **Florist sales.**

(a) **Florist sales must be sourced in a manner consistent with:**

(i) The sourcing requirements described in subsection (301)(a) and (b) of this section; or

(ii) In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the customer is deemed to be the location of the florist originally taking the order. See RCW 82.32.730 (7)(d).

(b) **Collection of retail sales tax:** On all orders taken by a Washington florist and communicated to a second florist, either in Washington or at a point outside the state, the florist taking the order will be responsible for the collection of the retail sales tax from the customer placing the order. See WAC 458-20-158.

Example 22. Floral arrangement delivered to a purchaser's donee in Washington, seller located in Washington.

Facts: Wade, an out-of-state resident, purchases a floral arrangement directly from a florist in Renton. The purchase arrangement does not involve multiple florists. Wade arranges for the florist to deliver the arrangement to a hospital located in Seattle, where his brother Frank is a patient.

Conclusion: The seller must source the sale to Renton, the location at or from which delivery is made. Because the seller is physically located in Washington and the purchase was made directly between the buyer and the florist, the sale is sourced to the location from which delivery was made.

Example 23. Floral arrangement delivered to a purchaser in Washington, originating florist located in Washington, delivering florist located out-of-state.

Facts: Michelle, a Tacoma resident, purchases a floral arrangement from an online florist, Beautiful Flowers, LLC. Beautiful Flowers, LLC is located in Seattle, but has contractual agreements with florists throughout the country, whereby the contracted florist will prepare and deliver floral arrangements to Beautiful Flowers LLC's

customers as a subcontractor. Michelle arranges for the flowers to be delivered to her brother in Camas. The floral arrangement is prepared and delivered by a florist located in Portland, Oregon.

Conclusion: The seller would source the sale to Seattle and collect retail sales tax as the location at which the florist originally took the order was in Washington. RCW 82.32.730 (7)(d) specifies that the sale is sourced to the location of the florist originally taking the order.

(303) **Telecommunications service and ancillary services.** Sales of telecommunications service and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located in RCW 82.32.520. See RCW 82.04.065, 82.04.530, and 82.04.535 for more information about telecommunication services and ancillary services, and the calculation of gross proceeds for purposes of B&O tax.

Part 4. Sourcing Rules for Leases and Rentals of Tangible Personal Property.

(401) The terms "lease" and "rental" are used interchangeably throughout this subsection ((~~(2)(c)~~)). This subsection ((~~(2)(c)~~)) provides state and local retail sales tax sourcing guidance for lessors ((~~who lease~~)) of tangible personal property. Persons who rent or lease tangible personal property to consumers are required to collect retail sales tax on the amount of each rental or lease payment at the time the payment becomes due. In addition, persons who rent or lease tangible personal property are generally subject to Washington's B&O tax. See WAC 458-20-211.

((~~(i)~~)) (a) **How do I source lease payments attributable to the lease of transportation equipment?** If you are leasing transportation equipment, you must source the lease payments attributable to that transportation equipment ((~~under sourcing Rules 1 through 5 above as a retail sale. See subsection (1)(b)(viii) of this section for a description of transportation equipment.~~

~~(ii)~~)) as follows:

(i) For purposes of retail sales tax, you must source the lease payments attributable to the lease of transportation equipment following the sourcing requirements for retail sales discussed in Part 2 of this rule. The sourcing requirements for retail sales discussed in Part 2 of this rule apply to both single payment leases and periodic payment leases of transportation equipment. See RCW 82.32.730(4).

(ii) For purposes of B&O tax, you must source the lease payments attributable to the lease of transportation equipment as described in Excise Tax Advisory 3185.2014.

(b) **How should I source lease payments attributable to the lease of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment?** If you are leasing a motor vehicle, trailer, semi-trailer, or aircraft that does not qualify as transportation equipment, you must source the lease payments ((~~under this subsection (2)(c)(ii).~~

~~(A)~~)) as follows:

(i) **Leases that require recurring periodic payments.** If the lease requires recurring periodic payments, you must source each periodic payment to the "primary property location" of the leased property. ((~~See subsection (1)(b)(vii) of this section for a description of primary property location.~~)) The "primary property location" will not change by intermittent use of the leased property in different juris-

dictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

((~~(B)~~)) (ii) **Leases that do not require recurring periodic payments.** If the lease does not require recurring periodic payments, you must source the single lease payment ((~~under sourcing Rules 1 through 5 above as a retail sale.~~

~~(C) **Examples:**~~

~~(1) Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The periodic lease payments will be sourced to the residential primary property location in Fall City. If Rich were to move to Seattle during the term of the lease and notify the dealer of a change in the car's primary property location, the dealer would source any lease payments subsequent to that change in primary property location to Seattle.~~

~~(2) Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location in Tacoma. The seller will source the sale to the Tacoma business location.~~

~~(iii)~~)) following the sourcing requirements discussed in Part 2 of this rule.

Example 24. Motor vehicle lease with recurring periodic payments.

Facts: Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The first monthly lease payment is due at the end of the month following the date in which Rich acquired the vehicle.

Conclusion: The seller (lessor) must source the periodic lease payments to Fall City, the residential primary property location of the purchaser (lessee). If Rich changes the vehicle's primary location during the term of the lease and notifies the lessor, the lessor must source any subsequent lease payments to the primary location of the vehicle.

Example 25. Vehicle trailer lease that does not involve recurring periodic payments.

Facts: Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location in Tacoma.

Conclusion: The seller (lessor) must source the sale to Tacoma, the seller's business location where the trailer was received by the purchaser (lessee).

(c) **How do I source lease payments for all other tangible personal property?** ((~~If you lease~~)) For leases of tangible personal property not described in (a) or (b) of this subsection ((~~(2)(c)(i) or (ii) of this section, you~~)), sellers must source ((~~your~~)) lease payments ((~~under this subsection (2)(c)(iii).~~

~~(A)~~)) as follows:

(i) **Lease that requires recurring periodic payments.** If ((~~the~~)) a lease of tangible personal property requires recurring periodic payments, ((~~you~~)) sellers must source the first periodic lease payment ((~~on that lease under sourcing Rules 1 through 5 as a retail sale. You must then source all~~)) following the sourcing requirements discussed in Part 2 of this rule. Sellers must source subsequent periodic payments to the primary property location for ((~~each period covered by such periodic payments. See subsection (1)(b)(vii) of this section for a description of primary property location~~)) the relevant payment period. The primary property location will not change by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

((~~(B)~~)) (ii) **Leases that do not require recurring periodic payments.** If ((~~the~~)) a lease of tangible personal property does not require recurring periodic payments, ((~~you~~)) sellers must source the single payment ((~~under sourcing Rules 1 through 5 as a retail sale.~~

~~(C) **Examples:**~~

~~(1) Mark, a Gig Harbor resident, leases furniture from a store in Bremerton. The furniture will be leased for twelve months. The store delivers the furniture to Mark's home address in Gig Harbor. Mark indicates the primary property location for the equipment is his home address in Gig Harbor. The Gig Harbor location is recorded in the store's business records. The customer makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Gig Harbor where Mark receives the furniture. The store must then source all subsequent periodic payments to Gig Harbor, which represents the primary property location recorded in the store's ordinary business records.~~

~~(2) Brad, a Pasco business owner, leases furniture from a store in Spokane. Brad picks up the furniture in Spokane and makes the initial periodic payment on the lease. The furniture is leased for a period of twelve months. Brad indicates the primary property location for the equipment is a business address in Pasco. The Pasco location is recorded in the store's business records. Brad then makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Spokane where Brad received the furniture. The store must source the subsequent periodic payments to the Pasco primary property location.~~

~~(3) Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used in work primarily performed in Washington, but the equipment is also taken out intermittently on a number of service calls made in Oregon. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year. Alison makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Issaquah where the equipment is received. The store must source the subsequent periodic payments to Seattle, which represents the primary property location. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.~~

~~(4) Amelia, a Pasco business owner, leases equipment from a store located in Pasco. Amelia picks up the equipment in Pasco, making an initial periodic payment on the lease. The lease is for a period of~~

~~one year. During the first six months of the lease, Amelia indicates the primary property location for the equipment is a business address in Walla Walla. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records. The store must source the initial periodic payment to Pasco where Amelia received the equipment. The store must source all other periodic lease payments covering the first six months of the lease to the primary property location recorded for Walla Walla. The store must source those periodic lease payments covering the last six months of the lease to the primary property location in Leavenworth.~~

~~(5) Brian, a North Bend business owner, rents a backhoe from Construction Rentals located in Lynnwood. The lease period is 45 days and the lease requires a single lease payment. Brian pays the entire lease amount at the time of pickup. The customer picks up the equipment in Lynnwood and takes it to a job site in DuPont. Construction Rentals must source the sale to the location in Lynnwood where Brian receives the backhoe.~~

~~(6) Lisa, an Olympia business owner, rents a pressure washer from Rental Co. located in Lacey. The rental period is one day and no periodic payments are required under the lease. Lisa picks up the equipment in Lacey and takes it to a job site in Yelm. Sales tax is sourced to the seller's location in Lacey. If Rental Co. delivered the pressure washer directly to Lisa at the job site in Yelm, the sale would have been sourced to the location of the job site in Yelm.~~

~~(3) **Telecommunications services.**~~

~~Where can I find information related to the sourcing and sale of telecommunication services?~~ ~~Sales of telecommunication services and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located in RCW 82.32.520. See RCW 82.04.065 for more information about telecommunication services and ancillary services.~~

~~(4)~~)) following the sourcing requirements described in Part 2 of this rule.

Example 26. Lease of tangible personal property with periodic lease payments, tangible personal property picked up at seller's location, tangible personal property intermittently used out-of-state.

Facts: Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used primarily in Washington, but the equipment is intermittently used in Oregon throughout the term of the lease. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year.

Conclusion: The seller (lessor) must source the initial periodic payment to Issaquah, the location where the equipment was received. The seller must source the subsequent periodic payments to Seattle, the primary property location of the equipment. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.

Example 27. Lease of tangible personal property with periodic lease payments, tangible personal property delivered to purchaser, primary location of property changes during the term of the lease.

Facts: Amelia, a Pasco business owner, leases equipment from a store located in Pasco for a period of one year. The leased equipment is delivered by the lessor to Amelia and received at the primary prop-

erty location of the equipment in Walla Walla. Amelia indicates this will be the primary property location for a period of six months. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records.

Conclusion: The seller (lessor) must source the initial periodic payment to Walla Walla, the location where Amelia received the equipment. The seller must source subsequent periodic lease payments covering the first six months of the lease to Walla Walla, the primary property location. The seller must source periodic lease payments covering the last six months of the lease to Leavenworth, the primary property location.

Part 5. Sourcing Rules for Use Tax Purposes - Purchasers.

(501) **Use tax imposed on the consumer. ((~~How is use tax sourced in Washington?~~** ~~Where a seller does not have an obligation to collect Washington sales tax, the tangible personal property or service sold by that person may be subject to use tax under chapter 82.12 RCW et seq. This use tax is sourced to the place of first use and is payable by the purchaser. The seller may be required to collect use tax pursuant to the requirements of RCW 82.12.040.~~)) Where an article of tangible personal property, an extended warranty, retail service, prewritten computer software, digital product, or digital code is acquired by a consumer in this state in any manner, including through a casual or isolated sale, or as a by-product used by the manufacturer thereof, use tax is generally due, unless an exemption applies or retail sales tax has been paid. RCW 82.12.020. The rate of use tax is cumulative of a state and local component, where the local component varies by local jurisdiction.

(502) **Sourcing rules.** Sourcing rules for use tax vary depending on the object of use, as follows:

(a) **Tangible personal property**, except for natural gas and manufactured gas, is sourced to the location where the taxpayer makes first taxable use of the article of tangible personal property as a consumer. This includes the location of installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article of tangible personal property within this state. RCW 82.12.010. "First taxable use" is described in the examples below.

Example 28. Use of a motor vehicle by a Washington resident, vehicle registration and location of the vehicle's primary use.

Facts: Sandra, a Spokane resident, purchases a motor vehicle from a private seller located in Seattle. Retail sales tax was not collected by the private seller. Title to the vehicle is transferred in the King County Auditor's office. Sandra will primarily use the vehicle in Spokane and will drive the vehicle to her residence in Spokane upon completion of the sale. Sandra will list the Spokane address on her vehicle registration and new vehicle insurance policy.

Conclusion: The King County Auditor's office will collect use tax from Sandra based on the combined state and local use tax rate for Spokane, as Sandra's use of the vehicle in Seattle is insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 29. Use of a motor vehicle by a Washington resident, purchase of vehicle out-of-state.

Facts: Jerry, a Seattle resident, purchases a motor vehicle from a car dealership located in Oregon. The dealership is not registered

with the department and does not collect retail sales tax from Jerry at the time of sale. Jerry drives the vehicle via Interstate 5, from Portland, Oregon to Seattle. Jerry subsequently registers the vehicle with the King County Auditor's office upon returning with the vehicle to Seattle.

Conclusion: The King County Auditor's office will collect use tax from Jerry based on the combined state and local use tax rate for Seattle. Although Jerry drove the vehicle in Clark County, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 30. Use of a personal watercraft in Washington, purchase of watercraft out-of-state.

Facts: Cameron, a Port Townsend resident, purchases a 42-foot sailboat from a boat dealer in Portland, Oregon. Cameron takes possession of the sailboat at the dealer's location in Portland and does not pay Washington's retail sales tax. Cameron navigates the watercraft down the Columbia River and around the Olympic Peninsula, ultimately arriving in Port Townsend. Cameron entered into a long-term moorage agreement and lists the Port Townsend marina as an additional insured party on his current watercraft insurance policy.

Conclusion: The sailboat is subject to use tax based on the combined state and local use tax rate for Port Townsend. Although Cameron sailed the watercraft in Washington on the Columbia River, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 31. Use of a personal aircraft in Washington by a Washington resident, possession taken outside of Washington.

Facts: John, a Bremerton resident, purchases an aircraft from a dealer located in Sacramento, California. John takes possession of the aircraft in California and flies it back to Washington. Prior to arriving at the Bremerton airport, where John has secured a permanent hangar or storage space for the aircraft, John lands the aircraft in Pullman, Washington. While in Pullman he refuels the aircraft before continuing on to the final destination in Bremerton.

Conclusion: The aircraft is subject to use tax based on the combined state and local use tax rate for Bremerton. Although John fueled the aircraft in Pullman, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 32. Use of tangible personal property by a Washington business, purchase of tangible personal property out-of-state.

Facts: Grace, an Issaquah business owner, purchases a trailer-mounted generator from a dealer located in Oregon without paying retail sales tax. Grace tows the generator with her own motor vehicle to the company warehouse located in Issaquah. The company stores the generator at their warehouse throughout the year and operates it at various worksites throughout the state.

Conclusion: The King County Auditor's office will collect use tax based on the combined state and local use tax rate for Issaquah, the location where the taxpayer stores the generator. Although Grace towed the generator through other jurisdictions prior to arriving at the business' Issaquah warehouse, the use was insufficient to establish first taxable use in another location for purposes of the local portion of the use tax. Even though Grace operates the generator in multiple locations, the company warehouse is the location where first taxable use as a consumer occurs.

Example 33. Use of tangible personal property by a Washington resident, purchase of tangible personal property out-of-state.

Facts: Alex, a Wenatchee resident, purchases an electric bicycle from a dealer in Montana, without paying retail sales tax. Alex takes possession of the electric bicycle in Montana and transports it back to Wenatchee in their own motor vehicle where it will be stored in their garage. Alex rides the electric bicycle in Wenatchee and various other locations throughout the state.

Conclusion: The electric bicycle is subject to use tax based on the combined state and local use tax rate for Wenatchee, the location where Alex stores the electric bicycle. Transporting the electric bicycle to Wenatchee was insufficient to establish first taxable use in another location for purposes of the local portion of the use tax.

Example 34. Use of tangible personal property by an out-of-state service provider.

Facts: ABC Testing, an out-of-state medical testing company, provides services to Washington customers. ABC sends a customer of its services, a Sequim resident, a container that the customer uses to provide a saliva sample. The container is shipped to Sequim and back out of Washington using unaffiliated shipping companies. ABC owns the container at all times and its customers are subject to ABC terms and conditions regarding their use of the containers. ABC discards the container upon receipt and testing of the customer's sample at their out-of-state business location.

Conclusion: Use tax is due and sourced to Sequim, the location where the testing company made the tangible personal property available for their customer's use.

(b) **Retail services**, which include the installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property for consumers, are sourced to the location where the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed. Dominion and control includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state.

Example 35. Tangible personal property repaired by out-of-state business who is not required to register or collect Washington taxes.

Facts: Pamela, a resident of Sequim, sends an antique oil painting to an out-of-state business who will refurbish and repair the painting. The out-of-state repairer does not have nexus with Washington and is not required to register with the state or collect Washington's sales tax. Upon completion of the restoration, the repairer sends the painting to Pamela's residence, via a third-party shipping company.

Conclusion: Pamela must report and pay use tax. Pamela must source the repair services to Sequim, the location where first taxable use of the repaired painting occurred as a consumer.

(c) **Extended warranties** are sourced to the location where the taxpayer, after acquiring the extended warranty, first takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies.

Example 36. Extended warranty purchased from an out-of-state business who is not required to register or collect Washington taxes.

Facts: Michael, a resident of Longview, purchases a laptop computer from an online retailer, who is not registered with the state or required to collect Washington's taxes. The retailer sends Michael the laptop computer to his residential address in Longview via a third-

party shipping company. At the time of the laptop's purchase, Michael also purchases an extended warranty. The retailer sends Michael an email which contains the extended warranty in electronic form.

Conclusion: Michael must report and pay use tax. Michael must source his use of the laptop computer and the extended warranty to Longview, the location where Michael first assumed dominion and control over the property and extended warranty, establishing first taxable use in this state as a consumer.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 08-12-035, § 458-20-145, filed 5/30/08, effective 6/30/08. Statutory Authority: RCW 82.32.300. WSR 83-07-032 (Order ET 83-15), § 458-20-145, filed 3/15/83; Order ET 75-1, § 458-20-145, filed 5/2/75; Order ET 70-3, § 458-20-145 (Rule 145), filed 5/29/70, effective 7/1/70.]

WSR 22-13-153
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Order 21-07—Filed June 21, 2022, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-094 on May 19, 2021.

Title of Rule and Other Identifying Information: Designating an emerging commercial fishery in the Lower Columbia River for the use of alternative commercial fishing gears, including purse seines, beach seines, and pound nets. This fishery will also require a fisher possess an experimental fishing permit prior to the start of the fishery.

Hearing Location(s): On August 3, 2022, at 1:00 - 2:30 p.m. In-person at Washington Department of Fish and Wildlife (WDFW) Region 5, Ridgefield Office, 5525 South 11th Street, Ridgefield, WA 98642; and virtually. Zoom meeting https://us02web.zoom.us/j/81450146884?pwd=bUJ6aTcxa2JDaG1CczhZd0J4dm9GUT09.

Date of Intended Adoption: November 1, 2022.

Submit Written Comments to: Charlene Hurst, 5525 South 11th Street, Ridgefield, WA 98642, email ColumbiaRiverCommercial102@PublicInput.com, voicemail message 885-925-2801, project code 4006, website https://publicinput.com/ColumbiaRiverCommercial102, by August 3, 2022.

Assistance for Persons with Disabilities: Contact civil rights compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, https://wdfw.wa.gov/accessibility/requests-accommodation, by August 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to allow for alternative commercial fishing gears to be used for commercial fishing in the Lower Columbia River using an emerging commercial fishery license and an associated experimental gear permit. This fishery will be limited entry with participants chosen from a one-time lottery in the first year the fishery is offered. The anticipated effects are that some commercial fishers may use these gears to harvest salmon when fisheries are open for commercial harvest using the existing commercial allocation as described in Policy C-3630 for the Columbia River.

Reasons Supporting Proposal: This rule designates an emerging nontreaty commercial fishery in the Lower Columbia River to gather information and data on the use of other commercial fishing gears such as seines and pound nets. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3630, which includes guiding principles and actions to improve the management of salmon in the Columbia River basin. This designation is the next step in gathering information on how these gears perform in a commercial fishery, as opposed to a test fishery or in a research capacity and is a necessary step to providing the Washington legislature the information they need to decide whether to legalize these gears (per RCW 77.70.180).

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047, 77.70.160, 77.50.030, 77.65.400.

Statute Being Implemented: WAC 220-360-500 Designation of an emerging commercial fishery in the Lower Columbia River, 220-360-510 Columbia River emerging commercial fishery—Qualifications,

220-360-520 Columbia River emerging commercial fishery—Issuance of an emerging commercial fishery license and experimental fishery permit—License and permit conditions, 220-360-530 Columbia River seine emerging commercial fishery—Season, area, and gear requirements, and 22-360-540 Columbia River emerging commercial fishery—Allowable possession and sales—Catch handling requirements.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Gear, season, and permit specifications associated with the emerging commercial fishery will be decided annually based on salmon and steelhead run sizes, availability of impacts to listed species under the Federal Endangered Species Act and as part of the North of Falcon and Compact processes.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Charlene Hurst, Ridgefield, Washington, 360-605-0536; Implementation: Ryan Loftrop, Olympia, Washington, 360-902-2808; and Enforcement: Captain Jeff Wickersham, Ridgefield, Washington, 360-906-6714; Captain Dan Chadwick, Montesano, Washington, 360-249-4628 ext. 252.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal does not require a cost-benefit analysis per RCW 34-05-328 (5)(a)(i).

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

Is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

June 21, 2022
Annie Szvetecz
Rules Coordinator

OTS-3888.1

NEW SECTION

WAC 220-360-500 Designation of an emerging commercial fishery in the Lower Columbia River. (1) The director designates an emerging commercial fishery in the Lower Columbia River. The director has determined a need to limit the number of participants in this fishery.

(2) It is unlawful to fish for, possess, or deliver salmon taken for this fishery unless the fisher possesses a valid emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

[]

NEW SECTION

WAC 220-360-510 Columbia River emerging commercial fishery—Qualifications. To qualify for an emerging commercial fishery license and experimental fishery permit, a person must:

(1) Possess a commercial gillnet salmon license/permit issued by Washington (WA) or Oregon (OR) for the Columbia River; and

(a) Demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River select areas within the most recent five calendar years under that license or by the applicant under a commercial salmon license issued for the Columbia River; or

(b) Demonstrate participation in a test fishery (WA) or possession and use of an experimental gear permit (OR) using alternative commercial fishing gears within the most recent five calendar years.

(2) Have at least three years of commercial salmon fishing experience.

(3) Have at least one year of fishing experience (commercially or in a research/test fishery capacity) with purse seines, beach seines, or a pound net.

(4) Be free of a commercial fishing or other related violation within the last 10 years.

[]

NEW SECTION

WAC 220-360-520 Columbia River emerging commercial fishery—Issuance of an emerging commercial fishery license and experimental fishery permit—License and permit conditions. (1) To maintain consistency in this fishery enabling the department to gather the best available information, a fisher selected by lottery in the initial year the fishery is offered will be able to renew their permit for the duration of the fishery.

(2) Applications for participation in the one-time lottery are due by March 15th of the initial year in which the fishery is offered.

(a) Only one application per person is allowed, and only one gear type may be permitted per person.

(b) The alternative gear an applicant is interested in fishing is in the applicant's possession by the time their application is submitted.

(3) Issuance of the annual emerging commercial fishery license and experimental fishery permit will occur by May 15th prior to the start of each fishing season.

(a) If the total number of available permits is not filled from the applications received by the deadline, the department may ask for additional applications.

(b) Applicants selected must respond within 10 business days of being notified by the department to accept the permit and purchase the emerging fishery license. If the applicant fails to purchase the license and permit within 10 business days of notification of selection, the department may issue the license and permit to another applicant.

(4) The conditions of possessing a valid license and permit are as follows:

(a) Fishery participants are not precluded from participation in other commercial fisheries.

(b) Fishery participants are required to have a state observer observing their catch while actively fishing.

(c) If a permit holder fails to make multiple landings during the fishery, the experimental permit issued to that fisher will be voided, that person will have his or her name permanently withdrawn from the applicant pool, and a new applicant will be selected from the applicant pool.

(d) This license and permit are not transferable between persons. The license and permit holder must be present and in possession of a valid license and permit during fishing operations. A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(e) It is unlawful to violate the conditions of the emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(f) This license and permit may be revoked at the discretion of the director and future licenses and permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.

[]

NEW SECTION

WAC 220-360-530 Columbia River emerging commercial fishery—Season, area, and gear requirements. (1) The following gear is allowable:

(a) Purse seines as defined in WAC 220-350-110.

(b) Beach seines as defined in WAC 220-350-040.

(c) Pound nets as defined here as nets attached to fixed pilings, stakes, and/or anchors to form a lead, guiding fish into at least one heart, pot, or spiller that directs fish into a live well for sorting.

(2) Other gears may be considered for inclusion in this fishery if:

(a) The gear has a TAC approved mortality rate; and

(b) It is brought forward by a commercial fisher possessing a Columbia River commercial fishing license.

(3) All other season, area, and gear requirements will be as determined by the states of Oregon and Washington via the Columbia River compact process.

[]

NEW SECTION

WAC 220-360-540 Columbia River emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (1) Allowable possession and sales: Salmon, and as determined by the states of Oregon and Washington via the Columbia River compact process. All spe-

cies other than salmon must be carefully handled and promptly returned to the water.

(2) Handling of catch: Salmon catch may only be handled by hand or with rubber coated nets when sorting fish. Fish must be sorted while submerged in the water; it is unlawful to dry sort fish on land or on deck.

[]

WSR 22-13-159
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed June 21, 2022, 3:16 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: In chapter 110-03 WAC, Administrative hearings; WAC 110-03-0530 Requesting review of the initial order, and 110-03-0590 Judicial review.

Hearing Location(s): On July 26, 2022, telephonic. Make oral comments by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including July 26, 2022, will be considered.

Date of Intended Adoption: July 27, 2022.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate, by July 26, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by July 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules update the instructions for petitioning for review of initial administrative hearing orders. Specifically, the proposals direct petitioners to follow the instructions that are included with the initial order. The proposals' change in existing rules is the elimination of a physical address for service on the department's board of appeals.

Reasons Supporting Proposal: The department's board of appeals is no longer located at the address the current rule provides for personal service. It is possible the board of appeals could relocate again, so the department is opting not to include in the rule an address for personal service, and instead directs petitioners to follow the instructions supplied with the orders being challenged. The instructions will include the current physical address for personal service on the board of appeals.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Statute Being Implemented: RCW 34.05.464.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Laura Farris, Olympia, 360-902-8262; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to

agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

June 21, 2022
Brenda Villarreal
Rules Coordinator

OTS-3663.6

AMENDATORY SECTION (Amending WSR 21-11-078, filed 5/18/21, effective 6/18/21)

WAC 110-03-0530 Requesting review of the initial order. ((~~(1) A party must file the review request (petition for review) in writing and it should:~~

~~(a) Clearly identify the parts of the initial order with which the party disagrees; and~~

~~(b) Clearly present arguments and refer to evidence in the record supporting the party's position.~~

~~(2) The petition for review must be filed with the BOA and the party requesting review must serve copies on the other parties and their representatives and OAH at the same time the petition is filed.~~

~~(3) Instructions for obtaining a review will be sent with the initial order. Depending on how the petition is filed, use the following contact information:~~

~~(a) Mailing address:~~
~~DCYF Board of Appeals~~
~~P.O. Box 40982~~
~~Olympia, WA 98504-0982;~~
~~(b) Fax: 360-586-5934;~~
~~(c) Email: Call the BOA at 360-902-0278 and request access to the secure email portal; or~~

~~(d) Physical address:~~
~~DCYF Board of Appeals~~
~~1115 Washington Street Southeast~~
~~Olympia, WA 98501~~

~~(4) The contact information in this subsection is current as of the effective date of these rules; however, parties should file documents using the address or fax information received with the initial order if it is different from the information provided here.~~

~~(5) The DCYF board of appeals can be contacted by phone at: 360-902-0278.~~))

(1) A party may request review of their initial order by filing a written request, known as a petition for review. A petitioner must follow the instructions included with their initial order when petitioning for review.

(2) A petition for review should state the:

(a) Specific parts of the initial order with which the party disagrees;

(b) Reasons why they disagree; and

(c) The specific evidence in the record that supports their position.

(3) A party filing a petition for review must serve a copy of their petition for review on OAH and the other parties and their representatives at the same time their petition for review is filed with the BOA.

(4) A petition for review must be filed with the BOA using one of the following methods:

(a) Mail to:

DCYF Board of Appeals
P.O. Box 40982
Olympia, WA 98504-0982;

(b) Fax: 360-586-5934;

(c) Email: Call the BOA at 360-902-0278 and request access to the secure email portal; or

(d) Personal service: The physical address where the BOA may be served is identified on the BOA website and in the initial order's instructions for petitioning for review. Parties filing by personal service are encouraged to first call the BOA at 360-902-0278 to arrange for someone to accept service.

(5) The contact information in this section is current as of the effective date of these rules. Any necessary updates are made to the initial orders' instructions for petitioning for review when changes occur.

(6) The DCYF board of appeals can be contacted by telephone at: 360-902-0278.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 21-11-078, § 110-03-0530, filed 5/18/21, effective 6/18/21; WSR 20-02-031, § 110-03-0530, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 21-11-078, filed 5/18/21, effective 6/18/21)

WAC 110-03-0590 Judicial review. (1) Judicial review is the process of appealing ((~~a~~)) final agency orders to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing a written petition for judicial review in superior court pursuant to RCW 34.05.514 that meets the requirements of RCW 34.05.546. The petition must be properly filed and served, as required by RCW 34.05.542, within ((~~thirty~~)) 30 calendar days of the date the review judge serves the final order in the case. However, as provided by RCW 34.05.470, if a petition for reconsideration has been properly filed, the ((~~thirty~~)) 30 day period does not commence until the agency disposes of the petition for reconsideration. ((~~Copies~~)) A copy of the petition must be served on DCYF, the office of the attorney general, and all other parties at the same time the petition is filed.

(3) To serve DCYF, a copy of the petition must be delivered to the DCYF secretary ((~~of DCYF~~)) or ((~~to the DCYF~~)) the BOA. The petition must be either hand delivered, mailed with proof of receipt, or sent by secure email.

(a) The physical location of the secretary is:

DCYF Office of the Secretary
1500 Jefferson Street Southeast
Olympia, WA 98501

The mailing address of the secretary is:

DCYF Office of the Secretary
P.O. Box 40975
Olympia, WA 98504-0975

(b) The ((~~physical location and~~)) mailing address for the DCYF BOA ((~~are as~~)) is stated in WAC 110-03-0530.

(c) To serve by email, call the BOA at 360-902-0278 and request access to the secure email portal.

(4) Service on the office of the attorney general and other parties of a copy of the petition for judicial review may be made at the following locations:

(a) The office of the attorney general may be served personally or by delivery at:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

(b) Each party must be served at each party's address of record.

(5) A party may file a petition for judicial review only after it has exhausted administrative remedies, as provided under RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 21-11-078, § 110-03-0590, filed 5/18/21, effective 6/18/21; WSR 20-02-031, § 110-03-0590, filed 12/19/19, effective 1/19/20.]

WSR 22-13-172
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed June 22, 2022, 8:05 a.m.]

Supplemental Notice to WSR 22-05-100.

Preproposal statement of inquiry was filed as WSR 20-13-041.

Title of Rule and Other Identifying Information: WAC 192-250-015 When is an employer eligible to participate in the shared work program?

Hearing Location(s): On July 28, 2022, at 9 a.m., Zoom, Meeting ID 818 1368 1974, Passcode 972744, Call-in 253-215-8782. Join Zoom meeting https://us02web.zoom.us/j/81813681974?pwd=cmtUR1pOWXJiaktFQTRHUm1lNWNyUT09.

Date of Intended Adoption: August 2, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by July 28, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by July 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Shared work provides flexibility for businesses to restart and bring their employees back from unemployment with reduced hours. Businesses gradually build back their team with qualified workers receiving partial unemployment benefits to replace a portion of their lost wages.

The employment security department intends to expand access to this program by removing the requirement that an employer be legally registered in the state for at least six months before qualifying for the shared work program.

Reasons Supporting Proposal: In February of 2020, Governor Inslee proclaimed a State of Emergency in Washington in response to COVID-19. The department filed a series of emergency rules to support the state's emergency response, one of which expanded access to the shared work program.

There are two spots in chapter 192-250 WAC where employers who have been registered in Washington for six months or less are excluded from participating in the shared work program: The entirety of WAC 192-250-015 and 192-250-045 (2)(c). Rules adopted under WSR 21-13-007 deleted WAC 192-250-045 (2)(c) but failed to repeal WAC 192-250-015. By adding a repeal of WAC 192-250-015, the department is following through with the policy that employers who have been registered employers for six months or less can still participate in shared work, thereby leaving that program open to more employers and their employees.

Statutory Authority for Adoption: Under RCW 50.60.030, the commissioner shall approve a shared work compensation plan if certain criteria are met; the commissioner may also take into account any other factors which may be pertinent.

Statute Being Implemented: RCW 50.60.030 (criteria for approving a shared work compensation plan).

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Joshua Dye, Olympia, WA, 360-890-3472; Implementation and Enforcement: Sam Virgil, Olympia, WA, 360-890-3637.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, https://esd.wa.gov/newsroom/ui-rule-making/.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules and amendments do not create additional tax burdens on employers of any size. The rule making provides flexibility for both employers and claimants.

June 22, 2022
Dan Zeitlin
Employment System Policy Director

OTS-3860.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-250-015	When is an employer eligible to participate in the shared work program?

WSR 22-13-173
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed June 22, 2022, 8:18 a.m.]

Supplemental Notice to WSR 22-07-071.

Preproposal statement of inquiry was filed as WSR 20-15-127.

Title of Rule and Other Identifying Information: Rule making to implement HB 1841, chapter 170, Laws of 2020, which pertains to the establishment of minimum crew size on certain trains. This rule making is recorded as Docket TR-200536 at the utilities and transportation commission (UTC).

Hearing Location(s): On August 1, 2022, at 1:30 p.m., Zoom https://utc-wa-gov.zoom.us/j/85252735543?pwd=UjhXOE9ITlFnNkt0TjROTkZqZHhQQT09; by phone 253-215-8782, Meeting ID 852 5273 5543, Passcode 223459. Public hearing to consider adoption of the proposed rule.

Date of Intended Adoption: August 1, 2022.

Submit Written Comments to: Amanda Maxwell, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email records@utc.wa.gov, 360-664-1160, by July 18, 2022.

Assistance for Persons with Disabilities: Contact human resources, phone 360-664-1160, TTY 360-586-8203, email human_resources@utc.wa.gov, by July 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2020, the legislature enacted the chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. The legislation also added new sections to and repeals specific sections of chapter 81.40 RCW, necessitating a rule making to define Class I railroads, provide automatic waivers, and establish a process for UTC-ordered crew size increases.

Reasons Supporting Proposal: In 2020, the legislature enacted the chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. This rule making enables UTC to implement the new law, establishing rules for UTC to apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160; chapter 81.40 RCW. RCW 81.40.150(1) states that UTC's "paramount obligation" is the furtherance of safety in railroad transportation. RCW 81.40.025 (4)(a) states that UTC "may order railroad carriers to increase the number of railroad employees in areas of increased risk to the public, passengers, railroad employees, or the environment …"

Statute Being Implemented: RCW 81.40.005 - [81.40].025, [81.40].150.

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

Name of Proponent: UTC, governmental.

Name of Agency Personnel Responsible for Drafting: Betty Young, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-292-5470; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1110.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to UTC as it is not one of the listed agencies in RCW 34.05.328 (5)(a)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. UTC is proposing to adopt rules that enable UTC to implement the law, apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations. On May 6, 2021, UTC mailed a notice to all stakeholders interested in the rule making, providing a copy of the draft rules and an opportunity to respond to a small business economic impact statement (SBEIS) questionnaire. The notice requested that entities affected by the proposed rules provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. UTC did not receive any information in response to the questionnaire. On November 15, 2021, UTC sent a supplemental SBEIS questionnaire to affected entities, providing an additional opportunity to respond. UTC received no responses to the supplemental questionnaire. Based on the information available to it, UTC determined that the proposed rules merely implement the statute as required by the legislature.

June 22, 2022
Amanda Maxwell
Executive Director and Secretary

OTS-3674.1

AMENDATORY SECTION (Amending WSR 18-10-001, filed 4/18/18, effective 5/19/18)

WAC 480-62-125 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Class I railroad company" means a railroad company having annual operating revenues of ((~~$250 million~~)) $250,000,000 or more;

"Class II railroad company" means a railroad company having annual operating revenue of less than ((~~$250 million~~)) $250,000,000, but more than ((~~$20 million~~)) $20,000,000; and

"Class III railroad company" means a railroad company having annual operating revenues of ((~~$20 million~~)) $20,000,000 or less.

"Commission" means the Washington utilities and transportation commission.

"Contract crew transportation company" means any person, organization, company or other entity that operates one or more contract crew transportation vehicles.

"Contract crew transportation vehicle" means every motor vehicle designed to transport ((~~fifteen~~)) 15 or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers and used primarily to provide railroad crew transportation.

"Department of labor and industries" means the Washington state department of labor and industries.

"Department of transportation" means the Washington state department of transportation.

"On track equipment" means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

"Passenger carrying vehicle" means those buses, vans, trucks, and cars owned, operated, and maintained by a railroad company primarily used to transport railroad employees, other than in the cab of such vehicles, and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

"Railroad" means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

"Railroad company" means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

"Railroad police officer" means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

"Remote-control area" means any place remote-control operations are conducted on a railroad.

"Remote-control operations" means ((~~controlling~~)) control of the movement of locomotives through the use of radio transmitter and receiver systems by persons not physically located at the controls within the confines of a locomotive cab.

"Remote-control zone" means a designated restricted access area ((~~where access is restricted~~)) in which remote-control operations may occur under alternative point protection procedures.

"State" means the state of Washington.

[Statutory Authority: RCW 80.01.040, 81.04.160, and 81.61.050. WSR 18-10-001 (Docket TR-170780, General Order R-591), § 480-62-125, filed 4/18/18, effective 5/19/18. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 04-11-023 (Docket No. TR-021465, General Order No. R-514), § 480-62-125, filed 5/11/04, effective 6/11/04. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. WSR 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-125, filed 1/30/01, effective 3/2/01.]

NEW SECTION

WAC 480-62-255 Minimum crew size on certain trains. (1) For the purpose of this section, unless the language or context indicates that a different meaning is clearly intended, the following definitions apply:

"Class I" means a railroad carrier designated as a class I railroad by the United States surface transportation board and its subsidiaries or is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the United States surface transportation board designation as a class I railroad carrier.

"Class III" means a railroad carrier designated as a class III railroad by the United States surface transportation board.

"Crewmember" has the same meaning as "operating craft employee" as defined in this section.

"Operating craft employee" means a person employed by a railroad carrier and identified as train or yard crew as defined in 49 C.F.R. Part 218.5.

"Other railroad carrier" means a railroad carrier that is not a class I carrier.

"Railroad carrier" means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns. "Railroad carrier" includes any officers and agents of the railroad carrier.

(2) Any person, corporation, company, or officer of the court operating any railroad, railway, or any part of any railroad or railway, in the state as a common carrier of freight or passengers shall operate and manage all trains and switching assignments over its road with no less than two crewmembers.

(3) The minimum crew size requirement of subsection (2) of this section does not apply to: (a) Class III railroad carriers operating on their roads while at a speed of 25 miles per hour or less; (b) other railroad carriers in possession of an effective automatic waiver issued under subsection (4) of this section; or (c) one person remote control operations in compliance with 49 C.F.R. Parts 218 and 229, and any other applicable regulations regarding remote control operations.

(4) Other railroad carriers operating in the state on or after June 11, 2020, receive an automatic waiver of the minimum train crew size requirements of subsection (2) of this section that shall remain in effect until the commission terminates the effectiveness of such a waiver by order.

(5) The commission may order railroad carriers to increase the number of railroad employees, to require additional crewmembers, or direct the placement of additional crewmembers if the commission determines that the increase is necessary to protect the safety, health, and welfare of the public, passengers, or railroad employees, to prevent harm to the environment or to address site specific safety or security hazards. In issuing any order to increase the number of railroad employees, the commission may consider, but is not limited to, the factors found in RCW 81.40.025 (4)(b).

(6) Any railroad carrier in violation of this section may be subject to fines of not less than $1,000 and not more than $100,000 for each offense, as determined by the commission through order. In the event of a serious injury or fatality the commission may impose fines exceeding $100,000 per offense.

[]

WSR 22-13-174
PROPOSED RULES
WASHINGTON STATE UNIVERSITY
[Filed June 22, 2022, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-078.

Title of Rule and Other Identifying Information: Campus parking and traffic regulations for Washington State University, chapter 504-15 WAC.

Hearing Location(s): On August 3, 2022, at 4:00 p.m., Zoom meeting. Join Zoom meeting from PC, Mac, Linux, iOS, or Android https://wsu.zoom.us/j/99875670289?pwd=M05ITUQxM01HaFYwWXROTlA3RGVLUT09, Meeting ID 998 7567 0289, Passcode 527370; join by telephone (long distance) +1 669 900 9128 (enter meeting ID and passcode when prompted). No in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: August 8, 2022.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, by August 3, 2022.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, email prf.forms@wsu.edu, by August 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the campus parking and traffic regulations for Washington State University.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Jeff Elbracht, Director, Student Affairs Facility and Operations, Student Recreation Center, Pullman, WA 99164-1830, 509-335-9668; or Chris Boyan, Director, WSU Transportation Services, Parking and Transportation Building, Pullman, WA 99164-5500, 509-335-2950; Implementation and Enforcement: Bill Gardner, AVP, Public Safety, Public Safety Building, Pullman, WA 00164 [99164]-1072, 509335-4484.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this to be a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

June 22, 2022
Deborah L. Bartlett, Director
Procedures, Records, and Forms and
University Rules Coordinator

OTS-3874.1

AMENDATORY SECTION (Amending WSR 19-11-063, filed 5/15/19, effective 6/15/19)

WAC 504-15-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Campus. Describes all property owned, leased, and/or controlled by the university Pullman campus which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of the university.

(2) Commuter student. Any student who does not live in a university residence hall (dormitory). All students living in fraternities, sororities, university-owned housing (other than residence halls), and private housing are considered to be commuter students.

(3) Day. Unless otherwise specified, the term "day" refers to a calendar day.

(4) Disability zone. A parking zone designated for exclusive use by individuals with disability and identified with a sign bearing the associated international symbol.

(5) Electric-assisted bicycle. As defined under RCW 46.04.169.

(6) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

(7) Gate card. A plastic card that activates the gates controlling access to certain parking areas.

(8) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license plate number on the permit.

(b) Use of a parking permit or indicator obtained under false pretenses.

(c) Use of a modified parking permit or indicator.

(d) Use and/or retention of a parking permit or indicator by individual(s) ineligible, or no longer eligible, for such a permit as described and authorized in this chapter.

(9) Impound. To take and hold a vehicle in legal custody by use of a wheel lock and/or towing.

(10) Indicator. A decal or hanger displayed adjacent to a parking permit which defines additional parking areas available to a permit holder.

(11) Loading zone. A loading dock, or an area signed "loading zone" adjacent to a facility, in a parking area, or near a residence hall. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

(12) Micromobility device. Bicycles, skateboards, scooters, roller skates/blades, and all other human-powered, motorized, or electrically assisted rolling conveyances.

(13) Moped. As defined under RCW 46.04.304.

((~~(13)~~)) (14) Motorcycle. As defined under RCW 46.04.330.

((~~(14)~~)) (15) Motorized foot scooter. As defined under RCW 46.04.336.

((~~(15)~~)) (16) Motor vehicle. As defined under RCW 46.04.320.

((~~(16)~~)) (17) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow.

((~~(17)~~)) (18) Officer. Any parking or police official employed by the university who is designated by the parking administrator or chief of police to issue parking tickets, to place and remove wheel locks, or to cause vehicles to be towed under this chapter.

((~~(18)~~)) (19) Owner. The individual registered with any state as the present owner of a vehicle in the most current registration records available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator or chief of police has received actual written notice of the transfer.

((~~(19)~~)) (20) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

((~~(20)~~)) (21) Parking administrator. The director in charge of the parking department or designee.

((~~(21)~~)) (22) Parking appeals committee. Any individual or individuals appointed to consider parking violations and the application of fees, fines, and sanctions. Said individual or individuals are appointed by the vice president whose responsibilities include supervision of the parking department or designee.

((~~(22)~~)) (23) Parking department. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities; enforcing the parking regulations; and coordinating commute trip reduction efforts for the Pullman campus.

((~~(23)~~)) (24) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

((~~(24)~~)) (25) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on the campus. A parking payment device is not a parking meter.

((~~(25)~~)) (26) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by the parking department that is displayed from a vehicle, and authorizes parking in specified areas. Some parking permits may be purchased online and may be virtual in nature, and identified by other means such as by license plate. (See the definition of "virtual permit" in subsection ((~~(46)~~)) (47) of this section.) Also referred to as "permit" in this chapter.

((~~(26)~~)) (27) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

((~~(27)~~)) (28) Pay parking facility. A location where parking is provided and payment is made on-site via a parking payment device, cashier, or other means other than a parking meter.

((~~(28)~~)) (29) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances. These restricted areas are depicted on the Pullman campus map and/or with signing at the entrances to the pedestrian mall areas.

((~~(29)~~)) (30) Individuals with disability. For the purpose of this chapter, individuals with disability refer to an individual or

individuals with disability or disabilities who qualify for a state-issued individual with disabilities parking identification and permit.

((~~(30)~~)) (31) Resident priority zone. A parking area close to a residence hall (i.e., crimson zone or gray zone) that is typically limited to use by residence hall students.

((~~(31)~~)) (32) Residence hall student. A student with a current, valid residence hall contract, who lives in a residence hall.

((~~(32)~~)) (33) Residence hall. Residence hall units (dormitories) that are owned by the university but are not included as university-owned housing apartments. Occupants of residence halls are considered residence hall students and are eligible for parking permits in resident priority zones.

((~~(33)~~)) (34) Service vehicle. A vehicle used to provide a service for the university or a tenant or contractor of the university (e.g., a university owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

((~~(34)~~)) (35) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones on an occasional basis for a maximum of ((~~fifteen~~)) 15 minutes, except for vehicles that display a commercial permit, or a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

((~~(35)~~)) (36) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university and the nonstudent employees of other entities located on, or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university, or other entities located on, or regularly doing business on campus, are not "staff." They are considered to be students for the purpose of these regulations.

((~~(36)~~)) (37) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

((~~(37)~~)) (38) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

((~~(38)~~)) (39) Student. The term "student" includes all individuals who are not staff who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more classes.

((~~(39)~~)) (40) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session, and ending on the last day of the latest session.

((~~(40)~~)) (41) University. Refers to Washington State University.

((~~(41)~~)) (42) University holiday. A day regarded by the university as an official university holiday.

((~~(42)~~)) (43) University-owned housing. Housing units or apartments, and their respective parking areas, that are owned by the university, but are not included as residence halls. Occupants of university-owned housing are eligible for housing parking permits issued by the university.

((~~(43)~~)) (44) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

((~~(44)~~)) (45) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of the university are open during this time.

((~~(45)~~)) (46) Vehicle storage. Vehicle storage means the parking or leaving of any vehicle for a period of more ((~~then twenty-four~~)) than 24 consecutive hours.

((~~(46)~~)) (47) Virtual permit. A virtual permit is authorization given at the time of vehicle registration with the parking department, allowing the registered vehicle to park in a designated lot, zone, or space. The virtual permit is associated with the vehicle license plate number and is used to identify the parking authorization.

((~~(47)~~)) (48) Visitors. Individuals who are not staff or students and who only visit the campus on an occasional basis.

((~~(48)~~)) (49) Wheel lock. A device used to temporarily immobilize a motor vehicle. Wheel locked vehicles are considered to be impounded in place and subject to storage fees.

((~~(49)~~)) (50) Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking department. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

((~~(50)~~)) (51) Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than ((~~thirty~~)) 30 days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

((~~(51)~~)) (52) WSU disability permit. WSU-issued zone permit displayed with a valid state-issued disability placard or disability license plate.

[Statutory Authority: RCW 28B.30.150. WSR 19-11-063, § 504-15-100, filed 5/15/19, effective 6/15/19; WSR 15-11-036, § 504-15-100, filed 5/14/15, effective 6/14/15; WSR 14-11-024, § 504-15-100, filed 5/12/14, effective 6/12/14; WSR 10-11-083, § 504-15-100, filed 5/17/10, effective 7/1/10; WSR 08-08-050, § 504-15-100, filed 3/27/08, effective 7/1/08; WSR 02-14-071, § 504-15-100, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. WSR 95-13-003, § 504-15-100, filed 6/8/95, effective 7/9/95. Statutory Authority: RCW 28B.30.125, 28B.30.150, 28B.10.560 and chapter 34.05 RCW. WSR 90-11-078 (Order 90-1), § 504-15-100, filed 5/16/90, effective 7/1/90.]

AMENDATORY SECTION (Amending WSR 15-11-036, filed 5/14/15, effective 6/14/15)

WAC 504-15-370 Vehicle storage and abandonment. (1) The storage of vehicles, including motorcycles and mopeds, is prohibited on campus unless otherwise authorized by the parking department.

(2) No person may use any vehicle parked on campus as a living unit without specific approval from the parking department. Violators may be cited and the vehicle impounded.

(3) Vehicles are to be maintained in operating condition at all times on university property, except those in an automotive shop designated by the parking department for parking such vehicles. Vehicle

repairs or maintenance is not done on campus unless authorized in advance by the parking department.

(4) A vehicle which appears to be abandoned, with or without a current parking permit or license plates, may be cited and impounded after an attempt is made to locate and notify the owner of the impending action.

[Statutory Authority: RCW 28B.30.150. WSR 15-11-036, § 504-15-370, filed 5/14/15, effective 6/14/15; WSR 10-11-083, § 504-15-370, filed 5/17/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 19-11-063, filed 5/15/19, effective 6/15/19)

WAC 504-15-930 Bicycles, skateboards, scooters, and ((~~roller skates.~~)) other "micromobility devices." (1) The riding and use of ((~~bicycles, skateboards, scooters, and roller skates~~)) micromobility devices is restricted as defined in this section. Exemption: Wheelchairs, "knee walkers," and other mobility aids used because of a disability or injury are exempt from subsections (2) and (4) of this section.

(2) Use of micromobility devices is prohibited on all ((~~building plazas, all~~)) pedestrian overpasses, interior building spaces, parking structures, parking structure ramps, all stairways, steps, ledges, benches, planting areas, any other fixtures, and in any other posted area.

((~~(2) Bicycles, skateboards, scooters, and roller skates~~)) (3) Micromobility devices may be ridden and used on sidewalks outside the prohibited areas when a bike path is not provided, subject to the restrictions described in subsection (9) of this section.

((~~(3) Electric-assisted bicycles must be used in a human propulsion only mode on pedestrian malls and sidewalks.~~))

(4) ((~~Motorized foot scooters must be used in a human propulsion only mode on sidewalks.~~)) When operated in pedestrian areas, including building plazas, pedestrian malls, and sidewalks, motorized or electric-assisted micromobility devices must:

(a) Respond to automatic controls as described in subsection (9) of this section; or

(b) Be operated only using human propulsion.

(5) Operators must move at a safe speed and yield to pedestrians at all times. Reckless or negligent operation of ((~~bicycles, skateboards, scooters, and roller skates~~)) micromobility devices on any part of campus is prohibited.

(6) Bicyclists must obey all traffic laws applying to individuals riding bicycles when operating bicycles on roadways. Micromobility devices other than bicycles are prohibited from use on roadways.

(7) Bicycles and scooters may be secured only at ((~~university-provided~~)) bicycle racks and bicycle storage facilities designed for such purpose.

((~~(8)~~)) Bicycles and scooters that are not secured at ((~~university-provided~~)) bicycle racks or bicycle storage facilities may be impounded at the owner's expense.

((~~(9)~~)) (8) Abandoned and inoperable ((~~bicycles~~)) micromobility devices. Internal policies regarding abandoned and inoperable ((~~bicycles~~)) micromobility devices, including the impoundment of ((~~bicycles~~

~~at the WSU Pullman campus~~)) micromobility devices, may be established upon approval by the vice president or designee whose responsibilities include supervision of the parking department.

(9) The campus may implement automatic controls on the operation of certain micromobility devices based on any or all of the following:

(a) Location of the device;

(b) Time of day; and

(c) Weather conditions.

Controls may include speed restriction, shutoff of motorized assist, or complete shutoff of the device.

(10) If there is a conflict between these regulations and on-site signage, the on-site signage takes precedence.

[Statutory Authority: RCW 28B.30.150. WSR 19-11-063, § 504-15-930, filed 5/15/19, effective 6/15/19; WSR 15-11-036, § 504-15-930, filed 5/14/15, effective 6/14/15; WSR 14-11-024, § 504-15-930, filed 5/12/14, effective 6/12/14; WSR 10-11-083, § 504-15-930, filed 5/17/10, effective 7/1/10; WSR 08-08-050, § 504-15-930, filed 3/27/08, effective 7/1/08. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. WSR 95-13-003, § 504-15-930, filed 6/8/95, effective 7/9/95.]

WSR 22-13-176
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed June 22, 2022, 8:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-049.

Title of Rule and Other Identifying Information: Amending WAC 192-520-010 Parties to collective bargaining agreements and 192-610-025 Birth, placement, or death of a child and required documentation.

Hearing Location(s): On July 26, 2022, at 9:00 a.m., Microsoft Teams. Join online, link available at paidleave.wa.gov/rulemaking; join by phone 564-999-2000, PIN 524 452 625#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after August 2, 2022.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by July 26, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by July 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program (Title 50A RCW) is proposing amendments to existing rules to implement 2SSB 5649, which passed into law during the 2022 legislative session. The proposed amendments implement an expiration date of December 31, 2023, for provisions allowing parties to collective bargaining agreements that were in effect on October 19, 2017, have not expired, have not been reopened, or have not been renegotiated to be exempt from PFML participation. The proposed amendments implement the "postnatal period" as the six-week period after an employee gives birth and outline that leave taken for the postnatal period will default to medical leave unless otherwise specified by the employee or if the employee's available medical leave has been exhausted. The proposed amendments clarify that leave taken for the postnatal period will not require a medical certification and describe other forms of documentation that may be required. The proposed amendments also implement a new provision allowing an employee to take family leave for up to seven calendar days, if available, in the event of the death of a child they would have been eligible to bond with or were bonding with. Additional changes are technical.

Reasons Supporting Proposal: The proposed amendments to the rules are necessary to implement 2SSB 5649, which passed into law during the 2022 legislative session.

Statutory Authority for Adoption: 2SSB 5649 (chapter 233, Laws of 2022); RCW 50A.05.060.

Statute Being Implemented: 2SSB 5649 (chapter 233, Laws of 2022).

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

Name of Proponent: Employment security department, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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

A cost-benefit analysis is not required under RCW 34.05.328. WAC 192-520-010 is exempt under RCW 34.05.328 (5)(b)(v). The content of the proposed amendment is explicitly and specifically dictated by 2SSB 5649.

WAC 192-610-025 is exempt under RCW 34.05.328 (5)(b)(v) and (c)(ii). The proposed amendments are explicitly and specifically dictated by 2SSB 5649 and are interpretive rules that do not subject a person to a penalty or sanction and set forth the agency's interpretation of statutory provisions it administers. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: WAC 192-510-010 is exempt under RCW 34.05.310 (4)(e). The proposed amendment is explicitly and specifically dictated by 2SSB 5649.

WAC 192-610-025 is exempt under RCW 34.05.310 (4)(e) and 19.85.025(4). The proposed amendments are explicitly and specifically dictated by 2SSB 5649. The proposed amendments also do not apply to businesses and only apply to individuals applying for and receiving paid family or medical leave benefits.

June 22, 2022
April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3892.1

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-520-010 Parties to collective bargaining agreements.

(1) Parties to a collective bargaining agreement in existence on October 19, 2017, are not required to be subject to the rights and responsibilities under Title 50A RCW and related rules unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

(3) To be eligible for benefits, an employee must have worked at least ((~~eight hundred twenty~~)) 820 hours during the qualifying period. If the employee's qualifying period includes any quarter prior to a collective bargaining agreement being reopened or renegotiated by the parties or expiring, the department will request the employee's qualifying period wages and hours from the employer. The employer must provide the wages and hours to the department within ((~~ten~~)) 10 calendar days.

(4) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50A RCW and

related rules. Employers are also subject to the rights and responsibilities of Title 50A RCW and related rules for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(5) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50A RCW and related rules as they pertain to the bargaining units whose collective bargaining agreement is reopened or renegotiated by the parties or expires, on or after October 19, 2017.

(6) Parties to a collective bargaining agreement in existence on October 19, 2017, that has not been reopened or renegotiated by the parties or expired may elect to be subject to all applicable rights and responsibilities under Title 50A RCW and related rules prior to the expiration, reopening or renegotiation of the agreement. Parties seeking to do so must submit to the department a memorandum of understanding, letter of agreement, or a similar document signed by all parties.

(7) The provisions described in this section are effective until December 31, 2023.

[Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-520-010, filed 7/31/19, effective 8/31/19; WSR 18-12-032, § 192-520-010, filed 5/29/18, effective 6/29/18.]

OTS-3893.1

AMENDATORY SECTION (Amending WSR 20-20-073, filed 10/2/20, effective 11/2/20)

WAC 192-610-025 ((~~Documenting the~~)) Birth ((~~or~~)), placement, or death of a child ((~~for paid family leave~~)) and required documentation. (1) When paid family or medical leave is taken for the postnatal period, to bond with the employee's child after birth, or for the death of a child as outlined in subsection (6) of this section, the employee must provide ((~~a copy of~~)):

(a) A copy of the child's birth certificate; ((~~or~~))

(b) Certification of birth from a health care provider; or

(c) Documentation sufficient to verify or substantiate the child's birth or death.

(2) When paid family leave is taken to bond with the employee's child after the child's placement as defined in WAC 192-500-195, the employee must provide a copy of a court order verifying placement.

If a court order is not available, the department may accept alternate documentation sufficient to verify the placement.

(3) Additional documentation may be requested to substantiate the qualifying event.

(4) Only the employee giving birth is eligible for medical leave taken for the postnatal period related to recovery from childbirth.

(5)(a) Leave taken by the employee giving birth for the postnatal period is subject to maximum family or medical leave duration and will be medical leave except when:

(i) Medical leave is fully or partially exhausted prior to the birth of the child; or

(ii) An employee chooses to use family leave, if available, for the postnatal period.

(b) An employee who gives birth and is not or will not be eligible for family leave to bond with a child may only use medical leave for the postnatal period.

(6) Subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in Title 50A RCW, an employee is eligible for up to seven calendar days of family leave in the event of the death of a child they would have been eligible to bond with or were bonding with. This leave is available for up to seven calendar days beginning the day after the date of the child's death or delivery of the deceased child.

[Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-610-025, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-025, filed 3/22/19, effective 4/22/19.]

WSR 22-13-179
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Massage)
[Filed June 22, 2022, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-09-038.

Title of Rule and Other Identifying Information: WAC 246-830-201, 246-830-485, 246-830-490, 246-830-500, and 246-830-510, massage therapists. The board of massage in coordination with the department of health (DOH) is proposing amendments to existing sections of the massage therapist rules to correct the names of the national examinations, clarify the training requirements for somatic education and intraoral massage education, and clarify and modernize the language in the equipment and sanitation rule and the hygiene rule.

Hearing Location(s): On July 29, 2022, at 9:10 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board of massage and DOH will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

To attend the hearing, please paste the following into your browser https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2Fl%2Fmeetup-join%2F19%253ameeting_MGY4ODkwM2MtYzUzZi00MGFlLWExZGQtODgxZjM1Mzc0MzRh%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522179ae2cc-af7d-41c0-9005-8be98625ea56%2522%257d&data=05%7C01%7CMegan.Maxey%40doh.wa.gov%7Cead9979996cc422d3e3208da507c2a9a%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C637910791494272988%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=YpJbZ7EtQ5sKLFJyzdm0igVz0xiAbHN6XI%2B2dd20Sic%3D&reserved=0; or call in (audio only), +1 564-999-2000,,129244599#, Phone Conference ID 129 244 599#.

Date of Intended Adoption: July 29, 2022.

Submit Written Comments to: Megan Maxey, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, megan.maxey@doh.wa.gov, by July 22, 2022.

Assistance for Persons with Disabilities: Contact Megan Maxey, phone 360-236-4945, TTY 711, email megan.maxey@doh.wa.gov, by July 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make additional amendments to five rules adopted in 2017. The proposed clarifications to WAC 246-830-485, 246-830-490, 246-830-500, and 246-830-510 and corrections to WAC 246-830-201 correctly identify the names of the national examination required for licensure, and clearly specify the necessary hygiene and sanitation practices in the massage setting in order to protect the health and safety of the public.

Reasons Supporting Proposal: A comprehensive review of the chapter was completed in 2017 which included amendments to WAC 246-830-201, 246-830-485, 246-830-490, and 246-830-500, along with adding new WAC 246-830-510. After the adoption of the rules in 2017, these five sections were identified as needing clarifications and corrections.

Statutory Authority for Adoption: RCW 18.108.025 and 18.108.085.

Statute Being Implemented: Chapter 18.108 RCW.

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

Name of Proponent: Board of massage, DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Maxey, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4945.

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

A cost-benefit analysis is not required under RCW 34.05.328. No significant analysis is required because the proposed amendments meet the exemption enumerated under RCW 34.05.328 (5)(b)(iv). The purpose of the proposed amendments is to correct typographical errors and clarify the current rule language without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: As defined in RCW 34.05.310 (4)(d), DOH has determined that no small business economic impact statement is required because the revisions are to correct typographical errors and clarify the current rule language without changing its effect.

June 22, 2022
Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary
and Megan Maxey
Acting Executive Director

OTS-3660.1

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-201 Examination. (1) An applicant for a massage therapist license must successfully pass one of the following examinations:

((~~(1)~~)) (a) The federation of state massage therapy boards ((~~and~~)) massage and bodywork licensing examination; ((~~or~~ ~~(2)~~)) (b) The national certification examination for therapeutic massage ((~~therapy~~)) and bodywork; or

((~~(3)~~)) (c) A board-approved examination.

((~~(4)~~)) (2) An applicant who does not pass an examination after three attempts must provide proof to the board of having successfully completed additional clinical training or course work as determined by the board before being permitted three additional attempts to pass an exam.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-201, filed 6/29/17, effective 7/30/17. Statutory Authority: RCW 18.108.025. WSR 91-01-077 (Order 102B), recodified as § 246-830-201, filed 12/17/90, effective 1/31/91; WSR 88-11-011 (Order PM 725), § 308-51-100, filed 5/10/88. Statutory Authority: RCW 18.108.020 and 18.108.070. WSR 85-01-043 (Order PL 501), § 308-51-100, filed 12/13/84. Statutory Authority: RCW 18.108.020. WSR 80-01-018 (Order PL 329, Resolution No. 12/79), § 308-51-100, filed 12/13/79; Order PL 248, § 308-51-100, filed 5/25/76.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-485 Somatic education training program exemption. (1) The secretary may approve an exemption from this chapter for an individual who has completed a somatic education and training program that has a professional organization with a permanent administrative location that oversees the practice of somatic education and training and that has the following:

(a) Standards of practice;

(b) A training accreditation process;

(c) An instructor certification process;

(d) A therapist certification process; and

(e) A code of ethics or code of professional conduct.

(2) An authorized representative must submit a request for approval of a program on forms provided by the secretary.

(3) The secretary in consultation with the board will evaluate the education and training program and grant approval or denial. If denied, applicants will be given the opportunity to appeal through the brief adjudicative hearing process as authorized in chapter 246-10 WAC.

(4) The secretary may request from an approved education and training program, and the program must provide, updated information every three years to ensure the program's compliance with this rule. Approval may be withdrawn if the program fails to maintain the requirements of this rule. Where a determination has been made that the program no longer meets the requirements of this rule and a decision is made to withdraw approval, an approved program may appeal through the brief adjudicative proceeding as authorized in chapter 246-10 WAC.

(5) Organizations representing multiple training programs such as the International Alliance of Healthcare Educators, must obtain an exemption for each training program to ensure clarity regarding what is and is not exempt as a somatic education program.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-485, filed 6/29/17, effective 7/30/17. Statutory Authority: Chapter 18.108 RCW. WSR 00-07-086, § 246-830-485, filed 3/15/00, effective 4/15/00.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-490 Intraoral massage education and training. A massage therapist may perform intraoral massage after completing specific intraoral massage education and training and after receiving an intraoral massage endorsement to their massage therapist license.

To qualify for an intraoral massage endorsement a massage therapist must complete the following education and training:

(1) Sixteen hours of direct supervised education and training, which must include:

(a) Hands-on intraoral massage techniques, cranial anatomy, physiology, and kinesiology;

(b) Pathology, cautions, and contraindications; and

(c) Hygienic practices, safety and sanitation. Hygienic practices, safety and sanitation includes, but is not limited to:

(i) Gloves must be worn during treatment and training which involves intraoral procedures;

(ii) Fresh gloves must be used for every intraoral client or patient contact;

(iii) Gloves that have been used for intraoral treatment must not be reused for any other purpose; and

(iv) Gloves must not be washed or reused for any purpose. The same pair of gloves must not be used, removed, and reused for the same client or patient at the same visit or for any other purpose.

(2) Supervised education and training must be obtained from a massage therapist endorsed in intraoral massage or from an individual who is licensed, certified, or registered and who has performed intraoral massage services within their authorized scope of practice.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-490, filed 6/29/17, effective 7/30/17. Statutory Authority: Chapter 18.108 RCW, 2007 c 272. WSR 08-17-001, § 246-830-490, filed 8/6/08, effective 9/6/08.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-500 Equipment, linens, and sanitation. (1) A massage therapist using hydrotherapies including, but not limited to, cabinet, vapor or steam baths, whirlpool, hot tub or tub baths must have ((~~available~~)) adequate shower facilities available for client or patient use.

(2) All cabinets, showers, tubs, basins, massage or steam tables, hydrotherapy equipment, and all other fixed equipment used must be thoroughly cleansed using ((~~an effective~~)) a bactericidal agent in accordance with the manufacturer directions.

(3) Combs, brushes, shower caps, mechanical, massage and hydrotherapy instruments, or bathing devices that come in contact with the body must be sterilized or disinfected by modern and approved methods and instruments. Devices, equipment or parts thereof having been used on one person must be sterilized or disinfected before being used on another person.

(4) Impervious material must cover, full length and width, all massage tables or pads, pillows, bolsters, and face cradles directly under ((~~fresh sheets and linens or disposable paper sheets~~)) single service linens or disposable covers. Impervious materials and surfaces must be disinfected after each use.

(5) A massage therapist must provide single service materials or clean ((~~linen such as sheets, towels, gowns, pillow cases, and all other~~)) linens used in the practice of massage. Linens must be stored in a sanitary manner.

(6) All ((~~towels and~~)) linens ((~~used for one~~)) that come into direct contact with a client or patient must be laundered or cleaned before they are used on any other client or patient. Blankets used on a client or patient must be laundered at least once a day or when the blanket comes in direct contact with a client or patient or becomes soiled.

(7) All soiled linens must be immediately placed in a covered receptacle.

(8) Soap and clean towels must be provided by the massage therapist for use by massage therapists, clients or patients and any employees.

(9) All equipment must be clean, ((~~well~~)) in good repair, and maintained ((~~and in good repair~~)) to industry standards.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-500, filed 6/29/17, effective 7/30/17.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-510 Hygiene. To maintain a professional standard of hygiene in their practice, a massage therapist must:

(1) Cleanse ((~~their~~)) any exposed body part used for applying treatment, before and after each treatment, using a sink with ((~~hot~~)) water and soap or a chemical germicidal product;

(2) Maintain a barrier of unbroken skin on their exposed body part used for applying treatment during each treatment and in the case of broken skin use a finger cot, glove or chemical barrier product to cover the affected area during treatment; and

(3) Wear clothing that is clean.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-510, filed 6/29/17, effective 7/30/17.]

WSR 22-13-181
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 22, 2022, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-072.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-436-0050 Determining financial need and benefit amount for CEAP, and 388-478-0005 Cash assistance need and payment standards and grant maximum.

Hearing Location(s): On July 26, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than July 27, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on July 26, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov [Tencza@dshs.wa.gov], by 5:00 p.m. on July 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments reflect a change in the temporary assistance for needy families (TANF) and state family assistance (SFA) maximum benefit limit, from an eight-person household to 10-person household, effective July 1, 2022, per the 2021-2023 supplemental operating budget. Amendments update related net income limits and allowable benefit amounts for the consolidated emergency assistance program, which are based on the TANF standards, are also included.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.660, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, and 74.62.030.

Statute Being Implemented: Section 205 (1)(b)(v), chapter 297, Laws of 2022.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5770, 360-522-2214.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical

or financial eligibility and rules concerning liability for care of dependents …["]

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small business, only DSHS clients.

June 16, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4928.1

AMENDATORY SECTION (Amending WSR 21-21-054, filed 10/15/21, effective 11/15/21)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than or equal to ((~~ninety percent~~)) 90% of the temporary assistance for needy families (TANF) payment standard. The net income limit for CEAP assistance units is:

Assistance unit members	Net income limit
1	$375
2	475
3	589
4	694
5	799
6	908
7	1,049
8 ((~~or more~~))	1,160
9	1,274
10 or more	1,385

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 ((~~or more~~))	9	10 or more
Food	$253	$322	$397	$469	$539	$612	$699	$773	$864	$939
Shelter	308	390	485	572	657	744	863	952	1,048	1,139
Clothing	36	45	56	66	76	89	98	112	127	139
Minor medical care	214	273	338	397	458	516	603	665	736	800
Utilities	105	132	163	191	220	253	292	322	354	385
Household maintenance	76	97	121	140	163	185	214	235	255	277
Job related transportation	417	528	654	771	888	1,009	1,165	1,289	1,416	1,539

	1	2	3	4	5	6	7	8 ((~~or more~~))	9	10 or more
Child related transportation	417	528	654	771	888	1,009	1,165	1,289	1,416	1,539

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

(a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;

(b) Cash on hand, if not already counted as income; and

(c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.660, 74.08.090, 74.08A.230 and 2021 c 334. WSR 21-21-054, § 388-436-0050, filed 10/15/21, effective 11/15/21. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-436-0050, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and 2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-436-0050, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-436-0050, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.660. WSR 09-14-040, § 388-436-0050, filed 6/24/09, effective 7/25/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 08-18-009, § 388-436-0050, filed 8/22/08, effective 9/22/08; WSR 98-16-044, § 388-436-0050, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC 388-478-0006).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on program grant standards.

((~~(4) Starting July 1, 2012, the monthly cash assistance grant for an assistance unit cannot exceed the payment standard for a family of 8 listed in WAC 388-478-0020(1).~~))

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0005, filed 9/24/20, effective 10/25/20.

Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-478-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, 74.08.090, and 2012 2nd sp.s. c 7. WSR 12-18-023, § 388-478-0005, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, and 74.08.090. WSR 11-21-024, § 388-478-0005, filed 10/11/11, effective 11/11/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, 74.08.090, and 2008 c 329 § 207 (1)(e). WSR 08-21-134, § 388-478-0005, filed 10/20/08, effective 10/28/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-478-0005, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0005, filed 7/31/98, effective 9/1/98.]

WSR 22-13-183
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed June 22, 2022, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-018.

Title of Rule and Other Identifying Information: Chapter 110-303 WAC, Organizational pilot. WAC 110-303-0001 Authority, 110-303-0005 Definitions, 110-303-0010 Pilot project licenses—licensing rules, 110-303-0015 Denial, modification, suspension, and revocation of a pilot project license—Right of review, and 110-303-0020 Process of seeking review.

Hearing Location(s): On July 26, 2022, telephonic. Make oral comments by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including July 26, 2022, will be considered.

Date of Intended Adoption: July 27, 2022.

Submit Written Comments to: DCYF Rules Coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, by July 26, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by July 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposals establish requirements for participating in a pilot project that will test the feasibility of licensing multi-site programs operated by one owner or entity, explain the criteria DCYF will use to select pilot participants, and clarify hearing rights for pilot participants.

Reasons Supporting Proposal: The rules are needed to administer the pilot project, and they fully comply with the 2021 legislature's directive to adopt rules for implementing a pilot project that explores the feasibility of licensing multi-site child care programs that operate under one owner or entity.

Statutory Authority for Adoption: Section 229(19), chapter 334, Laws of 2021, and section 229(19), chapter 297, Laws of 2022.

Statute Being Implemented: Section 229(19), chapter 334, Laws of 2021, and section 229(19), chapter 297, Laws of 2022.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

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

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

and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

June 22, 2022
Brenda Villarreal
Rules Coordinator

OTS-3866.4

Chapter 110-303 WAC
ORGANIZATIONAL LICENSE PILOT

NEW SECTION

WAC 110-303-0001 Authority. (1) Chapter 43.216 RCW grants to the department of children, youth, and families the responsibility and authority to establish and enforce licensing requirements and standards for licensed child care programs in Washington state, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Pursuant to section 229(19), chapter 334, Laws of 2021, and section 229(19), chapter 297, Laws of 2022, DCYF must:

(a) Establish a pilot project to determine the feasibility of a child care license category for multisite programs operating under one owner or one entity; and

(b) Adopt rules to implement the pilot project. DCYF may waive or adapt licensing requirements when necessary to allow for the operation of a new license category.

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NEW SECTION

WAC 110-303-0005 Definitions. The following definitions apply to this chapter.

"Applicant" means an individual who has made a formal request for a child care license or organizational license.

"Child care," "early learning program," or **"early learning"** means regularly scheduled care that is licensed by the department for a group of children birth through 12 years of age for periods of less than 24 hours.

"Department" means the Washington state department of children, youth, and families (DCYF).

"Early learning provider" or **"provider"** means an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center

directors, assistant directors, program supervisors, lead teachers, assistants, aides, and volunteers.

"Organizational pilot license" or **"pilot license"** means a permit issued by the department legally authorizing an applicant to operate an early learning program that is authorized under section 229(19), chapter 297, Laws of 2022.

"Pilot project" means the program authorized under section 229(19), chapter 297, Laws of 2022, that requires DCYF to determine the feasibility of a child care license category for multisite programs operating under one owner or entity.

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NEW SECTION

WAC 110-303-0010 Pilot project licenses—Licensing rules. (1) To participate in the pilot project, an early learning program must apply to and be granted an organizational pilot license from the department.

(2) To be eligible for an organizational pilot license, a governmental agency, nonprofit organization, or a for-profit private business must:

(a) Operate, oversee, or manage center or school-age child care and early learning programs;

(b) Have a current licensed or certified early learning program site authorized under chapter 43.216 RCW, or submitted an application to obtain a license or certification to provide child care at an early learning program site that is authorized under chapter 43.216 RCW; and

(c) Have the ability to operate, oversee, or manage a minimum of three and maximum of seven distinctly separate child care and early learning program sites that will be subject to the organizational pilot license.

(3) In addition to the eligibility requirements described in subsection (2) of this section, the department will select organizations to participate in the pilot project after considering:

(a) The criteria described in section 229(19), chapter 297, Laws of 2022; and

(b) The characteristics of applicants' identified sites that may contribute to a mixture of diverse statewide locations that participate in the pilot project.

(4) To protect the health and safety of children enrolled in the participating sites, early learning providers who participate in this pilot project must agree, enter into, and comply with the terms and conditions of an organizational license agreement prepared by the department. The organizational license agreement will require compliance with the following minimum terms and conditions:

(a) Applicable background check requirements contained in chapter 110-06 WAC;

(b) Applicable child care and early learning licensing requirements contained in chapter 43.216 RCW and chapter 110-300, 110-300E, or 110-301 WAC;

(c) The organizational license agreement; and

(d) Applicable federal Child Care Development Fund requirements described at Title 42 (chapter 105, subchapter II-B) of the United

States Code (U.S.C.), and Title 45, Part 98, of the Code of Federal Regulations (C.F.R.).

(5) Pursuant to RCW 34.05.310 (2)(b), the department will use this pilot project to test the feasibility of complying with or administering draft new rules or draft amendments to existing rules.

(6) To establish a uniform set of requirements for an organizational license, the department may:

(a) Draft new rules or add amendments to existing rules; and

(b) Add or amend current licensed child care rules under chapters 110-300, 110-300E, and 110-301 WAC.

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NEW SECTION

WAC 110-303-0015 Denial, modification, suspension, and revocation of a pilot project license—Right of review. (1) A license authorized to be issued under this chapter may be denied pursuant to chapter 43.216 RCW, this chapter, or chapters 110-06, 110-300, 110-300E, and 110-301 WAC.

(2) A license issued under this chapter may be suspended, modified, or revoked if the licensee fails to comply with the requirements contained in chapter 43.216 RCW, this chapter, or chapters 110-06, 110-300, 110-300E, and 110-301 WAC.

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NEW SECTION

WAC 110-303-0020 Process of seeking review. (1) Pursuant to RCW 43.216.250 and 43.216.325, the department is authorized to take enforcement action against an applicant or licensee if the applicant or licensee fails to comply with this chapter, applicable rules in chapters 110-06, 110-300, 110-300E, 110-301 WAC, or chapter 43.216 RCW. For purposes of this chapter, enforcement actions include only the denial, summary suspension authorized by RCW 34.05.422(4), suspension, revocation, modification, or nonrenewal of a license to participate in the pilot project.

(2) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service and must include:

(a) The reason why the department is taking the action;

(b) The rules the provider failed to comply with;

(c) The provider's right to appeal enforcement actions; and

(d) How the provider may appeal and request a hearing.

(3) An applicant or licensee has the right to appeal an enforcement action by requesting an adjudicative proceeding, otherwise known as a hearing, pursuant to the hearing rules codified in chapter 110-03 WAC.

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