

WSR 22-17-021

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 5, 2022, 10:41 a.m.]

Continuance of WSR 22-14-049.

Preproposal statement of inquiry was filed as WSR 21-11-052.

Hearing Location(s): On September 29, 2022, at 9:00 a.m. Zoom, Meeting ID 865 1049 4742, Passcode 285303, Call-in 253-215-8782. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/86510494742?pwd=NUN0a0F2cWg5Q0UlcFIwTWIRib1Vjdz09>.

Date of Intended Adoption: October 5, 2022.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by September 29, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teresa.eckstein@esd.wa.gov, by September 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules clarify that, during a public health emergency, benefits for claimants terminated from work due to entering quarantine because of an exposure to or contracting the disease that is the subject of the declaration of the public health emergency will be charged 100 percent to the claimant's last employer if: (a) The employer is a base-period employer; (b) the employer is a contribution-paying employer; (c) the employer is a health care facility as defined in RCW 9A.50.010; and (d) the claimant was directly involved in the delivery of health services. Additionally, the rules clarify that during the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for work while isolated or under quarantine as directed by a medical professional, local health official, or the secretary of health, if the individual is available for work that will commence after the isolation or quarantine period ends; or which can be performed for an employer from the individual's home.

Reasons Supporting Proposal: ESSB 5190 amended availability requirements and created a good cause basis to quit work for certain health care workers during a public health emergency; RCW 50.20.010, 50.20.050. ESSB 5190 also clarified that when an eligible individual's separation employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separation employer if the individual qualifies for benefits because during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency. RCW 50.29.021 (1)(c)(iii). The proposed rules provide clear and usable guidance for the public regarding unemployment benefits for health care workers during a public health emergency.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. RCW 50.20.010(5) and 50.20.050(3) address the availability requirements and good cause basis to quit work for certain health care workers during a public health emergency. RCW 50.29.021 (1)(c)(iii)

states that when an eligible individual's separation employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separation employer if the individual qualifies for benefits because during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

Statute Being Implemented: RCW 50.20.010, 50.29.021.

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

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, 360-890-3472; Implementation and Enforcement: JR Richards, Olympia, 360-463-1079.

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 Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 771 [711], email rules@esd.wa.gov.

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. Due to the complexity of contribution calculations, the department is unable to forecast the costs to individual businesses. The proposed rule will create additional benefit charges as employers charged under WAC 192-320-075(3) will be charged for 100 percent of certain claimant's benefits (though an unknown number of those benefit charges would have been charged 100 percent regardless of the proposed rule). However, the number of possible variables for claims precludes the department from making a reliable forecast for individual businesses. When the possible increase is viewed across all employers, the department anticipates a negligible increase in tax liability for employer.

August 5, 2022

Dan Zeitlin

Employment Security Policy Director

OTS-3715.2

AMENDATORY SECTION (Amending WSR 21-16-034, filed 7/26/21, effective 1/2/22)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to accept suitable full-time, part-time, and temporary work during the usual hours and days of the week customary for your occupation.

(i) You are not required to accept part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be willing to accept full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work for at least (~~forty~~) 40 hours during the week during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(4) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States;

or
(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

(5) (a) During the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for work while isolated or under quarantine as directed by a medical professional, local health official, or the Secretary of Health, if the individual is available for work that:

(i) Will commence after the isolation or quarantine period ends;
or

(ii) Can be performed from the individual's home.

(b) For the purposes of this section, a health care worker is defined as an individual who was directly involved in the delivery of health services at a health care facility as defined in RCW 9A.50.010.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010 and 50.20.100. WSR 21-16-034, § 192-170-010, filed 7/26/21, effective 1/2/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-170-010, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042 and 50.20.010. WSR 20-11-022, § 192-170-010, filed 5/13/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-170-010, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

OTS-3716.1

AMENDATORY SECTION (Amending WSR 21-12-068, filed 5/28/21, effective 6/28/21)

WAC 192-320-075 Charges to the separating employer—RCW

50.29.021 (1) (c). (1) If a claimant voluntarily quits work to accept a job with a new employer, (~~one hundred~~) 100 percent of benefits paid on the claim will be charged to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for (~~one hundred~~) 100 percent of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

(a) A reduction in the individual's usual compensation of (~~twenty-five~~) 25 percent or more under WAC 192-150-115;

(b) A reduction in the individual's usual hours of (~~twenty-five~~) 25 percent or more under WAC 192-150-120;

(c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;

(d) A deterioration in the individual's worksite safety under WAC 192-150-130;

(e) Illegal activities in the individual's worksite under WAC 192-150-135; or

(f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.

(3) During a public health emergency, 100 percent of the benefits paid on a claim will be charged to a claimant's last employer if:

(a) The employer is a base-period employer;

(b) The employer is a contribution-paying employer;

(c) The employer is a health care facility as defined in RCW

9A.50.010;

(d) The claimant was directly involved in the delivery of health services; and

(e) The claimant was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(4) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of the separating employer as described in subsections (1) and (2) if they were earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-320-075, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 04-23-058, § 192-320-075, filed 11/15/04, effective 12/16/04.]

WSR 22-17-024
WITHDRAWAL OF PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed August 5, 2022, 2:32 p.m.]

The office of financial management (OFM) requests to withdraw WSR 22-14-104 filed with the office of the code reviser on July 6, 2022. The purpose of OFM's request to withdraw WAC 357-04-125, 357-19-373, 357-19-413, 357-46-165, 357-46-195, and 357-58-190 filed as WSR 22-14-104 is due to the revised Directive 22-13.1 issued by Governor Inslee effective August 5, 2022. OFM intends to refile this rule making to align with Governor Inslee's revised Directive 22-13.1 at a later date.

Should you have any questions regarding this matter, please contact Brandy Chinn at Brandy.Chinn@ofm.wa.gov or 360-878-2901.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

WSR 22-17-034

WITHDRAWAL OF PROPOSED RULES

BELLEVUE COLLEGE

[Filed August 9, 2022, 2:39 p.m.]

Due to new and substantive changes to WSR 22-14-108, Bellevue College's student code of conduct policy 2050, since filing on July 6, 2022, we respectfully request that our CR-102 be rescinded. We anticipate submission of a new CR-102 in mid-September.

If additional information is required, contact Lori McRea Keller, associate director of policies and special projects, loreen.keller@bellevuecollege.edu, or 425-564-6155.

Loreen M. Keller
Bellevue College

WSR 22-17-035
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 10, 2022, 8:52 a.m.]

Continuance of WSR 22-11-092 filed on March 18, 2022.

Preproposal statement of inquiry was filed as WSR 20-21-058 on October 14, 2020; and WSR 20-21-057 on October 14, 2020.

Title of Rule and Other Identifying Information: WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished. This rule's original hearing date was June 24-25, 2022. Due to June's agenda and time constraints, Chair Baker announced that this agenda item would be moved to a future meeting and is part of the official record.

Hearing Location(s): On September 23-24, 2022, at 8:00 a.m., at Ocean Shores Convention Center, 120 West Chance A La Mer N.W., Ocean Shores, WA. In-person and hybrid. Information on how to register to testify at the public hearing is available at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267.

Date of Intended Adoption: Not before October 7, 2022.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email RedFox102@PublicInput.com, WhitePelican102@PublicInput.com, fax 360-902-2162, phone 855-925-2801, red fox project code 4936, white pelican project code 7748, website <https://publicinput.com/RedFox102>, <https://publicinput.com/whitepelican102>, by September 24, 2022.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, <https://wdfw.wa.gov/accessibility/requests-accommodation>, by September 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendments to WAC 220-200-100, if adopted, would classify the Cascade red fox as "threatened" in the state of Washington and reclassify the white pelican from "threatened" to "sensitive."

If the proposed amendments are adopted by the commission, the Cascade red fox would be classified as "threatened" and the American white pelican would be downlisted to "sensitive." The proposed amendments, if approved, would include the additional regulation and enforcement of wildlife classified as threatened identified in RCW 77.15.120. Washington department of fish and wildlife (WDFW) would also initiate work on a recovery plan for the species according to WAC 220-610-110.

Reasons Supporting Proposal: The Cascade red fox (*Vulpes vulpes cascadensis*) is a subspecies of red fox that historically occurred in subalpine meadow, parkland, upper montane forest, and alpine habitats of the Cascade Range of Washington and southern British Columbia. Lack of detections of Cascade red foxes in British Columbia in recent decades indicate that this species is now restricted to Washington. A southward range contraction appears to have occurred within Washington within recent decades, as the only known population now occurs in the South Cascades (south of the I-90 corridor). It now occurs within ≤ 50 percent of its historical range in the state.

The western population of white pelicans has recovered substantially and given the size of the Badger Island colony and number of nonbreeding white pelicans in Washington during the past several

years, a change in listing could be considered. The species remains somewhat vulnerable; however, as only the single colony regularly forms in Washington, and white pelican colonies are highly sensitive to disturbances, adults will desert and/or leave eggs and young exposed to predation following disturbances. We recommend the species be downlisted to sensitive. A sensitive species is "vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats" (WAC 220-610-110).

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020, 77.12.047, and 77.12.240.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020, 77.12.047, and 77.12.240.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed periodic status review for the Cascade red fox and white pelican does not require a cost-benefit analysis per RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The addition and downlisting of a periodic status review does not affect small businesses.

August 10, 2022
Annie Szvetecz
Rules Coordinator

WSR 22-17-036
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed August 10, 2022, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-053.

Expedited rule making [Emergency rule making]—Proposed notice was filed as WSR 22-13-071.

Title of Rule and Other Identifying Information: Chapter 110-720 WAC, Collection of costs of support, treatment, and confinement of juveniles under RCW 13.40.220; WAC 110-03-0020 Definitions and 110-03-0490 Finality of the initial order.

Hearing Location(s): On September 27, 2022, telephonic. Oral comments may be made by calling 360-902-8084 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 September 27, 2022, will be considered.

Date of Intended Adoption: September 28, 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 September 27, 2022.

Assistance for Persons with Disabilities: DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by September 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is repealing chapter 110-720 WAC and amending WAC 110-03-0020 and 110-03-0490 as a result of SHB 2050, which repeals parent pay in Washington state.

Reasons Supporting Proposal: Parent pay requires families to pay a percentage of their income to support their child's incarceration. Parent pay is a barrier to young people's successful transition out of the juvenile system and toward a second chance. The practice has inequitable racial outcomes, creates debt for families already struggling financially, and is an inefficient source of revenue for the state.

Statutory Authority for Adoption: RCW 13.40.220.

Statute Being Implemented: RCW 13.40.220.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen, Olympia, 360-764-3732; Implementation and Enforcement: DCYF, state-wide.

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(4).

Explanation of exemptions: This proposed rule does not impact small businesses as defined in RCW 19.85.020.

Scope of exemption for rule proposal:
Is fully exempt.

August 9, 2022
Brenda Villarreal
Rules Coordinator

OTS-3840.1

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0020 Definitions. The following definitions apply to this chapter:

"Adjudicative proceeding" means a proceeding in which an opportunity for a hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of a DCYF action. Hearings and prehearing conferences are elements of adjudicative proceedings. An adjudicative proceeding may take place before the office of administrative hearings (OAH) and may also encompass review proceedings before a DCYF board of appeals (BOA) review judge.

"Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an adjudicative proceeding resulting in an initial order, or resulting in a final order if no appeal of the initial order is properly made or if no further agency appeal is available.

"Adverse action" or "DCYF action" or "department action" means licensing, the enforcement of a statute, the application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

"Board of appeals" or "BOA" means the DCYF board of appeals, the entity to which an initial order of an ALJ may be appealed and considered by a review judge.

"Business days" means all days except for Saturdays, Sundays, federal legal holidays, and state legal holidays listed in RCW 1.16.050(1).

"Business hours" means 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

"Calendar days" means all days including Saturdays, Sundays, federal legal holidays, and state legal holidays as listed in RCW 1.16.050(1).

"Case" means the entire adjudicative proceeding following the filing of a request for hearing with OAH.

"Continuance" means a change to a later date or time of a prehearing conference, hearing, or deadline for other action.

"DCYF" or "department" means the department of children, youth, and families.

"DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

"Documents" means papers, letters, writings, or other printed or written items.

"Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present, as provided in RCW 34.05.455. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

"File" means delivering documents to OAH or the BOA at the location designated in this chapter or in a notice or order received from OAH or the BOA. The date of filing is the date documents are actually received during office hours by OAH or the BOA.

(a) Filing may be by:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax transmission, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service; or

(v) Legal messenger service.

(b) A party cannot file documents by email, unless agreed in advance by OAH or BOA.

"Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order. However, in the case of administrative proceedings related to juvenile parole revocation (~~(, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile,)~~) or subsidy overpayments to child care providers, the ALJ's decision is the final administrative decision.

"Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules. An ALJ or review judge may use the provisions of superior court civil rule 60 as a guide to determine what may be considered good cause.

"Hearing" means a meeting held before OAH or a review judge that gives an aggrieved party an opportunity to be heard, for the purpose of deciding issues of fact or law, in a dispute resulting from an appealable action taken against the party by DCYF.

"Initial order" is a decision made by an ALJ that may be reviewed by a review judge at any party's request.

"Judicial review" means a superior court's review of a final order.

"Limited-English-proficient person" or "LEP" means a person with limited ability to read, write, or speak English well enough to understand and communicate effectively.

"OAH" means the office of administrative hearings. This is a separate agency and not part of DCYF.

"Party" means DCYF or a person or entity named in a department action, or to whom a department action is directed.

"Prehearing conference" means a meeting scheduled and conducted by an ALJ in preparation for a hearing.

"Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF offices and divisions.

"Reconsideration" means reexamination of a final order on request of a party because the party believes a mistake was made.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Representative" means the person selected by a party to represent that party in an administrative hearing. A representative may be an attorney or a lay representative who is not an attorney.

"Review" means the act of reevaluating an initial order by examining the record and issuing the DCYF final order as provided by RCW 34.05.464.

"Review judge" or "BOA review judge" means an attorney designated by the DCYF board of appeals to act as the reviewing officer and who is authorized to review ALJ initial orders and to prepare and enter the final order.

"Rule" means a state agency regulation found in the Washington Administrative Code (WAC).

"Serve" or "service" means a procedure by which notice of legal action is given to a party.

(a) Unless otherwise stated in law or rule, a party may serve another party by one of the following methods:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service;

(v) Legal messenger service; or

(vi) By any other method authorized by chapter 10-08 WAC.

(b) Service for each method, respectively, is complete when:

(i) Personal service is made;

(ii) Mail is properly stamped, addressed, and deposited in the United States mail;

(iii) Fax produces proof of transmission;

(iv) A parcel is delivered to a commercial delivery service with charges prepaid; or

(v) A parcel is delivered to a legal messenger service with charges prepaid.

(c) A party cannot serve documents by email, unless agreed in advance by the receiving party.

(d) Notice and orders served by mail by OAH or BOA are served on the date of mailing.

"Stay" means an order temporarily halting the effective date of a DCYF action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0020, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0490 Finality of the initial order. (1) Except as provided in subsection (3) of this section, the ALJ issues an initial order that becomes a final order:

(a) Twenty-one days after the date the initial order is mailed to the parties, when none of the parties has timely requested a review; or

(b) When a request for review is dismissed.

(2) The review judge issues the final order when a party timely requests a review of an initial order.

(3) The ALJ will issue a final order in administrative proceedings concerning juvenile parole revocation(~~(, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile,)~~) and subsidy overpayments to child care providers.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0490, filed 12/19/19, effective 1/19/20.]

OTS-3841.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 110-720-0010	Definitions.
WAC 110-720-0020	Cost reimbursement schedule and ability to pay.
WAC 110-720-0030	Modifications.
WAC 110-720-0040	Hearing.
WAC 110-720-0050	Powers of the administrative law judge.

WSR 22-17-037

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed August 10, 2022, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-037.

Title of Rule and Other Identifying Information: Lighting and emergency equipment, WAC 204-21-130 Emergency lamps, 204-21-230 Lighting equipment prohibited, and 204-36-050 Equipment requirements.

Hearing Location(s): On September 27, 2022, at 9:00 a.m., Call-in 1-253-215-8782, Meeting ID 977 6585 0837, Passcode 373864. Hearing to be held via Zoom.

Date of Intended Adoption: September 28, 2022.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by September 23, 2022.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by September 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 204-21-130, 204-21-230 and 204-36-050 are needed to coincide with legislative changes to RCW 46.37.184 that permit rear-facing blue lights on fire department vehicles, which will become effective June 9, 2022. A change is also needed in WAC 204-36-050 to make it consistent with the authority in WAC 204-21-130 and 204-21-230, which permit blue lights on law enforcement vehicles. Additional minor, nonsubstantive changes are necessary to clean up the existing language and eliminate confusion.

Reasons Supporting Proposal: Updates are to ensure consistency and clarity with statutory changes.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.320 and 46.37.194.

Statute Being Implemented: RCW 46.37.184.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; and Implementation: Washington State Patrol, Olympia, Washington, 360-596-4017.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.[3]28 (5)(a)(i) - (ii) and (b)(ii).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.025(3), 34.05.310 (4)(c) - (d).

Explanation of exemptions: The proposed revisions to allow rear-facing blue lights on fire department vehicles in this rule making are necessitated by, and an adoption of, the new statutory language. The remainder of the changes clarify the authority existing in other rules without substantively changing their content or their effect.

Scope of exemptions for rule proposal:
Is fully exempt.

August 10, 2022
John R. Batiste
Chief

OTS-3885.1

AMENDATORY SECTION (Amending WSR 08-19-104, filed 9/17/08, effective 10/18/08)

WAC 204-21-130 Emergency lamps. (1) All emergency lamps must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:

(a) Conformance to Federal Motor Vehicle Safety Standards, or if none

(b) Conformance to current standards and specifications of the Society of Automotive Engineers, or if none

(c) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

(2) Headlamp flashing systems may be used for authorized emergency vehicles owned and operated by law enforcement agencies, licensed ambulance companies, and fire departments. Headlamp flashing systems must:

(a) Have a circuit that alternately flashes only the high beams from the headlamps at a rate of (~~sixty to one hundred twenty~~) 60 to 120 flashes per minute per side.

(b) Be so designated that any failure to flash the lamps will not result in failure of the headlamp system to operate normally.

(c) Incorporate an override feature which must stop the flashing and provide full illumination from both high beam headlamps when the dimmer switch is in the high-beam mode.

(d) Have an indicator lamp included in the circuit to give a visible and unmistakable indication to the driver that the system is turned on.

(3) The following table outlines the color of emergency lamps to be used for each type of (~~emergency~~) vehicle.

Vehicle Type	Lighting Required	Other Lighting Allowed
Authorized Emergency Vehicles (except <u>Law Enforcement and Fire Department Vehicles</u>)	1 red lamp	Flashing amber or white lamps
Law Enforcement Vehicles	1 blue lamp	Flashing red, amber or white lamps

Vehicle Type	Lighting Required	Other Lighting Allowed
<u>Fire Department Vehicles (RCW 46.37.184)</u>	<u>1 rear facing blue lamp</u>	<u>Flashing red, amber, or white lamps</u>
<u>Volunteer Firefighter Vehicles and Firefighter Private Vehicles (RCW 46.37.185)</u>		If approved by the chief of their respective service, green lamps may be installed on the vehicle provided that the requirements outlined in subsection (4) of this section are met.
Public utilities vehicles, other construction and maintenance vehicles, pilot cars, tow trucks, animal control vehicles, hazardous materials response team vehicles, search and rescue team vehicles, and rural newspaper carrier vehicles, and vehicles towing a load that exceeds legal dimensions.		One or more flashing amber lamps provided that the requirements of subsection (5) of this section are met.

(4) Green (~~(lights)) lamps~~ for volunteer firefighter and firefighter private vehicles must:

(a) Meet the requirements of SAE J595 except that the color of the lamp must be green as the color described in SAE J578.

(b) Be visible for a distance of (~~(two hundred)) 200~~ feet under normal atmospheric conditions.

(c) Not have a maximum light projected in any one direction exceeding three hundred candle power.

(d) Be mounted no less than (~~(twenty-four)) 24~~ inches above the level surface upon which the vehicle stands, or may be placed on the forward portion of the top above the windshield.

(e) Be mounted anywhere from the center of the vehicle to the left side thereof.

(f) Be used only for the purpose of identification and the operator of a vehicle so equipped must not be entitled to any of the privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles.

(5) Amber lamps must:

(a) Be mounted and be of sufficient intensity so as to be clearly visible to approaching traffic for at least (~~(five hundred)) 500~~ feet in normal sunlight.

(b) Be mounted as outlined in WAC 204-21-020 and as follows:

(i) Must be mounted so that the entire projected area of the lens is visible from all eye heights of drivers of other vehicles at angles within (~~(forty-five)~~) 45 degrees left to (~~(forty-five)~~) 45 degrees right of the front of the vehicle. If the light within these required angles is blocked by the vehicle or any substantial object on it, an additional (~~(warning)~~) amber lamp must be displayed within the obstructed angle.

(ii) May be mounted at any height.

(c) Only be used on the vehicles described in subsection (3) of this section, when such vehicles are actually involved in construction, maintenance, or operations which require that warning be given to ensure the protection of the motoring public or the work crew. (~~(Warning)~~) Lamps must not be illuminated while traveling to or from the site of operations. For the purposes of tow truck operations, the site of operations must be only that place where vehicles are attached to or detached from the tow truck. Lamps on pilot cars must be illuminated only while the vehicle is actually providing escort service. Lamps on rural newspaper delivery vehicles must only be illuminated when the vehicle is traveling on the delivery route. Lamps on oversize units may be illuminated when traveling on public roadways. The operator of these vehicles (~~(must)~~) are not (~~(be)~~) entitled to any (~~(of the)~~) other privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles.

(6) Three hundred sixty degree (~~(emergency)~~) warning lamps must meet SAE Standard J845.

(7) Nothing in this section relieves the operator of any vehicle from displaying any other light or warning device required by statute or regulation.

[Statutory Authority: RCW 46.37.005 and 46.37.320. WSR 08-19-104, § 204-21-130, filed 9/17/08, effective 10/18/08.]

AMENDATORY SECTION (Amending WSR 15-16-124, filed 8/5/15, effective 9/5/15)

WAC 204-21-230 Lighting equipment prohibited. (1) The addition of a lamp, reflective device or other motor vehicle equipment must not impair the effectiveness of lighting equipment required by 49 C.F.R. Part 571.108, as it exists on February 22, 2022, or chapter 46.37 RCW.

(a) If a vehicle is in motion on a public roadway, the vehicle must not:

(i) Display aftermarket neon lighting devices.

(ii) Combine any type of letter, number, sign, symbol or combination thereof with an eye level brake light meeting the standards of 49 C.F.R. Part 571.108 (FMVSS 108). No function other than red reflex reflectors will be combined in eye level brake lights.

(iii) Have a lighted or electrically/mechanically powered sign or message board enabling change or movement of any displayed message to be displayed or affixed to the vehicle. Except:

(A) Vehicles that are used in conjunction with officially sanctioned or sponsored motor vehicle traffic control or movement may display lighted or electrically powered signs to assist in the efficient control of traffic movement on public roadways. The signs must be designed, worded, and located to limit misinterpretation and confusion by the motoring public.

(B) Electric signs may be unitized to identify taxicabs and the destinations of mass transportation vehicles. These signs must not contain any commercial or personal message and must be designed, worded, and located so that it is clearly differentiated from other required motor vehicle lights.

(b) If a vehicle is not in motion and parked on private property, the vehicle may use aftermarket lighting except as outlined under RCW 46.37.180.

(c) This section is not intended to prohibit a scrolling sign provided that the scrolling sign must:

(i) Be powered by an external source or in a manner which does not cause the required equipment on the vehicle to be out of compliance with 49 C.F.R. Part 571, chapter 46.37 RCW or Title 204 WAC.

(ii) Not be lit.

(iii) Not have continual motion.

(2) Pursuant to Title 49 C.F.R. Part 571.108, the addition of an aftermarket style ornament or other feature such as tinted plastic glass covers, a grille or slotted covers must not be placed in front of the headlamp lens, or in front of any other lighting devices installed on motor vehicles which impair the effectiveness of lighting equipment required under 49 C.F.R. Part 571.108 (FMVSS 108) or chapter 46.37 RCW. Except:

(a) Clear aftermarket headlamp covers.

(b) Headlamp wipers may be used in front of the lens provided that the headlamp system is designed to conform to all applicable photometric requirements in 49 C.F.R. Part 571.108 (FMVSS 108) with the wiper stopped in any position in front of the lens.

(c) A bike rack may be installed on the front of a municipal transit vehicle (as defined under RCW 46.04.355) provided that even with the bike rack installed, loaded or unloaded with bicycles, the headlight system still conforms with all applicable photometric requirements in 49 C.F.R. Part 571.108 (FMVSS 108).

(3) Red emergency lights are prohibited on any vehicle other than an authorized emergency vehicle, a law enforcement vehicle, an emergency tow truck as defined in WAC 204-21-020(8), school buses, and private carrier buses.

(4) Blue lights are prohibited on any vehicle other than a law enforcement vehicle as defined in WAC 204-21-020 and a fire department vehicle as authorized in RCW 46.37.184.

(5) Flashing white lights are prohibited on any vehicle other than authorized emergency vehicles, law enforcement vehicles, school buses, and emergency tow trucks as defined in WAC 204-21-020.

[Statutory Authority: RCW 46.37.005 and 46.37.320. WSR 15-16-124, § 204-21-230, filed 8/5/15, effective 9/5/15; WSR 08-19-104, § 204-21-230, filed 9/17/08, effective 10/18/08.]

OTS-3886.1

AMENDATORY SECTION (Amending WSR 14-24-116, filed 12/3/14, effective 1/3/15)

WAC 204-36-050 Equipment requirements. (1) Authorized emergency vehicles must be:

- (a) Conventional passenger cars, vans, pickups, or similar vehicles;
- (b) Conventionally painted; and
- (c) Legally equipped in conformance with RCW 46.37.190(1) with at least one lamp capable of displaying a red light visible from at least (~~five hundred~~) 500 feet in normal sunlight and a siren capable of giving an audible signal. Such equipment must not be installed prior to obtaining approval of the application and issuance of a temporary certificate of approval for the vehicle(s) by the patrol. To be considered approved equipment for use under the provisions of this section, all devices must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:
 - (i) Conformance to current standards and specifications of the Society of Automotive Engineers, or; if none
 - (ii) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

(2) Authorized emergency vehicles must not:

- (a) Be equipped with blue lamps except as provided in RCW 46.37.184 and WAC 204-21-230(4).
 - (b) Display commercial signs, posters, or pictures.
 - (c) Carry or attach to the outside of the vehicle equipment, not related to the emergency nature of the vehicle.
 - (d) Display or use any name that includes the word "police" or "law enforcement" or other word which portrays the individual or business as a public law enforcement agency.
- (3) Authorized emergency vehicles may, in addition to the required equipment, have:
- (a) An amber or white lamp on their vehicle as outlined under WAC 204-21-130;
 - (b) Signal preemptive device as outlined in RCW 46.37.670;
 - (c) Flashing or strobing headlamps;
- provided that such equipment is listed on the application and approved by each primary jurisdiction and the patrol.

[Statutory Authority: RCW 46.37.194. WSR 14-24-116, § 204-36-050, filed 12/3/14, effective 1/3/15. Statutory Authority: RCW 46.37.194 and 46.37.005. WSR 09-09-091, § 204-36-050, filed 4/16/09, effective 5/17/09. Statutory Authority: RCW 46.37.194. WSR 90-07-034, § 204-36-050, filed 3/15/90, effective 4/15/90; WSR 88-15-052 (Order 88-08-ESR), § 204-36-050, filed 7/18/88; Order 7301, § 204-36-050, filed 2/5/73.]

WSR 22-17-038

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed August 10, 2022, 11:30 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Washington alfalfa seed commission, chapter 16-529 WAC. Specifically, WAC 16-529-030 Board membership, 16-529-060 Nomination of elected or director-appointed board members, 16-529-070 Election or advisory vote of board members, and 16-529-140 Assessments.

Hearing Location(s): On September 29, 2022, at 9:00 a.m., at Benton PUD, 2721 West 10th Avenue, Kennewick, WA 99336.

Date of Intended Adoption: December 10, 2022.

Submit Written Comments to: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, email mfinkenbinder@agr.wa.gov, fax 360-902-2092, by September 29, 2022.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist, phone 360-902-1976, fax 360-902-2092, TTY 800-833-6388, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to remove districts within the alfalfa seed marketing order due to the decreasing numbers of alfalfa seed growers and handlers in the state, and to increase the assessment rate from 50 cents per hundredweight of cleaned seed to 75 cents per hundredweight of cleaned seed.

Reasons Supporting Proposal: These amendments will implement the petition received from the alfalfa seed commission in accordance with RCW 15.65.050. The board is proposing to remove districts to allow for a statewide representation for all positions on the commission. This is due in part to the reduction in alfalfa seed growers and handlers and the continued challenges to find representation within a specific district. The petition also included the proposal from the board to increase the assessment from 50 cents per hundredweight of cleaned seed to 75 cents per hundredweight of cleaned seed. The commission has had the same assessment rate since the commission began in 1979. In order to continue to fund research projects and operate as a commission, the commissioners saw the need to increase the assessment rate.

Statutory Authority for Adoption: RCW 15.65.047 and [15.65].050; chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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: The proposed rules will not be adopted unless they are approved by referendum of affected producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington alfalfa seed commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, 360-972-4216; Implementation and Enforcement: Shane Johnson, 6601 West Deschutes Avenue, Suite C-2, Kennewick, WA 99336, 509-585-5460.

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 and the Washington alfalfa seed commission are not named agencies in 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 under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

August 10, 2022
Derek I. Sandison
Director

OTS-3926.1

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

WAC 16-529-030 Board membership. (~~((1))~~) The board shall consist of eight members. Six members shall be affected producers appointed or elected as provided in WAC 16-529-020 through 16-529-120. One member shall be an affected handler appointed as provided in WAC 16-529-020 through 16-529-120. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

~~((a))~~ (1) Director-appointed positions on the board shall be designated as position 2, position 4, position 6, and position 7. The affected handler member of the board shall be position 7.

~~((b))~~ (2) Elected affected producer positions on the board shall be designated as position 1, position 3, and position 5.

~~((c))~~ (3) The position representing the director who is neither an affected producer nor an affected handler shall be designated as position 8.

~~((2) For the purpose of nomination, appointment, and election of affected producer members of the board, the affected area of the state of Washington shall be divided into three representative districts as follows:~~

~~(a) District I shall have two board members, being Positions 1 and 2, and shall include the counties of Adams, Chelan, Douglas, Ferry, Franklin, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens.~~

~~(b) District II shall have one board member, being Position 3, and shall include the counties of Benton, Kittitas, Klickitat, and Yakima.~~

~~(c) District III shall have three board members, being Positions 4, 5, and 6, and shall include the counties of Asotin, Columbia, Garfield, Walla Walla, and Whitman.~~

~~(d) If no nominations are received or there are fewer than three affected producers within a district, the position(s) shall be deemed "at large" and shall be filled by a producer from any district in the state. Nominations may be made by producers from any district in the state pursuant to the provisions of WAC 16-529-060.)~~

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-030, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-030, filed 3/25/05, effective 4/25/05. Statutory Authority: Chapter 15.65 RCW. WSR 85-10-015 (Order 1850), § 16-529-030, filed 4/22/85, effective 6/1/85; Order 1, Article II, § B, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

WAC 16-529-060 Nomination of elected or director-appointed board members. (1) For the purpose of nominating candidates for appointment or election to board membership, the director shall call a separate nomination meeting of affected producers and affected handlers.

(2) Each year the director shall call a nomination meeting for both elected and director-appointed affected producer and affected handler board members (~~(in those districts)~~) whose board members' terms are about to expire. The meeting(s) shall be held at least (~~(thirty)~~) 30 days in advance of the date set by the director for the election or advisory vote of board members.

(a) (~~(Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district not less than ten days in advance of the date of such meeting and, in addition,~~) Written notice of every such meeting shall be given to all affected producers (~~(within such affected district)~~), and to all handlers, according to the list maintained by the board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer or affected handler may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the nomination meeting by written petition filed with the director, signed by not less than three affected producers or affected handlers.

(d) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-060, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-060, filed 3/25/05, effective 4/25/05; Order 1, Article II, § E, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

WAC 16-529-070 Election or advisory vote of board members. (1) An election or advisory vote shall be conducted by secret ballot under the supervision of the director. Each affected producer and affected handler shall be entitled to one vote.

(2) Elected affected producer members of the board shall be elected by a majority of the votes cast by the affected producers (~~(within~~

~~the affected district or, in the case of an election for an "at large" position, by a majority of the votes cast by affected producers from any district)) statewide.~~

If a nominee does not receive a majority of the votes on the first ballot, a runoff election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(3) An advisory vote shall be conducted for affected producer or affected handler board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

~~(4) ((Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the election or advisory vote.))~~ Not less than ~~((ten))~~ 10 days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers as maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(5) Nonreceipt of a ballot by an affected producer or affected handler shall not invalidate the election or advisory vote of any board member.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-070, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-070, filed 3/25/05, effective 4/25/05; Order 1, Article II, § F, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 79-07-061, filed 6/27/79, effective 8/1/79)

WAC 16-529-140 Assessments. (1) The fixed annual assessment on all varieties of alfalfa seed subject to this marketing order shall be ~~((fifty))~~ 75 cents per hundredweight of cleaned seed, which shall be paid by the producer thereof upon each and every unit sold, marketed, or delivered for sale by him.

(2) First handlers or purchasers shall collect assessments at time of payment for seed from producers whose production they handle and remit the same to the board in accordance with procedures adopted by the board.

Producers and producer-handlers who ship their alfalfa seed direct to handlers outside of the state of Washington shall remit assessments to the board at time of shipment.

[Statutory Authority: Chapter 15.65 RCW. WSR 79-07-061 (Order 1639), § 16-529-140, filed 6/27/79, effective 8/1/79; Order 1, Article IV, § A, filed 3/13/75, effective 7/1/75.]

WSR 22-17-053
PROPOSED RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed August 11, 2022, 3:39 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): On October 18, 2022, at 10 a.m., at NWCAA Office, 1600 South 2nd Street, Mount Vernon, WA; video and teleconference <https://us06web.zoom.us/j/87518159655>, Meeting ID 875 1815 9655, phone 253-215-8782.

Date of Intended Adoption: November 10, 2022.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email info@nwcleanairwa.gov, fax 360-428-1620, by October 18, 2022.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber, phone 360-428-1617, fax 360-428-1620, email info@nwcleanairwa.gov, by October 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Update the adoption-by-reference date to allow implementation of the most recent version of the referenced state and federal rules and add 40 C.F.R. 63 Subpart 000000 to the list. (NWCAA Section 104)
- Correct a regulation citation cross-reference to reflect previously revised section numbering. (NWCAA Section 309)
- Add vermiculite into the asbestos-containing material definition with associated test method to better manage a material that commonly contains asbestos and to bring us better in line with other local clean air agencies. (NWCAA Section 570)
- Remove seasonal residences from the definition of owner-occupied, single-family residence to reduce potential asbestos exposure from improper do-it-yourself asbestos removal on structures that sometimes are claimed to be seasonal homes (e.g., house flipping, rentals, AirBnBs). (NWCAA Section 570)
- Updated notification waiting period table to correspond with the concurrent asbestos program fee schedule change by adding a category for:
 - o Alternative means of compliance to address projects that require extensive review under NWCAA 570.4 (A)(6).
 - o Greater than 10,000 linear feet or greater than 50,000 square feet to address large projects.
- Incorporate editorial clarifications and corrections to asbestos program text to clarify implementation clarity and avoid misunderstandings. (NWCAA Section 570)

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: RCW 70A.15.2040(1).

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

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 70A.15.2040.

Explanation of exemptions: Not applicable under RCW 70A.15.2040.

Scope of exemption for rule proposal:

Is fully exempt.

August 11, 2022

Mark Buford

Executive Director

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of the following state rules that are in effect as of (~~December 8, 2021~~) August 24, 2022 are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except - -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the statewide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of (~~December 8, 2021~~) August 24, 2022 are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, YYYY, ZZZZ, BBBB, CCCC, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, OOOO, QQQQ, SSSS, TTTT, VVVV, WWWW, XXXX, ZZZZ, AAAAAA,

DDDDDDDD, EEEEEEEE, and HHHHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, May 14, 2020, June 10, 2021, February 10, 2022, November 10, 2022

SECTION 309 - REASONABLY AVAILABLE CONTROL TECHNOLOGY

309.1 Reasonably Available Control Technology (RACT) is required for all existing sources except as otherwise provided in RCW 70.94.331(9).

309.2 Where current controls are determined by the NWCAA to be less than RACT, the NWCAA shall define RACT for that source or source category and issue a rule or an order under NWCAA 121 requiring the installation of RACT.

309.3 RACT for each source category containing three or more sources shall be determined by rule, except as provided in NWCAA 309.4.

309.4 Source-specific RACT determinations may be performed under any of the following circumstances:

(A) For replacement or substantial alteration of existing control equipment under NWCAA 300.25 (~~(300.13)~~);

(B) When required by the federal Clean Air Act;

(C) For sources in source categories containing fewer than three sources;

(D) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(E) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

309.5 The Control Officer shall have the authority to perform a RACT determination, to hire a consultant to perform relevant RACT analyses in whole or in part, or to order the owner or operator to perform RACT analyses and submit the results to the NWCAA.

309.6 In determining RACT, the NWCAA shall utilize the factors set forth in the RACT definition in NWCAA 200 and shall consider RACT determinations and guidance made by the EPA, other states, and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, the NWCAA shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

309.7 The NWCAA shall assess a fee to be paid by any source included in a RACT determination to cover the direct and indirect costs of developing, establishing, or reviewing categorical or source-specific RACT determinations. The fee for RACT determinations shall be as established in NWCAA 324.6. The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category.

309.8 Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of operating permit issuance or renewal.

309.9 Replacement or substantial alteration of control equipment under NWCAA 300.13 shall be subject to the New Source Review fees under NWCAA 324.2, in lieu of RACT fees under this section.

PASSED: March 14, 2013 AMENDED: October 8, 2015, November 10, 2022

SECTION 570 ASBESTOS CONTROL STANDARDS

570.1 The Board of Directors of the Northwest Clean Air Agency recognize that asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board has, therefore, determined that any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects in order to protect the public health. In addition, the Board has adopted these regulations to coordinate with the United States Environmental Protection Agency (EPA) asbestos National Emission Standards for Hazardous Air Pollutants (NESHA~~P~~); ~~((~~r~~))~~ the federal Occupational Safety & Health Administration (OSHA) asbestos regulation; ~~((~~r~~))~~ the Washington State Department of Labor & ((~~and~~)) Industries asbestos regulations; ~~((~~r~~))~~ the Washington State Department of Ecology Dangerous Waste regulation; ~~((~~r~~))~~ and the solid waste regulations of Island, Skagit and Whatcom Counties.

570.2 DEFINITIONS

AHERA BUILDING INSPECTOR - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan (40 CFR Part 763, Subpart E, Appendix C ((~~to Subpart E~~)), I.B.3) and whose certification is current.

AHERA PROJECT DESIGNER - A person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR Part 763, Subpart E, Appendix C, I.B.5 ((~~40 CFR 763.90(g)~~))) and whose certification is current.

ASBESTOS - The asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

ASBESTOS-CONTAINING MATERIAL - Any material containing more than ~~((one))~~ 1 percent asbestos as determined using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, ((EPA regulations Appendix A, Subpart F, 40 CFR Part 763, Section 1,)) Polarized Light Microscopy. This definition includes any loose vermiculite, unless sampled using the Cincinnati Method (EPA 600/R-04/004) and found to contain 1 percent or less asbestos.

ASBESTOS-CONTAINING WASTE MATERIAL - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

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

ASBESTOS SURVEY - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.85 & 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

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

COMPONENT - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

DEMOLITION - Wrecking, razing, leveling, dismantling, or burning of a structure, making all or part of the structure permanently uninhabitable or unusable.

FRIABLE ASBESTOS-CONTAINING MATERIAL - Asbestos-containing material that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

LEAK-TIGHT CONTAINER - A dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

NONFRIABLE ASBESTOS-CONTAINING MATERIAL - Asbestos-containing material that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

OWNER-OCCUPIED, SINGLE-FAMILY PRIMARY RESIDENCE (OOSFPR) - Any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is currently used by one family who owns the property as their primary ((~~or seasonal~~)) residence. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

PERSON - Any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

RENOVATION - Altering a facility or a component in any way, except demolition.

SURFACING MATERIAL - Material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

SUSPECT ASBESTOS-CONTAINING MATERIAL - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and siding.

THERMAL SYSTEM INSULATION - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

570.3 ASBESTOS SURVEY REQUIREMENTS

(A) Requirements for Renovations

It shall be unlawful for any person to cause or allow a renovation unless the property owner or the owner's agent determines whether there are suspect asbestos-containing materials in the work area and obtains an asbestos survey of any suspect asbestos-containing materials by an AHERA building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of an owner-occupied, single-family primary residence.

(1) If there are no suspect materials in the work area, this determination shall either be posted at the work site or communicated in writing to all contractors involved in the renovation.

(2) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(3) Except for renovations of an owner-occupied, single-family primary residence, only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(4) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

(B) Requirements for Demolitions

It shall be unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey by an AHERA building inspector of the structure to be demolished.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

570.4 NOTIFICATION REQUIREMENTS

(A) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the NWCAA on approved forms, in accordance with the advance notification period requirements contained in NWCAA 570.4(D) (~~(of this Regulation)~~).

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects except demolition involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material.

(3) Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by NWCAA Section 570.

(4) Notification is required for all demolitions of structures with a greater than 120 square feet footprint even if no asbestos-containing material is present. All other demolition requirements remain in effect.

(5) The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in NWCAA 324.8 (~~(of this Regulation)~~) unless prior arrangements for payment have been made with the NWCAA.

(6) A copy of the notification, all amendments to the notification, the asbestos survey, and any (~~Order of Approval~~) written approval from NWCAA for an alternate means of compliance shall be available for inspection at all times at the asbestos project or demolition site.

~~((7) Notification for multiple asbestos projects or demolitions may be filed by a property owner on one form if all the following criteria are met:~~

~~(a) The work will be performed continuously by the same contractor; and~~

~~(b) A work plan is submitted that includes: a map of the structures involved in the project including the site address for each structure; the amount and type of asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For projects where a detailed work schedule cannot be provided the asbestos contractor and/or the demolition contractor shall participate in the NWCAA's work schedule fax program and will continue to participate in the program throughout the duration of the project.)~~

(7) ~~((8))~~ Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(a) The annual notification shall be filed with the NWCAA before commencing work on any asbestos project included in an annual notification;

(b) The total amount of asbestos-containing material for all asbestos projects (~~(from each structure, vessel, or building)~~) in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components; and

(c) The property owner submits quarterly written reports to the Control Officer on NWCAA-approved forms within 15 days after the end of each calendar quarter.

(B) Mandatory Amendments

An amendment shall be submitted to the Control Officer for the following changes in a notification:

(1) Increases in the project type or job size category that increase the fee or change the advance notification period;

(2) Changes in the type of asbestos-containing material that will be removed; or

(3) Changes in the start date, completion date, or work schedule, including hours of work. ((Asbestos contractors or property owners participating in the NWCAA work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.))

(C) Emergencies

The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(4) The project must proceed to avoid imposing an unreasonable burden.

(D) Notification Period

((Project	Notification Period
Asbestos Project	
Residential—Owner-Occupied—Single Family Residence	Prior Notice
10 - 259 linear feet or 48 - 159 square feet)*	3 days
260 - 999 linear feet or 160 - 4999 square feet	10 days
> 1000 linear feet or > 5000 square feet)	10 days
Demolitions with no Asbestos Project	10 days
Emergency Classification (NWCAA 570.4(C))	Prior Notice
Amendments (NWCAA 570.4(B))	Prior Notice
Annual Notification (NWCAA 570.4(A)(8))	Prior Notice))

<u>Project Categories</u>	Notification Waiting Period
<u>Owner-Occupied Single-Family Primary Residence (OOSFPR) Projects</u>	
<u>>10 Ln Ft or >48 Sq Ft</u>	<u>Prior notice</u>
<u>Demolition*</u>	<u>10 days</u>
<u>Emergency (NWCAA 570.4(C))</u>	<u>Prior notice</u>
<u>Other Projects</u>	
<u>10-259 Ln Ft or 48-159 Sq Ft</u>	<u>3 days</u>
<u>260-999 Ln Ft or 160-4999 Sq Ft</u>	<u>10 days</u>
<u>1,000-9,999 Ln Ft or 5,000-49,999 Sq Ft</u>	<u>10 days</u>
<u>>10,000 Ln Ft or >50,000 Sq Ft</u>	<u>10 days</u>
<u>Demolition*</u>	<u>10 days</u>
<u>Emergency (NWCAA 570.4(C))</u>	<u>Prior notice</u>
<u>Annual (NWCAA 570.4(A)(7))</u>	<u>Prior notice</u>
<u>Alternate Means of Compliance and Amendments</u>	
<u>Alternate Means of Compliance (NWCAA 570.5(B))</u>	<u>10 days</u>
<u>Amendment (NWCAA 570.4(B))</u>	<u>Prior notice</u>

* ((Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.)) At the request of the applicant, NWCAA may reduce or waive the waiting period for demolition projects with an asbestos survey showing <10 linear feet or <48 square feet of asbestos.

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

570.5 ASBESTOS REMOVAL REQUIREMENTS PRIOR TO RENOVATION OR DEMOLITION

(A) Removal of Asbestos Prior to Renovation or Demolition

Except as provided in NWCAA 570.6(C) (~~(of this Regulation)~~), it shall be unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(B) Exception for Hazardous Conditions

Asbestos-containing material need not be removed prior to a demolition, if the property owner demonstrates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material. This submittal, referred to as an alternate means of compliance, shall be submitted to NWCAA for written approval.

570.6 PROCEDURES FOR ASBESTOS PROJECTS

(A) Training Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & ~~(and)~~ Industries, the federal OSHA (~~(Occupational Safety and Health Administration)~~), or the EPA (~~(United States Environmental Protection Agency)~~) (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to individuals who work on asbestos projects on their own owner-occupied single-family primary (~~(single-family)~~) residence (~~(-s-)~~), no part of which is used for any commercial purpose.

(B) Asbestos Removal Work Practices

Except as provided in NWCAA 570.6(C) (~~(of this Regulation)~~), it shall be unlawful for any person to cause or allow the removal of asbestos-containing material unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

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

(3) Absorbent, asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated, absorbent, asbes-

tos-containing materials exposed during removal shall be immediately saturated with a liquid wetting agent.

(4) Nonabsorbent, asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent, asbestos-containing materials exposed during removal shall be immediately coated with a liquid wetting agent.

(5) Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material are exempt from the requirements of NWCAA 570.6 (B) (3) and 570.6 (B) (4) if all access to the asbestos-containing material is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

(6) Except for surfacing materials being removed inside a negative pressure enclosure, asbestos-containing materials that are being removed, have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged.

(7) All asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

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

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

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

(11) Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(12) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(C) Method of Removal for Nonfriable Asbestos-Containing Roofing Material

The following asbestos removal method shall be employed for asbestos-containing roofing material that has been determined to be nonfriable by a Competent Person or an AHERA Project Designer:

(1) The nonfriable asbestos-containing roofing material shall be removed using methods such as spud bar and knife. Removal methods such as sawing or grinding shall not be employed;

(2) Dust control methods shall be used as necessary to assure no fugitive dust is generated from the removal of nonfriable asbestos-containing roofing material;

(3) Nonfriable asbestos-containing roofing material shall be carefully lowered to the ground to prevent fugitive dust;

(4) After being lowered to the ground, the nonfriable asbestos-containing roofing material shall be immediately transferred to a disposal container; and

(5) Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material.

570.7 COMPLIANCE WITH OTHER RULES

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

570.8 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

(A) Except as provided in NWCAA 570.8(C) (~~(of this Regulation)~~), it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 days of removal at a waste disposal site authorized to accept such waste.

(B) Waste Tracking Requirements

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless the following requirements are met:

(1) Maintain waste shipment records, beginning prior to transport, using a form that includes the following information:

- (a) The name, address, and telephone number of the waste generator;
- (b) The approximate quantity in cubic meters or cubic yards;
- (c) The name and telephone number of the disposal site operator;
- (d) The name and physical site location of the disposal site;
- (e) The date transported;
- (f) The name, address, and telephone number of the transporter;

and

(g) A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record to the disposal site at the same time the asbestos-containing waste material is delivered.

(3) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

(4) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(C) Temporary Storage Site

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

(1) Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material shall be stored in leak-tight containers and the leak-tight containers shall be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

(D) Disposal of Asbestos Cement Pipe

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

PASSED: November 12, 1998 AMENDED: July 14, 2005, November 8, 2007, September 11, 2014, November 10, 2022

WSR 22-17-067

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 15, 2022, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-156.

Title of Rule and Other Identifying Information: WAC 182-503-0535 Washington apple health—Citizenship and immigration status and 182-507-0135 Immigration status requirement for refugee medical assistance.

Hearing Location(s): On September 27, 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_9Uo_ve5ETY2is3tDmG1Udw. 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 September 28, 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 September 27, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email johanna.larson@hca.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to align with the Additional Ukraine Supplemental Appropriations Act (AUSAA), 2022, Public Law 117-128. AUSAA provides for resettlement assistance, entitlement programs, and other benefits available to refugees for Ukrainian populations and other non-Ukrainian people in response to their displacement from Ukraine and entry into the United States.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Public Law 117-128.

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: Dodi McAlpine, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-9964.

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: Public Law 117-128, Sec. 401.

AUSAA authorizes the agency to grant medicaid to Ukrainian nationals and certain other individuals who last habitually resided in Ukraine. If the agency does not adopt this rule, it will be out of compliance with federal law.

Scope of exemption for rule proposal:

Is fully exempt.

August 15, 2022
Wendy Barcus
Rules Coordinator

OTS-3918.3

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(B) Granted parole into the United States after September 30, 2023, and is:

(I) The spouse or child of a person described in (b) (xiii) (A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b) (xiii) (A) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

~~((xiv))~~ (xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(e) An undocumented person may be eligible for:

- (i) Alien medical programs;
- (ii) State-only funded apple health for kids; or
- (iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through ~~((xiv))~~ (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-503-0535, filed 3/23/22, effective 4/23/22; WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-3917.3

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006.

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021;

(k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:

(i) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(ii) Granted parole into the United States after September 30, 2023, and is:

(A) The spouse or child of a person described in (k) (i) of this subsection; or

(B) The parent, legal guardian, or primary caregiver of a person described in (k) (i) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of

the statuses described in subsection (1) (~~((a) through (i))~~) of this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-507-0135, filed 3/23/22, effective 4/23/22. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 22-17-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed August 16, 2022, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-092.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-101-3130 Certification evaluation, and add a new section to chapter 388-101 WAC, as necessary to prioritize and resume certification evaluations of service providers which were suspended during the declared emergency of COVID-19.

Hearing Location(s): On September 27, 2022, at 10:00 a.m., at Office Building 2 (OB-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 DSHS website for the most up-to-date information.

Date of Intended Adoption: Not before September 28, 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 September 27, 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 shelley.tencza@dshs.wa.gov, by 5:00 p.m. on September 13, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to establish procedures for the department to prioritize and resume certification evaluations of service providers affected by the suspension of the certification evaluation requirements during the declared emergency of COVID-19.

Reasons Supporting Proposal: These rules are necessary to instruct and inform service providers on the process the department will use to prioritize and resume certification evaluations bringing all service providers back into compliance with certification evaluation timelines.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.080.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Debra Hoeman, P.O. Box 45600, Olympia, WA 98513, 360-725-3210; 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 "rules 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 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 34.05.328 (5)(b)(ii).

Explanation of exemptions: The proposed rules are exempt because they are "rules 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.

Scope of exemption for rule proposal:

Is fully exempt.

August 9, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4821.3

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3130 Certification evaluation. (1) The department may conduct an on-site certification evaluation of each service provider at any time (~~(, but at least once every two years)~~).

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

[Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3130, filed 12/21/07, effective 2/1/08.]

NEW SECTION

WAC 388-101-31301 Certification evaluation timelines. (1) In response to the COVID-19 pandemic, the department filed an emergency rule suspending the requirement for the department to conduct on-site certification evaluations of each service provider at least once every two years as authorized by RCW 71A.12.080 and required by WAC 388-101-3130.

(2) During the suspension of the certification evaluation requirements, the department continued to conduct complaint investigations in CCRSS settings (group homes, group training homes, and sup-

ported living client households) when it became aware of information indicating an immediate threat to client health and safety.

(3) The department must prioritize and resume certification evaluations of service providers affected by the suspension of the certification evaluation requirements by applying the following criteria collectively:

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

(b) Whether the service provider has had an enforcement remedy imposed in the last 24 months; and

(c) The length of time since the service provider's last certification evaluation.

[]

WSR 22-17-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed August 16, 2022, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-046.

Title of Rule and Other Identifying Information: The department is planning to: Amend WAC 388-71-0837, 388-71-0839, 388-71-0841, 388-71-0846, 388-71-0850, 388-71-0855, 388-71-0860, 388-71-0875, 388-71-0906, 388-71-0911, 388-71-0916, 388-71-0932, 388-71-0936, 388-71-0941, 388-71-0946, 388-71-0970, 388-71-0971, 388-71-0973, 388-71-0980, 388-71-0985, 388-71-0990, 388-71-0991, 388-71-1001, 388-71-1026, 388-71-1031, 388-71-1045, 388-71-1050, 388-71-1051, 388-71-1055, 388-71-1060, 388-71-1064, 388-71-1076, 388-71-1091, 388-71-1096, 388-71-1106, 388-71-1111, 388-71-1120, 388-71-1125, 388-71-1130, 388-112A-0105, 388-112A-0110, 388-112A-0115, 388-112A-0120, 388-112A-0125, 388-112A-0130, 388-112A-0200, 388-112A-0210, 388-112A-0220, 388-112A-0310, 388-112A-0320, 388-112A-0330, 388-112A-0520, 388-112A-0550, 388-112A-0560, 388-112A-0580, 388-112A-0610, 388-112A-0611, 388-112A-0612, 388-112A-0920, 388-112A-0940, 388-112A-0950, 388-112A-1010, 388-112A-1020, 388-112A-1230, 388-112A-1240, 388-112A-1250, 388-112A-1270, 388-112A-1285, 388-112A-1292, 388-112A-1300, and 388-112A-1310.

Repeal WAC 388-71-058329, 388-71-05833, 388-71-05834, 388-71-0921, 388-71-0931, 388-71-0951, 388-71-1006, 388-71-1021, 388-71-1083, 388-112A-0240, 388-112A-0350, 388-112A-0480, 388-112A-0530, 388-112A-0540, 388-112A-0585, 388-112A-0620, and 388-112A-0840.

New WAC 388-71-0958 Is there a challenge test for nurse delegation core or specialized diabetes training?, 388-71-0961 What knowledge and skills must nurse delegation core training include?, 388-71-0962 What knowledge and skills must specialized diabetes nurse delegation training include?, 388-71-1067 What are the minimum qualifications for community instructors for mental health specialty training?, 388-71-1068 What are the minimum qualifications for community instructors for dementia specialty training?, 388-71-1069 What are the minimum qualifications for community instructors to teach expanded specialty trainings?, and 388-112A-0118 What documentation is required for completion of each training?

Hearing Location(s): On October 25, 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 held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than October 26, 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 October 25, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Training requirements for all long-term care workers are regulated by the same policies. Long-term care workers who work in home environments are regulated under chapter 388-71 WAC, while workers in assisted living facilities, enhanced services facilities, and adult family homes are regulated under chapter 388-112A WAC. As a result of many years of amendments and additions to rules that were not done in concert between the two chapters, the language between chapters 388-71 and 388-112A WAC have diverged, resulting in significant differences. These differences cause unnecessary confusion. The modifications contained in this proposal will not change policy or practice, but will reconcile the differences, update language, and create more current and uniform policies for long-term care workers. Amendments fall under the following categories: Changing numbers over 10 to numbers rather than words; adding rules to chapter 388-71 WAC that are already in place in chapter 388-112A WAC, but should be in both training sections; moving rules to new, more logical locations; clarifying language suggested by stakeholders; making wording between chapters more consistent; gender equity changes; consolidating several redundant rules into a single rule; changing "70-hour long-term care basic training" to "70-hour home care aide basic training"; correction of typographical and other unintended errors; and anticipation of a future department of health rule change related to the date of hire.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.20.270, 70.128.230, 74.08.090, 74.39A.070, and 74.39A.074.

Statute Being Implemented: RCW 18.20.270, 70.128.230, 74.08.090, 74.39A.070, and 74.39A.074.

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: David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2366.

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. Exempt under RCW 34.05.328 (5)(b)(iv), rules that only correct typographical errors, make address or name changes, or clarify language of a rule 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(4).

Is exempt under RCW 34.05.328 (5)(b)(iv).

Explanation of exemptions: Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

August 12, 2022
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 22-19 issue of the Register.

WSR 22-17-077
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed August 16, 2022, 12:54 p.m.]

Continuance of WSR 22-14-097.

Preproposal statement of inquiry was filed as WSR 22-11-070.

Title of Rule and Other Identifying Information: Amendments to chapter 296-880 WAC, Unified safety standards for fall protection.

Hearing Location(s): On August 23, 2022, at 3:00 p.m. Virtual via Zoom webinar [https://lni-wa-gov.zoom.us/j/81502670550?](https://lni-wa-gov.zoom.us/j/81502670550?pwd=dmpLOEMrSldBWWkxcFovN1FUDUdBZz09)

815 0267 0550, Passcode 504777495.

Date of Intended Adoption: September 20, 2022.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email Carmyn.Shute@lni.wa.gov, fax 360-902-5619, by August 30, 2022.

Assistance for Persons with Disabilities: Contact Carmyn Shute, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov, by August 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this continuance is to provide another public hearing for chapter 296-880 WAC, Unified safety standards for fall protection. The original virtual public hearing meeting link posted on L&I website was faulty and did not allow the hearing to occur as scheduled. In order to ensure ample time for public comment, the comment period was extended. In-person hearings have already been held in Tukwila on August 9, 2022, and Spokane on August 11, 2022.

In August 2021, the division of occupational safety and health (DOSH) received notification from the Federal Occupational Safety and Health Administration (OSHA) relating to DOSH's fall protection standard. The notification advised L&I that DOSH needed to amend the fall protection rule in chapter 296-880 WAC in order to be at-least-as-effective-as those administered by OSHA, as required by the Washington state plan. This rule making proposes changes to sections of the current fall protection rule that address roofing activities including leading edge work, work performed on a low or flat pitch roof, and ski area facility and operations.

Chapter 296-880 WAC, Unified safety standards for fall protection:

WAC 296-880-090 Quick reference guide.

- Roofing work on a low pitch roof. Threshold height change from 10 feet to six feet.
- Constructing a leading edge. Threshold height change from 10 feet to six feet.
- Ski area facilities and operations: Working at unprotected elevated locations. Threshold height change from more than 10 feet to four feet or more.

WAC 296-880-095 Definitions.

- Added definition for "Infrequent."
- Removed definition for "Predictable and regular basis."
- Clarified definition for "Safety watch system."

- Added definition for "Temporary."

WAC 296-880-20005 Fall protection required at four feet or more.

- Added clarifying statement noting when fall protection is required at four feet or more.
- Subsection (7)(e) added option for use of a guardrail.
- Subsection (7)(f) added option for use of a safety watch system if appropriate.
- Added exception for when, work other than construction work, is being performed under certain circumstances.
- Subsection (8) safety watch system was removed.
- Subsection (9) was renumbered to subsection (8).
- Subsection (10) was renumbered to subsection (9).

WAC 296-880-30005 Construction work.

- Subsection (1) height threshold was changed from 10 feet to six feet.
- Subsection (1)(c) renumbered to subsection (2) and further clarification provided regarding when fall protection is needed at hazards of 10 feet or more to the ground.
- Subsection (1)(d) renumbered to subsection (2)(b).
- Subsection (2) renumbered to subsection (3).

WAC 296-880-30055 Ski area facilities and operations.

- Subsection (1)(a) fall hazard height threshold reduced from 10 feet to four feet or more.

WAC 296-880-40005 Guardrail systems.

- Subsection (2)(d) reference to subsection (2)(g) replaced with reference to subsection (2)(h)(ii).

WAC 296-880-40050 Safety watch system requirements.

- Subsection (1) clarified language regarding when a safety watch system can be used.
- Subsection (2)(a) removed "repair work or servicing equipment" and replaced with "work activity."
- Subsection (2)(b) removed "repair" and "or service" to be consistent in the section.

Reasons Supporting Proposal: The proposed rule is needed to align standards on when fall protection must be in place with OSHA's standards as required under the Washington state plan. Several housekeeping changes are being proposed to ensure there is clarity on when fall protection is needed and differentiate what provisions of the chapter apply to construction work activities.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the proposed changes adopt federal OSHA regulations as required to be as-effective-as OSHA and are exempt under RCW 34.05.328 (5) (b) (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 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted. [No citation provided.]

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

Scope of exemption for rule proposal:

Is fully exempt.

August 16, 2022

Joel Sacks

Director

OTS-3734.3

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-090 Quick reference guide.

Unified Fall Protection Quick Reference Guide

General fall protection for all industries	Threshold height	WAC
Above or adjacent to dangerous equipment	Regardless of height	296-880-10010(1)
Holes into which an employee can trip, step into, or step through	Regardless of height	296-880-10010(2)
Falling into or onto impalement hazards	Regardless of height	296-880-10010(3)
When on a walking/working surface	Four feet or more	296-880-20005
Ramps, runways, and inclined walkways	Four feet or more	296-880-20005(2)
Holes where work is being performed	Four feet or more	296-880-20005(3)
Skylights	Four feet or more	296-880-20005 (3)(b)
Hatchway and chute holes	Four feet or more	296-880-20005 (3)(c)
Ladderways	Four feet or more	296-880-20005 (3)(d)
Pits and trap door holes	Four feet or more	296-880-20005 (3)(e)
Repair pits and service pits	Four feet or more	296-880-20005 (3)(f)

General fall protection for all industries	Threshold height	WAC
Manholes	Four feet or more	296-880-20005 (3)(g)
Openings	Four feet or more	296-880-20005(4)
Formwork and reinforcing work	Four feet or more	296-880-20005(5)
Steep pitch roof - Regardless of task	Four feet or more	296-880-20005(6)
Low pitch roof - Other than roofing work or constructing a leading edge	Four feet or more	296-880-20005(7)
Hazardous slopes	Four feet or more	296-880-20005(9)
Vehicles and rolling stock - If suitable anchorages cannot be provided or creates a greater hazard	Four feet or more	296-880-20005(10)
Specific requirements not addressed in WAC 296-880-200 (above)		
Construction work *See also chapter 296-155 WAC		
Roofing work on a low pitch roof	(Ten) Six feet	296-880-30005(1)
Constructing a leading edge	(Ten) Six feet	296-880-30005(1)
Engaged in the erection or placement of structural members	Ten feet	296-880-30005(1)
Engaged in excavation and trenching operations	Ten feet	296-880-30005(1)
Order pickers (PITS) *See also chapter 296-863 WAC		
Operators of order pickers	Regardless of height	296-880-30010 (1) and (2)
Elevating work platforms *See also chapter 296-869 WAC		
Vehicle mounted aerial devices	Regardless of height	296-880-30015(1)
Manually propelled and self-propelled elevating work platforms	Regardless of height if required by manufacturer	296-880-30015(2)
Boom supported elevating work platforms	Regardless of height	296-880-30015(3)
Powered platforms *See also chapter 296-870 WAC		
Working on a roof or other elevated working area	Four feet or more	296-880-30020(5)
Window cleaning *See also chapter 296-878 WAC		
Working on a roof or other elevated working area	Four feet or more	296-880-30025(1)
Scaffolds *See also chapter 296-874 WAC		
Working on a scaffold	Ten feet or more	296-880-30030(1)
Cranes - Under the scope of chapter 296-155 WAC, Part L		
For nonassembly/disassembly work	Six feet or more	296-880-30035(2)
For assembly/disassembly work	Ten feet or more	296-880-30035(3)
Towercranes - Work other than erecting, climbing, and dismantling	Six feet or more	296-880-30035 (4)(a)
Towercranes - Erecting, climbing, and dismantling work	Ten feet or more	296-880-30035 (4)(b)
Telecommunications work *See also chapter 296-32 WAC		
	Four feet or more	296-880-200 and 296-880-30040
Qualified electrical workers *See also chapter 296-45 WAC		
	Four feet or more	296-880-200
Ship repairing, shipbuilding and shipbreaking *See also chapter 296-304 WAC		
Working aloft or elsewhere at elevation	Five feet or more	296-880-30045
Longshore, stevedore and waterfront related operations *See also chapter 296-56 WAC		
Maintenance work on cranes, spouts, or similar types of equipment	Eight feet or more	296-880-30050(1)
Floor or wall openings or waterside edges, including bridges or gangway-like structures	Four feet or more	296-880-30050 (2)(a)

General fall protection for all industries	Threshold height	WAC
Ski area facilities and operations *See also chapter 296-59 <i>WAC</i>		
Working at unprotected elevated locations	((More than ten feet)) Four feet or more	296-880-30055 (1)(a)

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-090, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-095 Definitions. For the purposes of this chapter the following definitions apply:

Aerial device. A vehicle-mounted device, telescoping or articulating, or both, which is used to position personnel.

Affected area. The distance away from the edge of an excavation equal to the depth of the excavation up to a maximum distance of ~~((fifteen))~~ 15 feet. For example, an excavation ~~((ten))~~ 10 feet deep has an affected area extending ~~((ten))~~ 10 feet from the edge of any side of the excavation.

Anchorage. A secure point of attachment for lifelines, lanyards, or deceleration devices which is capable of withstanding the forces specified in this chapter.

Boom-supported elevating work platform. A self-propelled, integral chassis, elevating work platform with a boom-supported platform that can be positioned completely beyond the base.

Catch platform. A type of fall arrest system that consists of a platform installed within four vertical feet of the fall hazard, is at least ~~((forty-five))~~ 45 inches wide and is equipped with a standard guardrail system on all exposed sides.

Catenary line. See "horizontal lifeline."

Competent person. An individual knowledgeable of fall protection equipment, including the manufacturer's recommendations and instructions for the proper use, inspection, and maintenance; and who is capable of identifying existing and potential fall hazards; and who has the authority to take prompt corrective action to eliminate those hazards; and who is knowledgeable of the requirements contained in this chapter regarding the installation, use, inspection, and maintenance of fall protection equipment and systems.

Connector. A device which is used to connect parts of the personal fall arrest system and positioning device systems together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or D-ring sewn into a harness, or a snap hook spliced or sewn to a lanyard or self-retracting lanyard).

Construction work. All or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges,

culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

Deceleration device. Any mechanism, such as a rope grab, rip-stitch lanyard, specifically woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards, etc., which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

Deceleration distance. The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's full body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

Dropline. A vertical lifeline secured to an upper anchorage for the purpose of attaching a lanyard or device.

Elevating work platform. A device used to position personnel, along with their necessary tools and materials, at work locations. It includes a platform and an elevating assembly. It may be vehicle-mounted or have an integral chassis for mobility and as a means of support.

Equivalent. Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate and will provide an equal or greater degree of safety for employees than the methods, materials, or designs specified in this standard.

Fall arrest system. A fall protection system that will arrest a fall from elevation. Fall arrest systems include personal fall arrest systems that are worn by the user, catch platforms, and safety nets.

Fall distance. The actual distance from the worker's support to the level where a fall would stop.

Fall protection work plan. A written planning document in which the employer identifies all areas on the job site where a fall hazard of ~~(ten)~~ 10 feet or more exists. The plan describes the method or methods of fall protection to be used to protect employees, and includes the procedures governing the installation, use, inspection, and removal of the fall protection method or methods which are selected by the employer. See WAC 296-880-10020.

Fall restraint system. A system in which all necessary components function together to restrain/prevent an employee from falling to a lower level. Types of fall restraint systems include standard guardrail systems, personal fall restraint systems, warning line systems, or a warning line system and safety monitor.

Feasible. It is possible to perform the work using a conventional fall protection system (i.e., guardrail system, safety net system, or personal fall arrest system) or that it is technologically possible to use any one of these systems to provide fall protection.

Free fall. The act of falling before a personal fall arrest system begins to apply force to arrest the fall.

Free fall distance. The vertical displacement of the fall arrest attachment point on the employee's full body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

Full body harness. A configuration of connected straps that meets the requirements specified in ANSI Z359.1, that may be adjustable to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

Full body harness system. A full body harness and lanyard which is either attached to an anchorage meeting the requirements of this chapter; or it is attached to a horizontal or vertical lifeline which is properly secured to an anchorage(s) capable of withstanding the forces specified in this chapter.

Handrail. A rail used to provide employees with a handhold for support.

Hardware. Snap hooks, D-rings, bucklers, carabiners, adjusters, or O-rings, that are used to attach the components of a fall protection system together.

Hazardous slope. A slope from which construction work is performed where normal footing cannot be maintained without the use of devices due to the pitch of the surface, weather conditions, or surface material.

Hole. A gap or void two inches or more in its least dimension, in a floor, roof, or other surface.

Horizontal lifeline. A rail, rope, wire, or synthetic cable that is installed in a horizontal plane between two anchorages and used for attachment of a worker's lanyard or lifeline device while moving horizontally; used to control dangerous pendulum like swing falls.

Infrequent. The task or job is performed only on occasion, when needed (e.g., equipment breakdown), on an occasional basis, or at sporadic or irregular intervals.

Lanyard. A flexible line of webbing, rope, or cable used to secure a positioning harness or full body harness to a lifeline or an anchorage point usually two, four, or six feet long.

Leading edge. The advancing edge of a floor, roof, or formwork which changes location as additional floor, roof, or formwork sections are placed, formed, or constructed. A leading edge is considered to be an "unprotected side or edge" during periods when it is not actively and continuously under construction.

Lifeline. A vertical line from a fixed anchorage or between two horizontal anchorages, independent of walking or working surfaces, to which a lanyard or device is secured. Lifeline as referred to in this text is one which is part of a fall protection system used as back-up safety for an elevated worker or as a restraint for workers on a flat or sloped surface.

Locking snap hook. A connecting snap hook that requires two separate forces to open the gate; one to deactivate the gatekeeper and a second to depress and open the gate which automatically closes when released; used to minimize roll out or accidental disengagement.

Low pitched roof. A roof having a slope equal to or less than four in (~~twelve~~) 12.

Maintenance. The work of keeping a building, machine, roadway, etc., in a state of good repair.

Manually propelled elevating work platform. A manually propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

Mechanical equipment. All motor or human propelled wheeled equipment except for wheelbarrows, mopcars, robotic thermoplastic welders, and robotic crimpers.

Opening. A gap or void (~~(thirty)~~) 30 inches (76 cm) or more high and (~~(eighteen)~~) 18 inches (48 cm) or more wide, in a wall or partition, through which employees can fall to a lower level.

Personal fall arrest system. A fall arrest system that is worn by the employee to arrest the employee in a fall from elevation. It consists of an anchor point, connectors, a full body harness, and may include a lanyard, deceleration device, lifeline, or suitable combinations of these.

Personal fall restraint system. A fall restraint system that is worn by the employee to keep the employee from reaching a fall point, such as the edge of a roof or elevated work surface. It consists of an anchor point, hardware assemblies, a full body harness and may include a lanyard, restraint lines, or suitable combinations of these.

Platform. A work surface elevated above the surrounding floor or ground.

Positioning device system. A full body harness or positioning harness that is worn by an employee, and is rigged to allow an employee to be supported on an elevated vertical or inclined surface, such as a wall, pole or column and work with both hands free from the body support.

Positioning harness. A body support that meets the requirements specified in ANSI Z359.1 that encircles and closes around the waist and legs with attachment elements appropriate for positioning work.

~~((Predictable and regular basis. Employee tasks which are performed either:~~

~~(a) At least once every two weeks; or~~

~~(b) Four employee hours or more during any sequential four-week period. (To calculate employee hours multiply the number of employees by the number of hours during a four-week period).))~~

Qualified person. One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

Repair. To restore a building, machine, roadway, etc., to an original state after damage or decay.

Restraint line. A line from a fixed anchorage or between two anchorages to which an employee is secured in such a way as to prevent the worker from falling to a lower level.

Roof. The exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

Roofing work. The hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

Rope grab. A fall arrester that is designed to move up or down a lifeline suspended from a fixed overhead or horizontal anchorage point, or lifeline, to which the full body harness is attached. In the event of a fall, the rope grab locks onto the lifeline rope through compression to arrest the fall. The use of a rope grab device is restricted for all restraint applications. See WAC 296-880-40025.

Runway. A passageway for persons, elevated above the surrounding floor or ground level, such as a footwalk along shafting or a walkway between buildings.

Safety line. See "lifeline."

Safety monitoring system. A type of fall restraint system in which a competent person whose only job responsibility is to recognize and warn employees of their proximity to fall hazards when working between the warning line and the unprotected sides and edges, including the leading edge of a low pitch roof or other walking/working surface.

Safety net system. A type of fall arrest system, as described in WAC 296-880-40055.

Safety watch system. A type of fall protection system (~~(as described in WAC 296-880-40050,)~~) in which a competent person (~~(monitors one worker who is engaged in repair work or servicing equipment on low pitch roofs only)~~) is responsible for recognizing and warning one employee of a fall hazard.

Scaffold. A temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.

Self-propelled elevating work platform. A self-propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

Self-rescue device. A piece of equipment designed to allow a person, who is suspended in a personal fall arrest system, to independently rescue themselves after the fall by moving the device up or down until they reach a surface and are no longer suspended.

Self-retracting lifeline. A deceleration device which contains a wound line which may be slowly extracted from, or retracted onto, the device under slight tension during normal employee movement, and which after onset of a fall, automatically locks the drum and arrests the fall.

Service. To repair or provide maintenance for.

Shock absorbing lanyard. A flexible line of webbing, cable, or rope used to secure a full body harness to a lifeline or anchorage point that has an integral shock absorber.

Snap hook. See "locking snap hook."

Standard guardrail system. A type of fall restraint system that is a vertical barrier consisting of a top rail and midrail, and toeboard when used as falling object protection for persons who may work or pass below, that is erected along all open sides or edges of a walking/working surface, ramps, platforms, or runways.

Standard strength and construction. Any construction of guardrails, handrails, covers, or other guards that meets the requirements of this chapter.

Static line. See "horizontal lifeline."

Steep pitched roof. A roof having a slope greater than four in ~~((twelve))~~ 12.

Structural member. A support that is a constituent part of any building or structure. Structural members include columns, girders, beams, trusses, joists, and similar supporting members of a building or structure.

Suitable. That which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

Temporary. The duration of the task the worker performs is brief or short.

Toeboard. A vertical barrier at floor level erected along all open sides or edges of a floor opening, platform, runway, ramp, or other walking/working surface to prevent materials, tools, or debris from falling onto persons passing through or working in the area below.

Unprotected sides and edges. Any open side or edge of a floor, roof, balcony/deck, platform, ramp, runway, or walking/working surface where there is no standard guardrail system, or parapet wall of solid strength and construction that is at least (~~thirty-nine~~) 39 inches in vertical height.

Walking/working surface. Any surface, whether horizontal or vertical on which an employee walks, works, or gains access to a work area or workplace location. Walking/working surfaces include, but are not limited to, floors, the ground, roofs, ramps, bridges, runways, stairs, dockboards, formwork, and reinforcing steel but not including ladders.

Warning line system. A barrier erected on a walking and working surface or a low pitch roof (four in (~~twelve~~) 12 or less), to warn employees that they are approaching an unprotected fall hazard(s).

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-095, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-20005 Fall protection required at four feet or more. The employer must ensure that fall arrest systems, fall restraint systems, or positioning device systems are provided, installed, and implemented in accordance with WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of four feet or more to the ground or lower level.

(1) Walking/working surfaces with unprotected sides or edges. Except as required in subsections (2) through (10) of this section, the employer must ensure that each employee on a walking/working surface with an unprotected side or edge four feet or more above the ground or lower level is protected by one of the following fall protection systems:

(a) A standard guardrail system, or the equivalent, as specified in WAC 296-880-40005, on all open sides, except where there is entrance to a ramp, stairway, or ladder. The guardrail must be provided with a standard toeboard wherever: Beneath the open sides, persons can pass, there is moving machinery, or there is equipment with which falling materials could create a hazard.

(i) When employees are using stilts, the height of the top rail or equivalent member of the guardrail system must be increased (or additional rails may be added) an amount equal to the height of the stilts while maintaining the strength specifications of the guardrail system.

(ii) Where employees are working on or from platforms or ladders above the protection of the guardrail system, the employer must either increase the height of the guardrail system (or additional rails may be added) or select and implement another fall protection system as specified in (b), (c), (d), (e), or (f) of this subsection.

(iii) When guardrails must be temporarily removed to perform a specific task, the area must be constantly attended by an employee until the guardrail is replaced. The only duty the employee must perform is to warn persons entering the area of the fall hazard. The employee

must be protected from the fall hazard by a personal fall arrest system or personal fall restraint system.

- (b) A personal fall restraint system;
- (c) A personal fall arrest system;
- (d) A safety net system;
- (e) A catch platform; or
- (f) A warning line system.

(2) Guarding of ramps, runways, and inclined walkways.

(a) Ramps, runways, and inclined walkways that are four feet or more above the ground or lower level must be equipped with a standard guardrail system or the equivalent, as specified in WAC 296-880-40005, along each open side. Wherever tools, machine parts, or materials are likely to be used on the runway, a toeboard must also be installed on each open side to protect persons working or passing below.

(b) Runways used exclusively for special purposes may have the guardrail on one side omitted where operating conditions necessitate such omission, provided the falling hazard is minimized by using a runway not less than (~~eighteen~~) 18 inches wide.

Note: See WAC 296-880-40010 for other specific criteria for ramps, runways, and inclined walkways.

(3) Holes.

(a) The employer must protect employees from falling into or through holes four feet or more to the ground or lower level by one of the following fall protection systems:

(i) A standard guardrail system, or the equivalent, as specified in WAC 296-880-40005, on all open sides, except where there is entrance to a ramp, stairway, or ladder. The guardrail must be provided with a standard toeboard wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard;

(ii) A cover, as specified in WAC 296-880-40015;

(iii) A warning line system erected at least (~~fifteen~~) 15 feet from all unprotected sides or edges of the hole and meets the requirements of WAC 296-880-40040;

(iv) When the cover, guardrail system, or warning line system must be temporarily removed to perform a specific task, an employee must remain at the hole until the cover, guardrail system, or warning line system is replaced. The only duty the employee must perform is to warn persons entering the area of the fall hazard. The employee must be protected from the fall hazard by a personal fall arrest system or personal fall restraint system; or

(v) Personal fall arrest systems or personal fall restraint systems.

(b) The employer must guard skylight holes and skylights.

(i) Unprotected skylight holes must be guarded by covers of standard strength and construction, standard guardrail systems on all exposed sides, or employees must be protected by personal fall restraint systems, or personal fall arrest systems.

(ii) If the skylight has been installed and is not capable of supporting, without failure, at least twice the weight of employees, equipment, and materials that may be imposed on the skylight at any one time, the skylight must be guarded by a cover of standard strength and construction, a standard guardrail system on all sides, or employees must be protected by personal fall restraint systems, or personal fall arrest systems.

(c) The employer must guard hatchways and chute holes by one of the following:

(i) Hinged covers of standard strength and construction and a standard guardrail system with only one exposed side. When the hole is not in use, the cover must be closed or the exposed side must be guarded at both top and intermediate positions by removable standard guardrail systems; or

(ii) A removable standard guardrail system with toeboard on not more than two sides of the hole and fixed standard guardrail system with toeboards on all other exposed sides. The removable guardrail must be kept in a place when the hole is not in use and must be hinged or otherwise mounted so as to be conveniently replaceable.

(d) The employer must guard ladderways or platforms by a standard guardrail system with standard toeboards on all exposed sides, except at the entrance to a hole, with the passage through the guardrail either provided with a swinging gate or so offset that a person cannot walk directly into the hole.

(e) The employer must guard pits and trap door holes by covers of standard strength and construction. While the cover is not in place, the pit or trap door holes must be protected on all exposed sides by a standard guardrail system.

(f) The employer must guard repair pits, service pits, and assembly pits by a cover, a guardrail system, a fall restraint system or fall arrest system.

(g) The employer must guard manholes by standard covers which need not be hinged in place. While the cover is not in place, the hole must be constantly attended or must be protected by a removable standard guardrail system.

(4) Guarding of openings. The employer must ensure that each employee working on, at, above, or near openings (including those with chutes attached) where the outside bottom edge of the opening is four feet or more above a lower level and the inside bottom edge of the opening is less than (~~(thirty-nine)~~) 39 inches above the working surface, are protected from falling by the use of a guardrail system, a safety net system, a personal fall arrest system, or personal fall restraint system.

(5) Fall protection during form and reinforcing work. The employer must ensure that employees exposed to fall hazards of four feet or more while placing or tying reinforcing steel or working on the face of formwork or reinforcing steel are protected by personal fall arrest systems, positioning device systems, or safety net systems.

(6) Fall protection on steep pitched roofs. Regardless of the work activity, the employer must ensure that employees exposed to fall hazards of four feet or more while working on a roof with a pitch greater than four in (~~(twelve)~~) 12 use one of the following:

(a) Fall restraint system. Safety monitor systems and warning line systems are prohibited on steep pitched roofs;

(b) A personal fall arrest system; or

(c) A positioning device system.

(7) Fall protection on low pitched roofs. The employer must ensure that employees exposed to fall hazards of four feet or more while engaged in work, other than roofing work or constructing a leading edge on low pitched roofs use one of the following:

(a) A personal fall restraint system;

(b) A personal fall arrest system;

(c) A positioning device system; (~~(or)~~)

(d) A warning line system;

(e) A standard guardrail system;

(f) Safety watch system when work, other than construction work, is performed that is both infrequent and temporary, and not within six feet of the roof edge.

Exception: When work, other than construction work, is performed 15 feet or more from the roof edge, the employer is not required to provide any fall protection, provided the work is both infrequent and temporary and the employer implements and enforces a work rule prohibiting employees from going within 15 feet of the roof edge without using fall protection in accordance with (a) through (f) of this subsection.

~~(8) ((Safety watch system. When one employee is conducting repair work or servicing equipment on a low pitch roof four feet or more above a lower level, employers are allowed to use a safety watch system in accordance with WAC 296-880-40050.~~

~~(9))~~ Hazardous slopes. Employees exposed to falls of four feet or more while performing construction work on a hazardous slope must use personal fall restraint systems or positioning device systems.

~~((10))~~ (9) Vehicles and rolling stock. The employer must ensure that employees exposed to fall hazards of four feet or more to the ground or lower level from vehicles or rolling stock on which employees must be located in order to perform their job duties are protected by fall arrest systems, fall restraint systems, or positioning device systems.

Exception: Where suitable anchorages cannot be provided or when the use of fall protection creates a greater hazard, work may be performed on vehicles or rolling stock without a fall protection system.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-20005, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-30005 Construction work. This section applies to work activities under the scope of chapter 296-155 WAC, Safety standards for construction work, unless specifically addressed in WAC 296-880-200 of this chapter.

(1) The employer must ensure that a fall arrest system, fall restraint system, or positioning device system is provided, installed, and implemented in accordance with ~~((this chapter))~~ WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of ~~((ten))~~ six feet or more to the ground or lower level while:

- (a) Engaged in roofing work on a low pitched roof;
- (b) Constructing a leading edge~~((+))~~.

Exception: Employees not directly involved with constructing the leading edge, or are not performing roofing work must comply with WAC 296-880-200 Fall protection required at four feet or more.

~~((e))~~ (2) The employer must ensure that a fall arrest system, fall restraint system, or positioning device system is provided, installed, and implemented in accordance with WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of 10 feet or more to the ground or lower level while:

- (a) Engaged in the erection or placement of structural members.

Exception: When the erection or placement of structural members is performed on or from a floor, deck, roof, or similar surface you must comply with WAC 296-880-200 Fall protection required at four feet or more.

~~((d))~~ (b) Engaged in excavation and trenching operations.
 (i) Exceptions. Fall protection is not required at excavations when employees are:

(A) Directly involved with the excavation process and on the ground at the top edge of the excavation; or

(B) Working at an excavation site where appropriate sloping of side walls has been implemented as the excavation protective system.

(ii) Fall protection is required for employees standing in or working in the affected area of a trench or excavation exposed to a fall hazard of ~~((ten))~~ 10 feet or more; and:

(A) The employees are not directly involved with the excavation process; or

(B) The employees are on the protective system or any other structure in the excavation.

Note: Persons considered directly involved in the excavation process include:

1. Foreman of the crew.
2. Signal person.
3. Employee hooking on pipe or other materials.
4. Grade person.
5. State, county, or city inspectors inspecting the excavation or trench.
6. An engineer or other professional conducting a quality-assurance inspection.

~~((2))~~ (3) Employees are exempt from WAC 296-880-30005 under the following conditions:

(a) During initial installation of the fall protection anchor prior to engaging in any work activity, or the disassembly of the fall protection anchor after all work activities have been completed;

(b) When employees are inspecting, investigating, or assessing roof level conditions or work to be performed only on low pitch roofs prior to the start of construction work or after all construction work has been completed;

This exemption does not apply on steep pitch roofs, where construction work is underway, or when fall protection systems or equipment meeting the requirements of this chapter have been installed and are available for workers to use for pre-work and post-work inspections, investigations, or assessments.

Note: Examples of activities the department recognizes as inspecting or estimating include:

- Measuring a roof to determine the amount of materials needed for a project;
- Inspecting the roof for damage without removing equipment or components; and
- Assessing the roof to determine what method of fall protection will be provided to employees.

Note: Examples the department does not recognize as inspecting or estimating under this exemption include:

- Delivering, staging, or storing materials on a roof; and
- Persons estimating or inspecting on roofs that would be considered a "hazardous slope" by definition.

(c) When employees must be located on vehicles, or rolling stock in order to perform their job duties.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-30005, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-30055 Ski area facilities and operations. This section applies to all persons, firms, corporations, or others engaged in the operation of organized ski areas and facilities under the scope of chapter 296-59 WAC, Safety standards for ski area facilities and operations.

(1) Personal protective equipment, general requirements.

(a) Personal fall arrest systems or personal fall restraint systems must be provided and used whenever employees are working in loca-

tions which expose them to a fall hazard of four feet or more (~~than ten feet~~).

(b) Employees will not be required to wear personal fall protection systems while riding on a standard lift chair while seated in the normal riding position.

(2) Ski lift facilities and structures. Personal fall arrest systems or personal fall restraint systems must be used when working at unprotected elevated locations. Exception to this requirement must only be permitted for emergency rescue or emergency inspection if a personal fall arrest system is not immediately available. Required personal protective equipment must be made available as quickly as possible.

(3) Guardrails on ski lift aerial work platforms.

(a) The platform must be equipped with standard height and strength guardrails where such guardrails will pass through the configuration of all lifts on which it is intended to be used.

(b) Where guardrails must be less than (~~thirty-nine~~) 39 inches high in order to clear carriages, guidage, etc., guardrails must be as high as will clear the obstructions but never less than (~~twelve~~) 12 inches high.

(c) If the work platform is equipped with an upper work level, the upper level platform must be equipped with a toeboard at least four inches high.

(d) Each platform must be equipped with a lanyard attachment ring for each permissible occupant to attach a personal fall arrest system or personal fall restraint system.

(e) Each lanyard attachment ring must be of such strength as to sustain (~~five thousand four hundred~~) 5,400 pounds of static loading for each occupant permitted to be attached to a specific ring.

(f) Attachment rings must be permanently located as close to the center balance point of the platform as is practical.

(g) The rings may be movable, for instance, up and down a central suspension rod, but must not be completely removable.

(4) Work platform use.

(a) Passengers must be provided with and must use the correct personal fall arrest system or personal fall restraint system for the intended work.

(b) Any time a passenger's position is not protected by a standard guardrail at least (~~thirty-nine~~) 39 inches high, the individual must be protected by a personal fall restraint system, which will not permit free-fall over the platform edge.

(c) When personnel are passengers on a work platform and their work position requires the use of a personal fall arrest or personal fall restraint system, the lanyard must be attached to the work platform, not to the haulrope or tower.

All specifications would be in accordance with WAC 296-880-400.

Additional requirements for ski area facilities and operations can be found in chapter 296-59 WAC, Safety standard for ski area facilities and operations.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-30055, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-40005 Guardrail systems. Guardrail systems and their use must conform to the following provisions:

(1) A standard guardrail system must consist of top rail, intermediate rail, and posts, and must have a vertical height of (~~(thirty-nine to forty-five)~~) 39 to 45 inches from upper surface of top rail to floor, platform, runway, or ramp level. When conditions warrant, the height of the top edge may exceed the (~~(forty-five)~~) 45 inch height, provided the guardrail system meets all other criteria of this subsection. The intermediate rail must be halfway between the top rail and the floor, platform, runway, or ramp. The ends of the rails must not overhang the terminal posts except where such overhang does not constitute a projection hazard.

(2) Minimum requirements for standard guardrail systems under various types of construction are specified in the following items:

(a) For wood guardrails, the posts must be of at least two-inch by four-inch stock spaced not to exceed eight feet. The top rail must be of at least two-inch by four-inch stock and each length of lumber must be smooth surfaced throughout the length of the guardrail. The intermediate rail must be of at least one-inch by six-inch stock. Other configurations may be used for the top rail when the configuration meets the requirements of (g) of this subsection.

(b) For pipe guardrails, posts and top and intermediate rails must be at least one and one-half inches nominal OD diameter with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (g) of this subsection.

(c) For structural steel guardrails, posts and top and intermediate rails must be of two-inch by two-inch by three-eighths inch angles or other metal shapes of equivalent bending strength, with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (g) of this subsection.

(d) For wire rope guardrails, the top and intermediate rails must meet the strength factor and deflection of (~~(g)~~) (h)(ii) of this subsection. The top rail must be flagged at not more than six foot intervals with high visibility material. Posts must be spaced not more than eight feet on centers. The rope must be stretched taut and must be between (~~(thirty-nine and forty-five)~~) 39 and 45 inches in height at all points. Other configurations may be used for the top rail when the configuration meets the requirements of (h) of this subsection.

(e) Guardrail systems must be of such construction that the completed structure is capable of withstanding a load of at least (~~(two hundred)~~) 200 pounds applied within two inches of the top edge, in any outward or downward direction, at any point along the top edge.

(f) When the (~~(two hundred)~~) 200 pound test load specified in (e) of this subsection is applied in a downward direction, the top edge of the guardrail must not deflect to a height less than (~~(thirty-nine)~~) 39 inches above the walking/working surface.

(g) Guardrails receiving heavy stresses from employees trucking or handling materials must be provided additional strength by the use of heavier stock, closer spacing of posts, bracing, or by other means.

(h) Other types, sizes, and arrangements of guardrail construction are acceptable, provided they meet the following conditions:

(i) A smooth surfaced top rail at a height above floor, platform, runway, or ramp level between (~~(thirty-nine and forty-five)~~) 39 and 45 inches;

(ii) When the (~~(two-hundred)~~) 200 pound (890 N) load specified in (e) of this subsection is applied in a downward direction, the top edge of the guardrail must not deflect to a height less than (~~(thirty-nine)~~) 39 inches (1.0 m) above the walking/working surface. Guardrail system components selected and constructed in accordance with this chapter will be deemed to meet this requirement;

(iii) Protection between top rail and floor, platform, runway, ramp, or stair treads, equivalent at least to that afforded by a standard intermediate rail;

(iv) Elimination of overhang of rail ends unless such overhang does not constitute a hazard.

(3) Toeboard specifications.

(a) A standard toeboard must be a minimum of three and one-half inches in vertical height from the top edge to the level of the walking/working surface. Toeboards may be made of any substantial material, either solid, or with openings not over one inch in greatest dimension. Toeboards must be securely fastened in place with no more than one-quarter inch clearance above the walking/working surface.

(b) Where material is piled to such height that a standard toeboard does not provide protection, paneling, or screening from floor to intermediate rail or to top rail must be provided.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-40005, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-880-40050 Safety watch system requirements. Safety watch systems and their use must conform to the following provisions:

(1) When one employee is conducting (~~(any repair)~~) work (~~(or servicing equipment)~~), other than construction work, on a low pitch roof, not within six feet of the roof edge (~~(, and where exposure to falls is infrequent (not on a predictable and regular basis))~~) and when the work is both infrequent and temporary, employers are allowed to use a safety watch system.

(2) The employer must ensure the safety watch system meets the following requirements:

(a) There can only be two people on the roof while the safety watch system is being used: One employee acting as the safety watch and one employee engaged in the (~~(repair work or servicing equipment)~~) work activity;

(b) The employee performing the (~~(repair)~~) work (~~(or service)~~) must comply promptly with fall hazard warnings from the safety watch;

(c) Mechanical equipment is not used; and

(d) The safety watch system is not used when weather conditions create additional hazards.

(3) The employer must ensure the employee acting as the safety watch meets all of the following:

(a) Is a competent person as defined in WAC 296-880-095;

(b) Is trained in the requirements of this section;

- (c) Has full control over the work as it relates to fall protection;
- (d) Has a clear, unobstructed view of the worker;
- (e) Is able to maintain normal voice communication; and
- (f) Performs no other duties while acting as the safety watch.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-40050, filed 6/2/20, effective 10/1/20.]

WSR 22-17-089

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 18, 2022, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-059.

Title of Rule and Other Identifying Information: WAC 182-503-0005
Washington apple health—How to apply.

Hearing Location(s): On September 27, 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_9Uo_ve5ETY2is3tDmG1Udw. 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 September 28, 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 September 27, 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 September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-503-0005(3) to include language regarding a telephonic signature option when applying for apple health coverage.

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: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; 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.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

August 18, 2022

Wendy Barcus

OTS-3744.1

AMENDATORY SECTION (Amending WSR 18-11-071, filed 5/15/18, effective 6/15/18)

WAC 182-503-0005 Washington apple health—How to apply. (1) You may apply for Washington apple health at any time.

(2) For apple health programs for children, pregnant people, parents and caretaker relatives, and adults age (~~sixty-four~~) 64 and under without medicare (including people who have a disability or are blind), you may apply:

(a) Online via the Washington Healthplanfinder at www.wahealthplanfinder.org;

(b) By calling the Washington Healthplanfinder customer support center and completing an application by telephone;

(c) By completing the application for health care coverage (HCA 18-001P), and mailing or faxing to Washington Healthplanfinder; or

(d) At a department of social and health services (DSHS) community services office (CSO).

(3) If you seek apple health coverage and are age (~~sixty-five~~) 65 or older, have a disability, are blind, need assistance with medicare costs, or seek coverage of long-term services and supports, you may apply:

(a) Online via Washington Connection at www.WashingtonConnection.org;

(b) By completing the application for aged, blind, disabled/long-term care coverage (HCA 18-005) and mailing or faxing it to DSHS;

(c) By calling the DSHS customer service contact center and completing an application by telephone;

(d) In person at a local DSHS CSO or home and community services (HCS) office; or

~~((d))~~ (e) As specified in subsection (2) of this section, if you are a child, pregnant, a parent or caretaker relative, or an adult age (~~sixty-four~~) 64 and under without medicare.

(4) You may receive help filing an application.

(a) For households containing people described in subsection (2) of this section:

(i) Call the Washington Healthplanfinder customer support center number listed on the application for health care coverage form (HCA 18-001P); or

(ii) Contact a navigator, health care authority volunteer assistor, or broker.

(b) For people described in subsection (3) of this section who are not applying with a household containing people described in subsection (2) of this section:

(i) Call or visit a local DSHS CSO or HCS office; or

(ii) Call the DSHS community services customer service contact center number listed on the medicaid application form.

(5) To apply for tailored supports for older adults (TSOA), see WAC 182-513-1625.

(6) You must apply directly with the service provider for the following programs:

(a) The breast and cervical cancer treatment program under WAC 182-505-0120;

(b) The TAKE CHARGE program under chapter 182-532 WAC; and

(c) The kidney disease program under chapter 182-540 WAC.

(7) For the confidential pregnant minor program under WAC 182-505-0117 and for minors living independently, you must complete a separate application directly with us (the medicaid agency).

More information on how to give us an application may be found at the agency's website: www.hca.wa.gov/free-or-low-cost-health-care (search for "teen").

(8) As the primary applicant or head of household, you may start an application for apple health by providing your:

(a) Full name;

(b) Date of birth;

(c) Physical address, and mailing addresses (if different); and

(d) Signature.

(9) To complete an application for apple health, you must also give us all of the other information requested on the application.

(10) You may have an authorized representative apply on your behalf as described in WAC 182-503-0130.

(11) We help you with your application or renewal for apple health in a manner that is accessible to you. We provide equal access (EA) services as described in WAC 182-503-0120 if you:

(a) Ask for EA services, you apply for or receive long-term services and supports, or we determine that you would benefit from EA services; or

(b) Have limited-English proficiency as described in WAC 182-503-0110.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-11-071, § 182-503-0005, filed 5/15/18, effective 6/15/18; WSR 17-15-061, § 182-503-0005, filed 7/13/17, effective 8/13/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0005, filed 7/29/14, effective 8/29/14.]

WSR 22-17-091

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 18, 2022, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-175.

Title of Rule and Other Identifying Information: WAC 182-517-0100 Federal medicare savings programs.

Hearing Location(s): On September 27, 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_9Uo_ve5ETY2is3tDmGlUdw. 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 September 28, 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 September 27, 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 September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-517-0100 Federal medicare savings programs, to remove resource limits as an eligibility requirement.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: Section 211(79), chapter 297, Laws of 2022.

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

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: Mark Westenhaver, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1324.

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 rules pertain to client program eligibility and do not impose any costs on businesses.

August 18, 2022
Wendy Barcus
Rules Coordinator

OTS-3978.2

AMENDATORY SECTION (Amending WSR 19-12-085, filed 6/4/19, effective 7/15/19)

WAC 182-517-0100 Federal medicare savings programs. (1) Available programs. The medicaid agency offers eligible clients the following medicare savings programs (MSPs):

- (a) The qualified medicare beneficiary (QMB) program;
- (b) The specified low-income medicare beneficiary (SLMB) program;
- (c) The qualified individual (QI-1) program; and
- (d) The qualified disabled and working individuals (QDWI) program.

(2) Eligibility requirements.

(a) To be eligible for an MSP, a client must:

- (i) Be entitled to medicare Part A; and
- (ii) Meet the general eligibility requirements under WAC

182-503-0505.

(b) To be eligible for QDWI, a client must be under age (~~sixty-five~~) 65.

(c) Income (~~and resource~~) limits.

(i) Income limits for all MSPs are found at <https://www.hca.wa.gov/health-care-services-and-supports/program-administration/program-standard-income-and-resources>.

(ii) If a client's countable income is less than or equal to (~~one hundred~~) 100 percent of the federal poverty level (FPL), the client is income eligible for the QMB program.

(iii) If a client's countable income is over (~~one hundred~~) 100 percent of the FPL, but does not exceed (~~one hundred twenty~~) 120 percent of the FPL, the client is income eligible for the SLMB program.

(iv) If a client's countable income is over (~~one hundred twenty~~) 120 percent of the FPL, but does not exceed (~~one hundred thirty-five~~) 135 percent of the FPL, the client is income eligible for the QI-1 program.

(v) If a client's countable income is over (~~one hundred thirty-five~~) 135 percent of the FPL, but does not exceed (~~two hundred~~) 200 percent of the FPL, the client is income eligible for the QDWI program if the client is employed and meets disability requirements described in WAC 182-512-0050.

~~((vi) Resource limits.~~

~~(A) The resource limit for the QMB, SLMB, and QI-1 programs are found at <https://www.hca.wa.gov/health-care-services-and-supports/program-standard-income-and-resources>.~~

~~(B) The resource limit for the QDWI program is \$4,000 for a single person and \$6,000 for a married couple.)~~

(d) The federal MSPs do not require a resource test.

(3) MSP income eligibility determinations.

(a) The agency has two methods for determining if a client is eligible for an MSP:

(i) The agency first determines if the client is eligible based on SSI-rated methodologies under chapter 182-512 WAC. Under this method, the agency calculates the household's net countable income and compares the result to the one-person standard. However, if the spouse's income is deemed to the client, or if both spouses are applying,

the household's net countable income is compared to the two-person standard.

(ii) If the client is not eligible under the methodology described in (a)(i) of this subsection, the agency compares the same countable income, as determined under (a)(i) of this subsection, to the appropriate FPL standard based on family size. The number of individuals that count for family size include:

- (A) The client;
- (B) The client's spouse who lives with the client;
- (C) The client's dependents who live with the client;
- (D) The spouse's dependents who live with the spouse, if the spouse lives with the client; and
- (E) Any unborn children of the client, or of the spouse if the spouse lives with the client.

(b) Under both eligibility determinations, the agency follows the rules for SSI-related people under chapter 182-512 WAC for determining:

- (i) Countable income ((and resources));
- (ii) Availability of income ((and resources));
- (iii) Allowable income deductions and exclusions; and
- (iv) Deemed income from and allocated income to a nonapplying spouse and dependents.

(c) The agency uses the eligibility determination that provides the client with the highest level of coverage.

(i) If the MSP applicant is eligible for QMB coverage under (a)(i) of this subsection, the agency approves the coverage.

(ii) If the MSP applicant is not eligible for QMB coverage, the agency determines if the applicant is eligible under (a)(ii) of this subsection.

(iii) If neither eligibility determination results in QMB coverage, the agency uses the same process to determine if the client is eligible under any other MSP.

(d) When calculating income under this section:

(i) The agency subtracts client participation from a long-term care client's countable income under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(ii) The agency counts the annual Social Security cost-of-living increase beginning April 1st each year.

(4) Covered costs.

(a) The QMB program pays:

(i) Medicare Part A and Part B premiums using the start date in WAC 182-504-0025; and

(ii) Medicare coinsurance, copayments, and deductibles for Part A, Part B, and Part C, subject to the limitations in WAC 182-502-0110.

(b) If the client is eligible for both SLMB and another medicaid program:

(i) The SLMB program pays the Part B premiums using the start date in WAC 182-504-0025; and

(ii) The medicaid program pays medicare coinsurance, copayments, and deductibles for Part A, Part B, and Part C subject to the limitations in WAC 182-502-0110.

(c) If the client is only eligible for SLMB, the SLMB program covers medicare Part B premiums using the start date in WAC 182-504-0025.

(d) The QI-1 program pays medicare Part B premiums using the start date in WAC 182-504-0025 until the agency's federal funding al-

lotment is spent. The agency resumes QI-1 benefit payments the beginning of the next calendar year.

(e) The QDWI program covers medicare Part A premiums using the start date in WAC 182-504-0025.

(5) MSP eligibility. Medicaid eligibility may affect MSP eligibility:

(a) QMB and SLMB clients may receive medicaid and still be eligible to receive QMB or SLMB benefits.

(b) QI-1 and QDWI clients who begin receiving medicaid are no longer eligible for QI-1 or QDWI benefits, but may be eligible for the state-funded medicare buy-in program under WAC 182-517-0300.

(6) Right to request administrative hearing. A person who disagrees with agency action under this section may request an administrative hearing under chapter 182-526 WAC.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-12-085, § 182-517-0100, filed 6/4/19, effective 7/15/19; WSR 16-13-157, § 182-517-0100, filed 6/22/16, effective 7/23/16. WSR 11-23-091, recodified as § 182-517-0100, filed 11/17/11, effective 11/21/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and 42 U.S.C. 9902(2). WSR 06-16-026, § 388-478-0085, filed 7/24/06, effective 8/24/06; WSR 05-17-157, § 388-478-0085, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 04-17-076, § 388-478-0085, filed 8/13/04, effective 9/13/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and Section 673(2) (42 U.S.C. 9902(2)). WSR 01-18-056, § 388-478-0085, filed 8/30/01, effective 9/30/01; WSR 00-17-085, § 388-478-0085, filed 8/14/00, effective 9/14/00; WSR 99-19-005, § 388-478-0085, filed 9/3/99, effective 10/4/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0085, filed 7/31/98, effective 9/1/98. Formerly WAC 388-517-1715, 388-517-1730, 388-517-1750 and 388-517-1770.]

WSR 22-17-092

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 18, 2022, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-028.

Title of Rule and Other Identifying Information: WAC 182-504-0005 Washington apple health—Retroactive certification period, 182-500-0010 Medical assistance definitions—A, 182-500-0020 Definitions—C, and 182-500-0035 Medical assistance definitions—F.

Hearing Location(s): On September 27, 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_9Uo_ve5ETY2is3tDmG1Udw. 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 September 28, 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 September 27, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.larson@hca.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-504-0005 and sections of chapter 182-500 WAC, Medical definitions, to implement requirements in RCW 74.09.830 regarding postpartum health care coverage. The amended rules will provide for retroactive postpartum coverage and define after-pregnancy coverage, continuous eligibility, and full-scope coverage.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Statute Being Implemented: RCW 74.09.830.

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

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: Emily Good, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0920.

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 rules pertain to client program eligibility and do not impose any costs on businesses.

August 18, 2022

Wendy Barcus

OTS-3858.3

AMENDATORY SECTION (Amending WSR 16-02-122, filed 1/6/16, effective 2/6/16)

WAC 182-500-0010 Medical assistance definitions—A. "Administrative renewal" means the agency uses electronically available income data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income is reasonably compatible (as defined in WAC 182-500-0095) with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

"After-pregnancy coverage (APC)" means full-scope Washington apple health (medicaid) health care coverage for people up to 12 months after the month their pregnancy ends under WAC 182-505-0115.

"Agency" or "medicaid agency" means the Washington state health care authority (HCA).

"Agency's designee" means any entity expressly designated by the agency to act on its behalf.

"Allowable costs" are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients or not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

"Alternative benefits plan" means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Ancillary services" means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

"Apple health for kids" is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs, Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

"Attested income" means a self-declared statement of a person's income made under penalty of perjury to be true. (See also "self-attested income.")

"Authorization" means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

"Authorized representative" is defined under WAC 182-503-0130.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-02-122, § 182-500-0010, filed 1/6/16, effective 2/6/16; WSR 15-15-143, § 182-500-0010, filed 7/17/15, effective 8/17/15. Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-500-0010, filed 12/9/13, effective 1/9/14. WSR 11-14-075, recodified as § 182-500-0010, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0010, filed 6/29/11, effective 7/30/11.]

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-500-0020 Definitions—C. "Caretaker relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

(a) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(b) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

(c) Other relatives including relatives of half-blood, first cousins once removed, people of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

"Carrier" means an organization that contracts with the federal government to process claims under medicare Part B.

"Categorically needy (CN) or categorically needy program (CNP)" is the state and federally funded health care program established under Title XIX of the Social Security Act for people within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"Categorically needy income level (CNIL)" is the standard used by the agency to determine eligibility under a categorically needy program.

"Categorically needy (CN) scope of care" is the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to people eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

"Center of excellence" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)" - The federal agency that runs the medicare, medicaid, and children's health insurance programs, and the federally facilitated marketplace.

"Children's health program or children's health care programs"
See "Apple health for kids."

"Client" means a person who is an applicant for, or recipient of, any Washington apple health program, including managed care and long-term care. See definitions for "applicant" and "recipient" in RCW 74.09.741.

"Community spouse." See "spouse" in WAC 182-500-0100.

"Continuous eligibility" means a person continues to receive their apple health coverage without interruption throughout their certification period regardless of changes in income, household size, immigration or citizenship status, or any other factor of eligibility other than moving out-of-state or death.

"Core provider agreement" is a written contract whose terms and conditions bind each provider in the fee-for-service program to applicable federal laws, state laws, and the agency's rules, provider alerts, billing guides, and other subregulatory guidance. See WAC 182-502-0005. The core provider agreement is a unilateral contract.

"Cost-sharing" means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

"Cost-sharing reductions" means reductions in cost-sharing for an eligible person enrolled in a silver level plan in the health benefit exchange or for a person who is an American Indian or Alaska native enrolled in a qualified health plan (QHP) in the exchange.

"Couple." See "spouse" in WAC 182-500-0100.

"Covered service" is a health care service contained within a "service category" that is included in a Washington apple health (WAH) benefits package described in WAC 182-501-0060. For conditions of payment, see WAC 182-501-0050(5). A noncovered service is a specific health care service (for example, cosmetic surgery), contained within a service category that is included in a WAH benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC 182-501-0160). A noncovered service is not an excluded service (see WAC 182-501-0060).

"Creditable coverage" means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c) (1).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-04-095, § 182-500-0020, filed 2/5/19, effective 3/8/19; WSR 17-23-040, § 182-500-0020, filed 11/8/17, effective 12/9/17; WSR 16-18-019, § 182-500-0020, filed 8/26/16, effective 9/26/16; WSR 15-17-013, § 182-500-0020, filed 8/7/15, effective 9/7/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-500-0020, filed 7/29/14, effective 8/29/14. WSR 11-14-075, recodified as § 182-500-0020, filed 6/30/11, effective 7/1/11. Statutory Authority:

RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0020, filed 6/29/11, effective 7/30/11.]

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0035 Medical assistance definitions—F. "Fee-for-service (FSS)" - The general payment method the agency or agency's designee uses to pay for covered medical services provided to clients, except those services covered under the agency's prepaid managed care programs.

"Fiscal intermediary" means an organization having an agreement with the federal government to process medicare claims under Part A.

"Full-scope coverage" means that the client is entitled to the benefits in the scope of service categories under WAC 182-501-0060.

[WSR 11-14-075, recodified as § 182-500-0035, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0035, filed 6/29/11, effective 7/30/11.]

OTS-3857.1

AMENDATORY SECTION (Amending WSR 13-14-019, filed 6/24/13, effective 7/25/13)

WAC 182-504-0005 Washington apple health—Retroactive certification period. (1) The medicaid agency approves a retroactive Washington apple health (WAH) certification period for the three months immediately before the month of application when an individual:

- (a) Requests retroactive WAH on his or her application, within the certification period following the retroactive period, or before the determination of benefits and any appeal process is final;
- (b) Would have been eligible for WAH for any or all of the three months if he or she had applied during the retroactive period; and
- (c) The individual received covered medical services as described in WAC 182-501-0060 and 182-501-0065.

(2) When an individual is eligible only during the three-month retroactive certification period, that period is the only period of certification, except when:

(a) A pregnant (~~woman~~) individual is eligible in one of the three months immediately before the month of application, but no earlier than the month of conception. Eligibility continues as described in WAC 182-504-0015(3).

(b) An individual who is applying within 12 months of their last pregnancy end date is eligible for after-pregnancy coverage in one of the three months immediately before the month of application. Eligibility continues as described in WAC 182-504-0015(4).

(c) A child is eligible for categorically needy (CN) WAH as described in WAC 182-505-0210 (1) through (5) and (7) in at least one of the three months immediately before the month of application. Eligi-

bility after the retroactive period continues as described in WAC 182-504-0015(11).

(3) An individual applying for the medically needy (MN) spenddown program may be eligible for a retroactive certification period as described in WAC 182-504-0020.

(4) An individual applying for a medicare savings program may be eligible for a retroactive certification period as described in WAC 182-504-0025.

[Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 13-14-019, § 182-504-0005, filed 6/24/13, effective 7/25/13.]

WSR 22-17-110

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 19, 2022, 4:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-031.

Title of Rule and Other Identifying Information: WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220), 192-310-010 What reports are required from an employer?, and 192-310-050 What records must every employer keep? (RCW 50.12.070)

Hearing Location(s): On September 29, 2022, at 9:00 a.m., Zoom, Meeting ID 865 1049 4742, Passcode 285303, Call-in 253-215-8782. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/86510494742?pwd=NUN0a0F2cWg5Q0UlcFIwTWRib1Vjdz09>.

Date of Intended Adoption: September 30, 2022.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by September 29, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teresa.eckstein@esd.wa.gov, by September 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2020, the legislature enacted SHB 2308, which requires employers to include the standard occupational classification (SOC) code or job title of each worker in their quarterly tax reports to the employment security department (ESD). ESD is seeking to adopt rules that implement the requirement for employers to report SOC codes or job titles for workers when reporting.

Reasons Supporting Proposal: RCW 50.12.070 (2)(a) requires employers to include the SOC code or job title of each worker in their quarterly tax reports to ESD. RCW 50.12.220 (2)(c) requires an employer to pay an incomplete report penalty if the employer knowingly fails to report the SOC or job title of each worker. This rule making provides clarity for employers on these new reporting requirements.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.12.070 requires employers to include the SOC code or job title of each worker in their quarterly tax reports to ESD. RCW 50.12.220 requires an employer to pay an incomplete report penalty if the employer knowingly fails to report the SOC or job title of each worker.

Statute Being Implemented: RCW 50.12.070 and 50.12.220.

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

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, 360-890-3472; Implementation and Enforcement: JR Richards, Olympia, 360-463-1079.

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 Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 771 [711], email rules@esd.wa.gov.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. ESD anticipates a minimal amount of money charged to employers from penalties related to employers submitting incomplete forms if they do not include job titles for their employees. ESD currently assesses approximately \$57,300 in incomplete report penalties annually. Not all the penalties are collected as almost 40 percent of penalized employers request waivers. ESD estimates approximately 50 percent of waiver requests are approved, which works out to approximately 20 percent of total cash receipts collected or \$11,460.

Additionally, no penalties will be charged for failing to provide SOC code or job titles while ESD does not offer employers the ability to provide job titles in their quarterly reports.

August 19, 2022

Dan Zeitlin

Employment Security Policy Director

OTS-3178.3

AMENDATORY SECTION (Amending WSR 17-17-128, filed 8/22/17, effective 9/22/17)

WAC 192-310-010 What reports are required from an employer? (1) **Business license application.** Every person or unit with one or more individuals performing services for it in the state of Washington must file a business license application with the department of revenue.

(2) **Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within thirty days of registration, must pay a penalty of twenty-five dollars for each violation unless the penalty is waived by the department.

(d) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, standard occupational classification code or job title, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, (~~he or she~~) the individual must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing (~~he or she~~) the individual has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for (~~his or her~~) their records;

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030); (~~and~~)

(v) For the purposes of this section, if an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of employees' wages; and

(vi) The United States Bureau of Labor Statistics Standard Occupational Classification system is used by federal agencies to classify workers into standard occupational categories for the purpose of collecting, calculating or disseminating data. These standard occupational categories are identified by a six-digit numerical code.

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using ~~((the current version of employer account management services (EAMS), UIFastTax, UIWebTax, or ICESA Washington))~~ programs or services authorized by the department; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-17-128, § 192-310-010, filed 8/22/17, effective 9/22/17; WSR 13-23-008, § 192-310-010, filed 11/7/13, effective 12/8/13; WSR 11-21-015, § 192-310-010, filed 10/7/11, effective 11/7/11; WSR 10-23-064, § 192-310-010, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-010, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-310-010, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-010, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.070. WSR 98-14-068, § 192-310-010, filed 6/30/98, effective 7/31/98.]

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-310-050 What records must every employer keep? (RCW 50.12.070.) The commissioner requires every employer to keep true and accurate business, financial, and employment records which are deemed necessary for the effective administration of chapter 50.12 RCW.

(1) **Employment records.** Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

(a) The name of each worker;

(b) The Social Security number of each worker;

(c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;

(d) The basis upon which wages and/or remuneration are paid to each worker;

(e) The standard occupational classification code or job title associated with the worker's job duties;

(f) The location where such services were performed;

~~((f))~~ (g) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;

~~((g))~~ (h) The workers' total gross pay period earnings;

~~((h))~~ (i) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and

~~((i))~~ (j) The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

(2) **Business, financial records, and record retention.** Every employer shall make, keep, and preserve business and financial records containing the following information for four calendar years following the calendar year in which employment occurred:

(a) Payroll and accounting records, including payroll ledgers, all check registers and canceled checks covering both payroll and general disbursements, general and subsidiary ledgers, disbursement and petty cash records, and profit and loss statements or financial statements;

(b) Quarterly and annual tax reports, including W-2, W-3, 1099, 1096, and FUTA (940) forms;

(c) Quarterly reports to the employment security department and the department of labor and industries;

(d) For independent contractors and subcontractors, business license numbers and registration numbers and copies of contract agreements and invoices; and

(e) For years prior to 2009 for corporations that did not voluntarily elect to cover corporate officers for unemployment insurance, copies of written notifications to corporate officers that they were ineligible for unemployment insurance benefits.

(3) Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(4) Penalties for failure to keep and preserve records shall be determined under RCW 50.12.070(3).

(5) For assistance with determining the appropriate standard occupational codes for their workers' job titles, employers can refer to the department's website or contact the employer call center.

[Statutory Authority: RCW 50.12.010, 50.12.040. WSR 10-23-064, § 192-310-050, filed 11/12/10, effective 12/13/10. Statutory Authority: Chapters 34.05 and 50.12 RCW. WSR 00-01-164, § 192-310-050, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

OTS-3990.2

AMENDATORY SECTION (Amending WSR 22-13-007, filed 6/2/22, effective 7/3/22)

WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.) (1) **Penalty for late tax and wage re-**

ports. An employer who does not file a tax or wage report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of (~~twenty-five dollars~~) \$25 for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax or wage report.** An employer must file tax and wage reports that are complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

(i) The entire wage report is not filed on time; or

(ii) A required element is not reported (Social Security number, name, standard occupational classification code or job title, hours worked, or wages paid); or

(iii) A significant number of employees are not reported; or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, standard occupational classification codes or job titles, hours, or wages; or

(v) Either the employment security department number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.); or

(vii) The report includes impossible standard occupational classification codes (such as 00-0000, 99-9999, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

(i) One employee and reports incomplete wage elements for the one employee; or

(ii) Two to (~~nineteen~~) 19 employees and reports incomplete wage elements for two or more employees; or

(iii) Twenty to (~~forty-nine~~) 49 employees and reports incomplete wage elements for three or more employees; or

(iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrectly formatted tax or wage report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(c) (i) The department will not issue a warning letter or penalty under this subsection for failure to report standard occupational classification codes or job titles for quarters where the department does not give employers the option to report standard occupational classification codes or job titles for their employees.

(ii) The department will not charge an incomplete report penalty for failure to report standard occupational classification codes or job titles unless the employer knowingly failed to report standard occupational classification codes or job titles.

(d) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of ~~((his or her))~~ their payroll that is subject to unemployment taxes, the penalty is up to ~~((ten))~~ 10 times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing ~~((his or her))~~ their books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax and wage report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ~~((ten))~~ 10 percent of total taxes due or \$10.00, whichever is greater.

(6) **Nonsufficient funds (NSF).** The department shall charge \$25.00 for checks dishonored by nonacceptance or nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

(7) **Waivers of late filing and late payment penalties.** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family. "Serious illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place;

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline; or

(viii) An infection from a disease subject to a public health emergency occurred at the employer's place of business and caused the employer to close or severely curtail operations.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules;

(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially registered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and

(d) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

(8) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(9) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(10) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(11) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.04.030, 50.20.010, 50.20.010 (1) (a), (1) (e) and (1) (c), 50.20.050 (1) (b) (ii) and (2) (b) (ii), and (3), 50.20.240, 50.20.044, 50.22.155 (2) (d), (2) (b) (iv), (2) (b) (i) and (ii), 50.12.220(6), 50.60.030, 50.29.021 (3) (a) (iii), and (5), 50.20.160, 50.20.170, 50.20.190, and 50.20.100. WSR 22-13-007, § 192-310-030, filed 6/2/22, effective 7/3/22. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-23-007, § 192-310-030, filed 11/7/13, effective 12/8/13; WSR 10-23-064, § 192-310-030, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-310-030, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

WSR 22-17-113
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed August 22, 2022, 8:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-081.

Title of Rule and Other Identifying Information: Rule making to implement amendments to RCW 80.24.010 updating the commission's authority to assess regulatory fees. The rules that the commission is amending in this rule making are WAC 480-90-252, 480-100-252, 480-110-505, 480-120-382, and 480-120-385. The commission has coordinated this rule making under Docket U-220271.

Hearing Location(s): On October 17, 2022, at 9:30 a.m., Zoom <https://utc-wa-gov.zoom.us/j/87497880066?pwd=dnZUMkloU1FYRWVxbnJPbm0wMDhqdz09>, phone 253-215-8782, Meeting ID 874 9788 0066, Passcode 384286. Public hearing to consider adoption of the proposed rule.

Date of Intended Adoption: October 17, 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 September 30, 2022.

Assistance for Persons with Disabilities: Contact human resources, phone 360-664-1160, TTY 360-586-8203, email human_resources@utc.wa.gov, by October 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature adopted amendments to RCW 80.24.010, increasing the maximum regulatory fees the commission may assess to utility companies. This rule making will conform the commission's rules to the formula adopted by RCW 80.24.010.

Reasons Supporting Proposal: The legislature amended RCW 80.24.010 so the commission could increase its maximum regulatory fees. This rule making will implement that purpose.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160, and 84.24.010.

Statute Being Implemented: RCW 84.24.010.

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

Name of Proponent: Washington utilities and transportation commission (UTC), governmental.

Name of Agency Personnel Responsible for Drafting: Gregory J. Kopta, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1355; 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. The proposed rule amendments incorporate the legislature's amendment of RCW 80.24.010 increasing the amount of the regulatory fees the commission collects from privately owned utilities. The only substantive change the commission proposes is the one the legislature adopted. The commission nevertheless undertook a small

business economic impact analysis. The increased regulatory fees are operational expenses that the utilities recoup through the rates they charge for their services. The commission also retains the authority to impose regulatory fees that are lower than the amount specified in the statute and proposed rule amendments when warranted, which the commission anticipates doing for telecommunications companies. On July 1, 2022, the commission sent a notice to all potential stakeholders and interested persons providing the proposed rule amendment language and requesting responses on a small business economic impact statement 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. The commission did not receive any information in response to the questionnaire. Based on the information available to the commission, the proposed rule amendments will not impose more-than-minor costs on any small business.

August 22, 2022

Amanda Maxwell

Executive Director and Secretary

OTS-4016.1

AMENDATORY SECTION (Amending WSR 06-08-057, filed 3/31/06, effective 5/1/06)

WAC 480-90-252 Federal Energy Regulatory Commission (FERC) Form No. 2. (1) Each gas utility must use the annual report form (FERC Form No. 2) promulgated by the Federal Energy Regulatory Commission in Title 18 of the Code of Federal Regulations, Part 260, for purposes of this report to the commission. Data required by RCW 80.04.080 (Annual reports), but not included in the FERC Form No. 2, must also be submitted with the annual report. The utility must submit the annual report for the preceding calendar year, along with the regulatory fee, by May 1st of each year. If not presented in the prescribed FERC Form No. 2, the annual report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales. Information about the FERC Form No. 2 regarding the version adopted and where to obtain it is set out in WAC 480-90-999 (Adoption by reference).

(2) Each utility must also submit to this commission, in essentially the same format and content as the FERC Form No. 2, a report that documents the costs incurred and the property necessary to furnish utility service to its customers and the revenues obtained in the state of Washington. The report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales.

(3) Combination and multistate utilities must submit with the annual report their cost allocation methods necessary to develop results of operations for the state of Washington. Approval of cost allocation methods for rate-making purposes is accomplished only by commission order.

(4) The total utility results of operations reported by each utility in its annual report to the commission must agree with the results of operations shown on the utility's books and records.

(5) **Regulatory fees.** The gas utility annual regulatory fee is set by statute at one-tenth of one percent of the first (~~(fifty thousand dollars)~~) \$50,000 of gross intrastate operating revenue plus (~~(two-tenths)~~) four-tenths of one percent of any gross intrastate operating revenue in excess of (~~(fifty thousand dollars)~~) \$50,000.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a gas utility must pay is (~~(twenty dollars)~~) \$20.

(c) The (~~(twenty dollar)~~) \$20 minimum regulatory fee is waived for any gas utility with less than (~~(twenty thousand dollars)~~) \$20,000 in gross intrastate operating revenue.

(d) The commission does not grant extensions for payment of regulatory fees.

(e) If a company does not pay its regulatory fee by May 1st, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

[Statutory Authority: 80.01.040(4), 81.04.160, and 34.05.353. WSR 06-08-057 (Docket A-060085, General Order No. R-531), § 480-90-252, filed 3/31/06, effective 5/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. WSR 05-21-022 (Docket No. A-050271, General Order No. R-521), § 480-90-252, filed 10/10/05, effective 11/10/05; WSR 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-90-252, filed 2/28/05, effective 3/31/05.]

OTS-4017.1

AMENDATORY SECTION (Amending WSR 06-08-057, filed 3/31/06, effective 5/1/06)

WAC 480-100-252 Federal Energy Regulatory Commission (FERC) Form

No. 1. (1) Each electric utility must use the annual report form (FERC Form No. 1) promulgated by the Federal Energy Regulatory Commission in Title 18 of the Code of Federal Regulations, Part 141, for purposes of this report to the commission. Data required by RCW 80.04.080 (Annual reports), but not included in the FERC Form No. 1, must also be submitted with the annual report. The utility must submit the annual report for the preceding calendar year, along with the regulatory fee, by May 1st of each year. If not presented in the prescribed FERC Form No. 1, the annual report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales. Information about the FERC Form No. 1 regarding the version adopted and where to obtain it is set out in WAC 480-100-999 (Adoption by reference).

(2) Each utility must also submit to this commission, in essentially the same format and content as the FERC Form No. 1, a report

that documents the costs incurred and the property necessary to furnish utility service to its customers and the revenues obtained in the state of Washington. The report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales.

(3) Combination and multistate utilities must submit with the annual report their cost allocation methods necessary to develop results of operations for the state of Washington. Approval of cost allocation methods for rate-making purposes is accomplished only by commission order.

(4) The total utility results of operations reported by each utility in its annual report to the commission must agree with the results of operations shown on the utility's books and records.

(5) **Regulatory fees.** The electric utility annual regulatory fee is set by statute at one-tenth of one percent of the first (~~fifty thousand dollars~~) \$50,000 of gross intrastate operating revenue plus (~~two-tenths~~) four-tenths of one percent of any gross intrastate operating revenue in excess of (~~fifty thousand dollars~~) \$50,000.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that an electric utility must pay is (~~twenty dollars~~) \$20.

(c) The (~~twenty dollar~~) \$20 minimum regulatory fee is waived for any electric utility with less than (~~twenty thousand dollars~~) \$20,000 in gross intrastate operating revenue.

(d) The commission does not grant extensions for payment of regulatory fees.

(e) If a company does not pay its regulatory fee by May 1st, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

[Statutory Authority: RCW 80.01.040(4), 81.04.160, and 34.05.353. WSR 06-08-057 (Docket A-060085, General Order No. R-531), § 480-100-252, filed 3/31/06, effective 5/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. WSR 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-100-252, filed 2/28/05, effective 3/31/05.]

OTS-4018.1

AMENDATORY SECTION (Amending WSR 06-08-057, filed 3/31/06, effective 5/1/06)

WAC 480-110-505 Accounting and reporting requirements and regulatory fees. (1) Water companies must use the uniform system of accounts (USOA) published by the National Association of Regulatory Utility Commissioners (NARUC). Information about the USOA regarding the version adopted and where to obtain it is set out in WAC 480-110-999 (Adoption by reference). The USOA sets out the accounting requirements for Class A, B, and C water companies.

Water companies are classified by revenues.

Class	Annual Gross Operating Revenue
A	\$1,000,000 or more
B	\$200,000 to \$999,999
C	Less than \$200,000

(2) A water company may use the accounting requirements for a higher class if it chooses.

(3) The commission will distribute an annual report form that each water company must complete and file with the commission for the prior calendar year. The annual report must be filed, and the company's regulatory fee paid, no later than May 1st of each year.

(4) A written request for the extension of the time for filing the annual report can be made prior to May 1st. The commission does not grant an extension of time for payment of regulatory fees.

(5) The maximum water company regulatory fee is set by statute at one-tenth of one percent of the first ~~((fifty thousand dollars))~~ \$50,000 of gross intrastate operating revenue plus ~~((two-tenths))~~ four-tenths of one percent of any gross operating revenue in excess of ~~((fifty thousand dollars))~~ \$50,000.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a water company must pay is ~~((twenty dollars))~~ \$20.

(c) The ~~((twenty-dollar))~~ \$20 minimum regulatory fee is waived for any water company with less than ~~((twenty thousand dollars))~~ \$20,000 in gross intrastate operating revenue.

(d) The commission does not grant extensions for payment of regulatory fees.

(e) If a company does not pay its regulatory fee by May 1st, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

[Statutory Authority: RCW 80.01.040(4), 81.04.160, 34.05.353. WSR 06-08-057 (Docket A-060085, General Order No. R-531), § 480-110-505, filed 3/31/06, effective 5/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. WSR 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-110-505, filed 2/28/05, effective 3/31/05.]

OTS-4019.1

AMENDATORY SECTION (Amending WSR 15-08-043, filed 3/26/15, effective 4/26/15)

WAC 480-120-382 Annual report for competitively classified telecommunications companies. The commission will distribute an annual report form including a regulatory fee form. A competitively classified company must:

(1) Complete both forms, file them with the commission, and pay its regulatory fee, no later than May 1st of each year;

- (2) Provide total number of access lines as required on the annual report form;
- (3) Provide income statement and balance sheet for total company;
- (4) Provide revenues for Washington and Washington intrastate operations subject to commission jurisdiction;
- (5) Keep accounts using generally accepted accounting principles (GAAP), or any other accounting method acceptable to the commission. In addition, the accounts must allow for the identification of revenues supporting subsection (4) of this section; and
- (6) **Regulatory fees.** The telecommunications annual regulatory fee is set by statute at one-tenth of one percent of the first (~~fifty thousand dollars~~) \$50,000 of gross intrastate operating revenue plus (~~two-tenths~~) four-tenths of one percent of any gross intrastate operating revenue in excess of (~~fifty thousand dollars~~) \$50,000.
- (a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.
- (b) The minimum regulatory fee that a company must pay is (~~one hundred fifty dollars~~) \$150.
- (c) The commission does not grant extensions for payment of regulatory fees.
- (d) If a company does not pay its regulatory fee by May 1st, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.
- (e) The commission may take action to revoke a company's registration certificate if it fails to pay its regulatory fee.

[Statutory Authority: Chapter 19.122 RCW, RCW 19.122.053, 80.01.040, and 80.04.160. WSR 15-08-043 (Docket UT-140680, General Order R-580), § 480-120-382, filed 3/26/15, effective 4/26/15. Statutory Authority: RCW 80.01.040(4), 81.04.160, and 34.05.353. WSR 06-08-057 (Docket A-060085, General Order No. R-531), § 480-120-382, filed 3/31/06, effective 5/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. WSR 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-382, filed 2/28/05, effective 3/31/05.]

AMENDATORY SECTION (Amending WSR 15-08-043, filed 3/26/15, effective 4/26/15)

WAC 480-120-385 Annual report for telecommunications companies not classified as competitive. (1) Annual reports for companies not classified as competitive. The commission will distribute an annual report form, a regulatory fee form, and financial information templates. A telecommunications company not classified as competitive must:

- (a) Return the annual report and regulatory fee forms and pay its regulatory fee, no later than May 1st of each year;
- (b) Provide total number of access lines (as required on the annual report form referred to in (a) of this subsection); and
- (c) Complete the financial information templates. The financial information templates include income statement, balance sheet, and rate base items. The templates also include sections on total company and results of operations for Washington and Washington intrastate.

The commission will provide the templates each year and the company must return the completed templates as follows:

- (i) Class A companies must file the required financial information templates no later than May 1st each year.
- (ii) Class B companies must file the required financial information templates no later than July 1st of each year.
- (iii) Class B companies are not exempt from these filing requirements.

(2) Methods used to determine Washington intrastate results of operations must be acceptable to the commission.

(3) This rule does not supersede any reporting requirements specified in a commission rule or order, or limit the commission's authority to request additional information.

(4) **Regulatory fees.** The telecommunications annual regulatory fee is set by statute at one-tenth of one percent of the first (~~fifty thousand dollars~~) \$50,000 of gross intrastate operating revenue plus (~~two-tenths~~) four-tenths of one percent of any gross intrastate operating revenue in excess of (~~fifty thousand dollars~~) \$50,000.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a company must pay is (~~one hundred fifty dollars~~) \$150.

(c) The commission does not grant extensions for payment of regulatory fees.

(d) If a company does not pay its regulatory fee by May 1st, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

[Statutory Authority: Chapter 19.122 RCW, RCW 19.122.053, 80.01.040, and 80.04.160. WSR 15-08-043 (Docket UT-140680, General Order R-580), § 480-120-385, filed 3/26/15, effective 4/26/15. Statutory Authority: RCW 80.01.040(4), 81.04.160, and 34.05.353. WSR 06-08-057 (Docket A-060085, General Order No. R-531), § 480-120-385, filed 3/31/06, effective 5/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. WSR 05-06-051 (Docket No. A-021178 and TO-030288, General Order No. R-518), § 480-120-385, filed 2/28/05, effective 3/31/05.]

WSR 22-17-116

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 22, 2022, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-018.

Title of Rule and Other Identifying Information: WAC 182-526-0030
Contacting the board of appeals and 182-526-0580 Deadline for request-
ing review of an initial order by a review judge.

Hearing Location(s): On September 27, 2022, at 10:00 a.m. In re-
sponse to the coronavirus disease 2019 (COVID-19) public health emer-
gency, the health care authority (HCA) continues to hold public hear-
ings virtually without a physical meeting place. This promotes social
distancing and the safety of the residents of Washington state. To at-
tend the virtual public hearing, you must register in advance [https://
us02web.zoom.us/webinar/register/WN_9Uo_ve5ETY2is3tDmG1Udw](https://us02web.zoom.us/webinar/register/WN_9Uo_ve5ETY2is3tDmG1Udw). If the
link above opens with an error message, please try using a different
browser. After registering, you will receive a confirmation email con-
taining information about joining the public hearing.

Date of Intended Adoption: Not sooner than September 28, 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 September 27, 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 serv-
ice 711, email Johanna.Larson@hca.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The agency is amending WAC 182-526-0030
to update the board of appeals' website address. The agency is amend-
ing WAC 182-526-0580 to specify the acceptable filing methods for a
written review request of an initial order.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen,
P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation
and Enforcement: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700,
1-844-728-5212.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or
repeal a procedure, practice, or requirement relating to
agency hearings; or a filing or related process requirement
for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

August 22, 2022

Wendy Barcus

OTS-3970.1

AMENDATORY SECTION (Amending WSR 21-18-063, filed 8/26/21, effective 9/26/21)

WAC 182-526-0030 Contacting the board of appeals. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the health care authority's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Board of Appeals	
Location	626 8th Avenue S.E. Olympia, Washington
Mailing address	P.O. Box 42700 Olympia, WA 98504-2700
Toll free telephone	1-844-728-5212
Fax	360-507-9018
Electronic service	HCABoardofAppeals@hca.wa.gov
Internet website	((www.hca.wa.gov/appeals)) https://www.hca.wa.gov/about-hca/board-appeals

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-18-063, § 182-526-0030, filed 8/26/21, effective 9/26/21; WSR 15-04-102, § 182-526-0030, filed 2/3/15, effective 3/6/15. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0030, filed 12/19/12, effective 2/1/13.]

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0580 Deadline for requesting review of an initial order by a review judge. (1) The board of appeals (BOA) must receive the written review request of an initial order on or before 5:00 p.m. on the ~~((twenty-first))~~ 21st calendar day after the initial order was served, unless an extension of the deadline is granted by the review judge.

(2) A party may file the written review request by physical mail, by facsimile transmission (fax) (~~(. A copy of the review request should also be mailed to BOA)~~), electronically by email, or in-person delivery. For the BOA contact information, see WAC 182-526-0030.

~~((2))~~ (3) A review judge may extend the deadline to request review if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for more time.

~~((3))~~ (4) A review judge may accept a review request after the ~~((twenty-one))~~ 21 calendar day deadline only if:

(a) BOA receives the review request on or before the ~~((thirtieth))~~ 30th calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

~~((4))~~ (5) The time periods provided by this section for requesting review of an initial order, including any extensions, does not count against a deadline, if any, for a review judge to enter the final order.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0580, filed 2/13/17, effective 3/16/17. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0580, filed 12/19/12, effective 2/1/13.]

WSR 22-17-122
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed August 23, 2022, 8:53 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-01-1745 Fully vaccinated, 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?, 357-16-197 Must an eligible candidate provide proof of being fully vaccinated?, 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or an eligible candidate to provide proof of being fully vaccinated?, 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?, 357-46-195 May an employer separate an employee for nondisciplinary reasons?, and 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?

Hearing Location(s): On September 27, 2022, at 8:30 a.m., Zoom meeting ID (with call-in option) 868 5754 9869, Call-in 253-215-8782, Passcode 862380. Zoom link <https://ofm-wa-gov.zoom.us/j/86857549869?pwd=eXA4ZzZMc0k5KzZGb01HWWhiNlpKUT09>, Passcode if needed 862380.

Date of Intended Adoption: October 4, 2022.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., September 20, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., September 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To place new provisions in Title 357 WAC for nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such a position, to continue the requirement to be fully vaccinated; or be granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine; and requiring employers to separate an employee for failure to comply with the COVID-19 vaccination requirements. These requirements are optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Reasons Supporting Proposal: On August 5, 2022, Governor Inslee issued a revised Directive #22-13.1, COVID[-19] Vaccination Standards for State Employees, which directs a permanent COVID-19 vaccination condition of employment requirement for state executive and small cabinet agencies. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impacts the life and health of all Washingtonians, as well as the economy of Washington state, and is a public disaster that affects life, health, property, or the public peace. COVID-19 vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect the health and safety of our workforce. As an employer, there is an obligation to maintain a safe and healthy work environment for all state employees. The vaccination requirements set forth in these proposed rules will help establish and

maintain a healthy and safe work environment to protect the welfare of all state employees.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 41.06.133 and 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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 are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328

(5)(b)(ii) for exemption.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

August 23, 2022

Roselyn Marcus

Assistant Director of Legal
and Legislative Affairs

OTS-4048.1

NEW SECTION

WAC 357-01-1745 Fully vaccinated. A person is "fully vaccinated" against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine or a single-dose COVID-19 vaccine authorized for emergency use, licensed or otherwise authorized or approved by the U.S. Food and Drug Administration or listed for emergency use or otherwise approved by the World Health Organization.

OTS-3934.3

NEW SECTION

WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment? As a condition of employment, an employee must be fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement con-

flicts with an employee's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the employee can be reasonably accommodated. If the employer determines an employee can be accommodated in accordance with state and federal laws, the employee may continue their employment. An employee who fails to meet this condition of employment will be subject to a separation in accordance with WAC 357-19-410, or a disability separation in accordance with WAC 357-46-160, or a non-disciplinary separation in accordance with WAC 357-46-195.

This section applies to executive and small cabinet agencies as defined in Directive 22-13, issued June 30, 2022, by the governor or any amendment thereto. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an employee to meet the requirements of this section.

OTS-3935.3

NEW SECTION

WAC 357-16-197 Must an eligible candidate provide proof of being fully vaccinated? After a conditional offer of employment is made, an eligible candidate must provide proof of being fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an eligible candidate's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the eligible candidate can be reasonably accommodated. If the employer determines an eligible candidate can be accommodated in accordance with state and federal laws, the eligible candidate may be considered for employment.

This section applies to executive and small cabinet agencies as defined in Directive 22-13, issued June 30, 2022, by the governor or any amendment thereto. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an eligible candidate to meet the requirements of this section.

OTS-3936.2

NEW SECTION

WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or an eligible candidate to provide proof of being fully vaccinated? (1) A nonpermanent employee must comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125. A nonpermanent employee who fails to comply must be separated in accordance with WAC 357-19-410.

(2) After a conditional offer of employment for a nonpermanent appointment is made, an eligible candidate must provide proof of being fully vaccinated in accordance with WAC 357-16-197.

OTS-3937.2

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160? An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

(4) The employer must separate an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-195 ((Can)) May an employer separate an employee for nondisciplinary reasons? An employer may separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

The employer must separate an employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

OTS-3938.2

AMENDATORY SECTION (Amending WSR 22-12-074, filed 5/27/22, effective 7/1/22)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy and/or procedure must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Consider making appointments from a veterans placement program;
- (6) Ensure that hiring decisions are not based on patronage or political affiliation;
- (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;
- (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220; and
- (10) Ensure compliance with the vaccination requirements in accordance with WAC 357-04-125 and 357-16-197.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

WSR 22-17-125
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 23, 2022, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-098.

Title of Rule and Other Identifying Information: Chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking.

Hearing Location(s): On September 27, 2022, at 10:00 a.m., Zoom hearing. Join electronically at <https://lni-wa-gov.zoom.us/j/84284319815?pwd=THV0c2hKeGJ4cVpKZkFjSkJzaUpNdz09>; join by phone 253-215-8782, Meeting ID 842 8431 9815, Passcode 370932747. The meeting will begin at 10:00 a.m., and will continue until all oral comments are received.

Date of Intended Adoption: November 22, 2022.

Submit Written Comments to: Cathy Coates, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email Cathy.coates@lni.wa.gov, fax 360-902-5619, by October 7, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Cathy Coates, administrative regulations analyst, phone 360-902-5432, fax 360-902-5619, email Cathy.coates@lni.wa.gov, by September 13, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to better align chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking, with the United States Occupational Safety and Health Administration (OSHA) personal protective equipment (PPE) requirements for eye and face protection for shipyard employment found at 29 C.F.R. 1915, Subpart I.

OSHA updated PPE requirements for eye and face protection for shipyard employment found at 29 C.F.R. 1915, Subpart I. This requires the agency to update chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking, to be at-least-as-effective-as OSHA requirements, as statutorily required per chapter 49.17 RCW, the Washington Industrial Safety and Health Act.

Additionally, this rule making will incorporate housekeeping and formatting changes.

WAC 296-304-010 Scope and application.

- Chapter 296-880 WAC, Unified safety standards for fall protection, applies to ship repairing, shipbuilding and shipbreaking industries. Proposed language adds reference to ensure stakeholders in these industries are aware of this.

WAC 296-304-01001 Definitions.

- Add definition of "auto-darkening helmet." Definition developed by L&I staff and information from welding headquarters. Use of "auto-darkening helmet" is industry standard. Employer not required to provide. Recognizes employees may purchase and prefer to use.
- Add numbers to defined words.
- Update formatting of numbers throughout the section.

WAC 296-304-03005 Mechanical paint removers.

- Update subsection (3)(c)(i), add an exception to include additional piece of PPE during abrasive blasting.
- Move text in subsection (3)(c)(ii) to be part of the exception and renumber subsequent subsections.
- Update subsection (3)(c)(iv), add reference to chapter 296-880 WAC, Unified safety standards for fall protection.

WAC 296-304-04001 Ventilation and protection in welding, cutting and heating.

- Update Table I-1A and Table I-1B to align with OSHA PPE requirements for eye and face protection for shipyard employment found in 29 C.F.R. 1915, Subpart I (29 C.F.R. 1915.153).
- Add note below table to include use of auto-darkening helmets.
- Reformat to address formatting error.
- Update formatting of numbers throughout the section.

WAC 296-304-05001 Scaffolds or staging.

- Subsection (9)(c), remove erroneous reference to WAC 296-304-09021(2). WAC 296-304-09021(2) was removed as part of the unified fall protection rule making (WSR 20-12-091). As part of this rule making, we propose removing the erroneous reference, and adding a reference to chapter 296-880 WAC, Unified safety standards for fall protection.
- Update formatting of numbers throughout the section.

Reasons Supporting Proposal: RCW 49.17.050 requires the department provide occupational health and safety standards which are at-least-as-effective-as OSHA. Further, aligning the standard with other agency standards and OSHA will eliminate confusion among L&I staff, stakeholders, and the public, thereby ensuring safety of employees and the public.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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: Christopher L. Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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 a cost-benefit analysis per RCW 34.05.328 (5)(b)(iii) because the rule making is proposing to adopt without material change language from OSHA requirements under 29 C.F.R. 1915, Subpart I; and per RCW 34.05.328 (5)(b)(iv) as this rule making proposes to clarify language without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide

significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule amendments incorporate without material change federal OSHA standards, make housekeeping changes like updating the way numbers are written, and remove outdated references so the rule is clear and easy to comply with.

Scope of exemption for rule proposal:

Is fully exempt.

August 23, 2022

Joel Sacks

Director

OTS-3417.3

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-304-010 Scope and application. (1) The provisions and standards of the general safety and health standards, chapters 296-24, 296-62 (~~and~~), 296-800, and 296-880 WAC, and such other codes and standards as are promulgated by the department of labor and industries which are applicable to all industries, shall be applicable in the ship repairing, shipbuilding, or shipbreaking industries whenever the employees are covered under the Washington State Industrial Safety and Health Act, chapter 49.17 RCW. The rules of this chapter and the rules of the aforementioned chapters 296-24, 296-62, (~~and~~) 296-800, and 296-880 WAC are applicable to all ship repairing, shipbuilding, and shipbreaking industries and operations, provided that such rules shall not be applicable to those operations under the exclusive safety jurisdiction of the federal government.

(2) The responsibility for compliance with these regulations is placed upon "employers" as defined in WAC 296-304-01001.

(3) It is not the intent of these regulations to place additional responsibilities or duties on owners, operators, agents or masters of vessels unless such persons are acting as employers, nor is it the intent of these regulations to relieve such owners, operators, agents or masters of vessels from responsibilities or duties now placed upon them by law, regulation or custom.

(4) The responsibilities placed upon the competent person herein shall be deemed to be the responsibilities of the employer.

[Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-304-010, filed 5/9/01, effective 9/1/01. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. WSR 98-02-006, § 296-304-010, filed 12/26/97, effective 3/1/98. Statutory Authority: RCW 49.17.010, [49.17].050 and [49.17].060. WSR 95-22-015, § 296-304-010, filed 10/20/95, effective 1/16/96. Statutory Authority:

Chapter 49.17 RCW. WSR 95-04-006, § 296-304-010, filed 1/18/95, effective 3/10/95; WSR 89-11-035 (Order 89-03), § 296-304-010, filed 5/15/89, effective 6/30/89; Order 75-6, § 296-304-010, filed 3/10/75; Order 74-25, § 296-304-010, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-304-01001 Definitions. (1) Additional safety measure. A component of the tags-plus system that provides an impediment (in addition to the energy-isolating device) to the release of energy or the generalization or start-up of the machinery, equipment, or system being serviced. Examples of additional safety measures include, but are not limited to, removing an isolating circuit element; blocking a controlling switch; blocking, blanking, or bleeding lines; removing a valve handle or wiring it in place; opening an extra disconnecting device.

(2) Affected employee. An employee who normally operates or uses the machinery, equipment, or system that is going to be serviced under lockout/tags-plus or who is working in the area where servicing is being performed under lockout/tags-plus. An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

(3) Alarm. A signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. At some shipyards, this may be called an "incident" or a "call for service."

(4) Alarm system. A system that warns employees at the worksite of danger.

(5) Anchorage. A secure point of attachment for lifelines, lanyards, or deceleration devices which is capable of withstanding the forces specified in this chapter.

(6) Authorized employee:

(a) An employee who performs one or more of the following lockout/tags-plus responsibilities:

(i) Executes the lockout/tags-plus procedures;

(ii) Installs a lock or tags-plus system on machinery, equipment, or systems; or

(iii) Services any machine, equipment, or system under lockout/tags-plus application.

(b) An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

(7) Auto-darkening helmet. A welding helmet which is equipped with a light sensor, ultra-violet filter/infra-red filter and a series of liquid crystal and aluminized or silver layers; which is capable of adjusting the lens to an appropriate shade automatically upon initiating welding arc, without input from the wearer.

(8) Body belt. A strap with means to both secure it around the waist and to attach it to a lanyard, lifeline, or deceleration device. Body belts may be used only in fall restraint or positioning device systems and may not be used for fall arrest. Body belts must be at least one and five-eighths inches (4.13 cm) wide.

(9) Body harness. Straps to secure around an employee so that fall arrest forces are distributed over at least the thighs, shoulders, chest and pelvis with means to attach it to other components of a personal fall arrest system.

(10) Capable of being locked out. An energy-isolating device is capable of being locked out if it has a locking mechanism built into it, or it has a hasp or other means of attachment to which, or through which, a lock can be affixed. Other energy-isolating devices are capable of being locked out if lockout can be achieved without the need to dismantle, rebuild, or replace the energy-isolating device or permanently alter its energy-control capability.

(11) Class II standpipe system. A one and one-half inch (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

(12) Cold work. Work that does not involve riveting, welding, burning, or other fire-producing or spark-producing operations.

(13) Contract employer. An employer, such as a painter, joiner, carpenter, or scaffolding subcontractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. This excludes employers who provide incidental services that are not directly related to shipyard employment (such as mail delivery or office supply and food vending services).

(14) Competent person. A person who can recognize and evaluate employee exposure to hazardous substances or to other unsafe conditions and can specify the necessary protection and precautions necessary to ensure the safety of employees as required by these standards.

(15) Confined space. A small compartment with limited access such as a double bottom tank, cofferdam, or other small, confined space that can readily create or aggravate a hazardous exposure.

(16) Connector. A device used to connect parts of a personal fall arrest system or parts of a positioning device system together. It may be:

(a) An independent component of the system (such as a carabiner);
or

(b) An integral component of part of the system (such as a buckle or D-ring sewn into a body belt or body harness or a snaphook spliced or sewn to a lanyard or self-retracting lanyard).

(17) Dangerous atmosphere. An atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space).

(18) Deceleration device. A mechanism, such as a rope grab, rip stitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline/lanyard, that serves to dissipate a substantial amount of energy during a fall arrest, or to limit the energy imposed on an employee during fall arrest.

(19) Deceleration distance. The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured from the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, to the location of that attachment point after the employee comes to a full stop.

(20) Designated area. An area established for hot work after an inspection that is free of fire hazards.

- (21) **Director.** The director of the department of labor and industries or a designated representative.
- (22) **Drop test.** A method utilizing gauges to ensure the integrity of an oxygen fuel gas burning system. The method requires that the burning torch is installed to one end of the oxygen and fuel gas lines and then the gauges are attached to the other end of the hoses. The manifold or cylinder supply valve is opened and the system is pressurized. The manifold or cylinder supply valve is then closed and the gauges are watched for at least (~~sixty~~) 60 seconds. Any drop in pressure indicates a leak.
- (23) **Dummy load.** A device used in place of an antenna to aid in the testing of a radio transmitter that converts transmitted energy into heat to minimize energy radiating outward or reflecting back to its source during testing.
- (24) **Emergency operations.** Activities performed by fire response organizations that are related to: Rescue, fire suppression, emergency medical care, and special operations or activities that include responding to the scene of an incident and all activities performed at that scene.
- (25) **Employee.** Any person engaged in ship repairing, ship building, or ship breaking or related employment as defined in these standards.
- (26) **Employer.** An employer with employees who are employed, in whole or in part, in ship repair, ship building and ship breaking, or related employment as defined in these standards.
- (27) **Enclosed space.** A space, other than a confined space, that is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.
- (28) **Energy-isolating device.** A mechanical device that, when utilized or activated, physically prevents the release or transmission of energy. Energy-isolating devices include, but are not limited to, manually operated electrical circuit breakers; disconnect switches; line valves; blocks; and any similar device used to block or isolate energy. Control-circuit devices (for example, push buttons, selector switches) are not considered energy isolating devices.
- (29) **Equivalent.** Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate and will provide an equal or greater degree of safety for employees than the methods, materials, or designs specified in this standard.
- (30) **Fire hazard.** A condition or material that may start or contribute to the spread of fire.
- (31) **Fire protection.** Methods of providing fire prevention, response, detection, control, extinguishment, and engineering.
- (32) **Fire response.** The activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.
- (33) **Fire response employee.** A shipyard employee who carries out the duties and responsibilities of shipyard firefighting in accordance with the fire safety plan.
- (34) **Fire response organization.** An organized group knowledgeable, trained, and skilled in shipyard firefighting operations that responds to shipyard fire emergencies, including: Fire brigades, shipyard fire departments, private or contractual fire departments, and municipal fire departments.

(35) **Fire suppression.** The activities involved in controlling and extinguishing fires.

(36) **Fire watch.** The activity of observing and responding to the fire hazards associated with hot work in shipyard employment and the employees designated to do so.

(37) **Fixed extinguishing system.** A permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

(38) **Flammable liquid.** Means any liquid having a flashpoint at or below 199.4°F (93°C). Flammable liquids are divided into four categories as follows:

(a) Category 1 shall include liquids having flashpoints below 73.4°F (23°C) and having a boiling point at or below 95°F (35°C).

(b) Category 2 shall include liquids having flashpoints below 73.4°F (23°C) and having a boiling point above 95°F (35°C).

(c) Category 3 shall include liquids having flashpoints at or above 73.4°F (23°C) and at or below 140°F (60°C). When a Category 3 liquid with a flashpoint at or above 100°F (37.8°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint below 100°F (37.8°C).

(d) Category 4 shall include liquids having flashpoints above 140°F (60°C) and at or below 199.4°F (93°C). When a Category 4 flammable liquid is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint at or above 100°F (37.8°C).

(e) When liquid with a flashpoint greater than 199.4°F (93°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 4 flammable liquid.

(39) **Free fall.** To fall before a personal fall arrest system begins to apply force to arrest the fall.

(40) **Free fall distance.** The vertical displacement of the fall arrest attachment point on the employee's body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before the device operates and fall arrest forces occur.

(41) **Gangway.** A ramp-like or stair-like means to board or leave a vessel including accommodation ladders, gangplanks and brows.

(42) **Hazardous energy.** Any energy source, including mechanical (for example, power transmission apparatus, counterbalances, springs, pressure, gravity), pneumatic, hydraulic, electrical, chemical, and thermal (for example, high or low temperature) energies, that could cause injury to employees.

(43) **Hazardous substance.** A substance likely to cause injury, illness or disease, or otherwise harm an employee because it is explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful.

(44) **Health care professional.** A physician or any other health care professional whose legally permitted scope of practice allows the provider to independently provide, or be delegated the responsibility to provide, some or all of the advice or consultation this subpart requires.

(45) **Hose systems.** Fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

(46) **Host employer.** An employer who is in charge of coordinating work or who hires other employers to perform work at a multiemployer workplace.

(47) **Hot work.** Riveting, welding, burning or other fire or spark producing operations.

(48) **Incident management system.** A system that defines the roles and responsibilities to be assumed by personnel and the operating procedures to be used in the management and direction of emergency operations; the system is also referred to as an "incident command system (ICS)."

(49) **Incipient stage fire.** A fire, in the initial or beginning stage, which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(50) **Inerting.** The displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

(51) **Interior structural firefighting operations.** The physical activity of fire response, rescue, or both involving a fire beyond the incipient stage inside of buildings, enclosed structures, vessels, and vessel sections.

(52) **Isolated location.** An area in which employees are working alone or with little assistance from others due to the type, time, or location of their work. Such locations include remote locations or other work areas where employees are not in close proximity to others.

(53) **Lanyard.** A flexible line of webbing, rope, or cable used to secure a positioning harness or full body harness to a lifeline or an anchorage point usually two, four, or six feet long.

(54) **Lifeline.** A vertical line from a fixed anchorage or between two horizontal anchorages, independent of walking or working surfaces, to which a lanyard or device is secured. Lifeline as referred to in this text is one which is part of a fall protection system used as back-up safety for an elevated worker or as a restraint for workers on a flat or sloped surface.

(55) **Lock.** A device that utilizes a positive means, either a key or combination lock, to hold an energy isolating device in a "safe" position that prevents the release of energy and the start-up or energization of the machinery, equipment, or system to be serviced.

(56) **Lockout.** The placement of a lock on an energy-isolating device in accordance with an established procedure, thereby ensuring that the energy-isolating device and the equipment being controlled cannot be operated until the lock is removed.

(57) **Lockout/tags-plus coordinator.** An employee whom the employer designates to coordinate and oversee all lockout and tags-plus applications on vessels or vessel sections and at landside work areas when employees are performing multiple servicing operations on the same machinery, equipment, or systems at the same time, and when employees are servicing multiple machinery, equipment, or systems on the same vessel or vessel section at the same time. The lockout/tags-plus coordinator also maintains the lockout/tags-plus log.

(58) **Lockout/tags-plus materials and hardware.** Locks, chains, wedges, blanks, key blocks, adapter pins, self-locking fasteners, or other hardware used for isolating, blocking, or securing machinery,

equipment, or systems to prevent the release of energy or the start-up or energization of machinery, equipment, or systems to be serviced.

(59) Lower levels. Those areas or surfaces to which an employee can fall. Such areas or surfaces include but are not limited to ground levels, floors, ramps, tanks, materials, water, excavations, pits, vessels, structures, or portions thereof.

(60) Motor vehicle. Any motor-driven vehicle operated by an employee that is used to transport employees, material, or property. For the purposes of this subpart, motor vehicles include passenger cars, light trucks, vans, motorcycles, all-terrain vehicles, small utility trucks, powered industrial trucks, and other similar vehicles. Motor vehicles do not include boats, or vehicles operated exclusively on a rail or rails.

(61) Motor vehicle safety equipment. Systems and devices integral to or installed on a motor vehicle for the purpose of effecting the safe operation of the vehicle, and consisting of such systems or devices as safety belts, airbags, headlights, tail lights, emergency/hazard lights, windshield wipers, defogging or defrosting devices, brakes, horns, mirrors, windshields and other windows, and locks.

(62) Multiemployer workplace. A workplace where there is a host employer and at least one contract employer.

(63) Normal production operations. The use of machinery or equipment, including, but not limited to, punch presses, bending presses, shears, lathes, keel press rollers, and automated burning machines, to perform a shipyard-employment production process.

(64) Personal alert safety system (PASS). A device that sounds a loud signal if the wearer becomes immobilized or is motionless for ~~((thirty))~~ 30 seconds or more.

(65) Personal fall arrest system. A system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body harness and may include a lanyard, a deceleration device, a lifeline, or a suitable combination.

(66) Physical isolation. The elimination of a fire hazard by removing the hazard from the work area (at least ~~((thirty-five))~~ 35 feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

(67) Physically isolated. Positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways to physically isolate include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system; or completely disconnecting valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

(68) Portable toilet. A nonsewered portable facility for collecting and containing urine and feces. A portable toilet may be either flushable or nonflushable. For purposes of this section, portable toilets do not include privies.

(69) Portable unfired pressure vessel. A pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure. This does not include pressure vessels built to Department of Transportation regulations under 49 C.F.R. Part 178, Subparts C and H.

(70) Positioning device system. A full body harness or positioning harness that is worn by an employee, and is rigged to allow an employee to be supported on an elevated vertical or inclined surface, such as a wall, pole or column, and work with both hands free from the body support.

(71) Potable water. Water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 C.F.R. Part 141).

(72) Powder actuated fastening tool. A tool or machine that drives a stud, pin, or fastener by means of an explosive charge.

(73) Protected space. Any space into which a fixed extinguishing system can discharge.

(74) Proximity firefighting. Specialized firefighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity firefighting operations usually are exterior operations but may be combined with structural firefighting operations. Proximity firefighting is not entry firefighting.

(75) Qualified instructor. A person with specific knowledge, training, and experience in fire response or fire watch activities to cover the material found in WAC 296-304-01019 (2) or (3).

(76) Qualified person. One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

(77) Readily accessible/available. Capable of being reached quickly enough to ensure, for example, that emergency medical services and first-aid intervention are appropriate or that employees can reach sanitation facilities in time to meet their health and personal needs.

(78) Related employment. Any employment related to or performed in conjunction with ship repairing, ship building or ship breaking work, including, but not limited to, inspecting, testing, and serving as a watchman.

(79) Rescue. Locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

(80) Restraint line. A line from a fixed anchorage or between two anchorages to which an employee is secured in such a way as to prevent the employee from falling to a lower level.

Note: A restraint line is not necessarily designed to withstand forces resulting from a fall.

(81) Rope grab. A fall arrester that is designed to move up or down a lifeline suspended from a fixed overhead or horizontal anchorage point, or lifeline, to which the full body harness is attached. In the event of a fall, the rope grab locks onto the lifeline rope through compression to arrest the fall. The use of a rope grab device is restricted for all restraint applications. See WAC 296-880-40025.

(82) Sanitation facilities. Facilities, including supplies, maintained for employee personal and health needs such as potable drinking water, toilet facilities, hand-washing and hand-drying facilities, showers (including quick-drenching or flushing) and changing rooms, eating and drinking areas, first-aid stations, and on-site medical-service areas. Sanitation supplies include soap, waterless cleaning agents, single-use drinking cups, drinking water containers, toilet paper, and towels.

(83) Serviceable condition. The state or ability of supplies or goods, or of a tool, machine, vehicle, or other device, to be used or to operate in the manner prescribed by the manufacturer.

(84) Servicing. Workplace activities that involve the construction, installation, adjustment, inspection, modification, testing, or repair of machinery, equipment, or systems. Servicing also includes maintaining machines, equipment, or systems when performing these activities would expose the employee to harm from the start-up or energization of the system being serviced, or the release of hazardous energy.

(85) Sewered toilet. A fixture maintained for the purpose of urination and defecation that is connected to a sanitary sewer, septic tank, holding tank (bilge), or on-site sewage-disposal treatment facility, and that is flushed with water.

(86) Shall or must. Mandatory.

(87) Shield. To install a covering, protective layer, or other effective measure on or around steam hoses or temporary steam-piping systems, including metal fittings and couplings, to protect employees from contacting hot surfaces or elements.

(88) Ship breaking. Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

(89) Ship building. Construction of a vessel, including the installation of machinery and equipment.

(90) Ship repairing. Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

(91) Shipyard firefighting. The activity of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or similar properties involved in a fire or emergency situation.

(92) Short bight. A loop created in a line or rope that is used to tie back or fasten objects such as hoses, wiring, and fittings.

(93) Small hose system. A system of hoses ranging in diameter from 5/8" (1.6 cm) up to 1 1/2" (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.

(94) Standpipe. A fixed fire protection system consisting of piping and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the system.

(95) Tag. A prominent warning device that includes a means of attachment that can be securely fastened to an energy-isolating device in accordance with an established procedure to indicate that the energy-isolating device and the equipment being controlled must not be operated until the tag is removed by an authorized employee.

(96) Tags-plus system. A system to control hazardous energy that consists of an energy-isolating device with a tag affixed to it, and at least one additional safety measure.

(97) Verification of isolation. The means necessary to detect the presence of hazardous energy, which may involve the use of a test instrument (for example, a voltmeter), and, for other than electric shock protection, a visual inspection, or a deliberate attempt to start-up the machinery, equipment, or system.

(98) Vermin. Insects, birds, and other animals, such as rodents, that may create safety and health hazards for employees.

(99) Vessel. Every watercraft for use as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

(100) Vessel section. A subassembly, module, or other component of a vessel being built or repaired.

(101) Walkway. Any surface, whether vertical, slanted, or horizontal, on which employees walk, including areas that employees pass through, to perform their job tasks. Walkways include, but are not limited to, access ways, designated walkways, aisles, exits, gangways, ladders, ramps, stairs, steps, passageways, and scaffolding. If an area is, or could be, used to gain access to other locations, it is to be considered a walkway.

(102) Work area. A specific area, such as a machine shop, engineering space, or fabrication area, where one or more employees are performing job tasks.

(103) Working surface. Any surface where work is occurring, or areas where tools, materials, and equipment are being staged for performing work.

(104) Worksite. A general work location where one or more employees are performing work, such as a shipyard, pier, barge, vessel, or vessel section.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-304-01001, filed 6/2/20, effective 10/1/20. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-304-01001, filed 9/5/17, effective 10/6/17. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 29 C.F.R. 1910 Subpart Z. WSR 14-07-086, § 296-304-01001, filed 3/18/14, effective 5/1/14. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 12-12-060, § 296-304-01001, filed 6/5/12, effective 8/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 07-03-163, § 296-304-01001, filed 1/24/07, effective 4/1/07; WSR 05-19-086, § 296-304-01001, filed 9/20/05, effective 12/1/05; WSR 03-04-099, § 296-304-01001, filed 2/4/03, effective 8/1/03. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. WSR 98-02-006, § 296-304-01001, filed 12/26/97, effective 3/1/98. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-006, § 296-304-01001, filed 1/18/95, effective 3/10/95; Order 76-7, § 296-304-01001, filed 3/1/76; Order 74-25, § 296-304-01001, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-03005 Mechanical paint removers. (1) Power tools.

(a) You must ensure that employees engaged in the removal of paints, preservatives, rusts or other coatings by means of power tools are protected against eye injury by goggles or face shields that meets the requirements of WAC 296-304-09005 (1) and (2).

(b) All portable rotating tools used for the removal of paints, preservatives, rusts or other coatings must be adequately guarded to protect both the operator and nearby workers from flying missiles.

(c) Portable electric tools must be grounded in accordance with the requirements of WAC 296-304-08003 (1) and (2).

(d) In a confined space, you must provide mechanical exhaust ventilation sufficient to keep the dust concentration to a minimum, or must protect employees by respiratory protective equipment that meets the requirements of chapter 296-842 WAC.

(2) Flame removal.

(a) You must ensure that when hardened preservative coatings are removed by flame in enclosed spaces, the employees exposed to fumes are protected by air line respirators that meet the requirements of chapter 296-842 WAC. Employees performing this operation in the open air, and those exposed to the resulting fumes, must be protected by a fume filter respirator that meets the requirements of chapter 296-842 WAC.

(b) Flame or heat must not be used to remove soft and greasy preservative coatings.

(3) Abrasive blasting.

(a) Equipment. Hoses and fittings used for abrasive blasting must meet the following requirements:

(i) Hoses of a type to prevent shocks from static electricity must be used.

(ii) Hose couplings. Hose lengths must be joined by metal couplings secured to the outside of the hose to avoid erosion and weakening of the couplings.

(iii) Nozzles must be attached to the hose by fittings that will prevent the nozzle from unintentionally becoming disengaged. Nozzle attachments shall be of metal and must fit onto the hose externally.

(iv) Dead man control. A dead man control device must be provided at the nozzle end of the blasting hose either to provide direct cutoff or to signal the pot tender by means of a visual and audible signal to cut off the flow, in the event the blaster loses control of the hose. The pot tender must be available at all times to respond immediately to the signal.

(b) Replacement. Hoses and all fittings used for abrasive blasting must be inspected frequently to ensure timely replacement before an unsafe amount of wear has occurred.

(c) Personal protective equipment.

(i) You must ensure that abrasive blasters (~~working in enclosed spaces~~) are protected by abrasive blasting respirators that meet the requirements of chapter 296-818 WAC, Abrasive blasting and chapter 296-842 WAC.

EXCEPTION: Filter type respirators that meet the requirements of chapters 296-842 and 296-840 WAC may be used when:

(1) The work is done in the open;

(2) Proper eye, face, hearing, and head protection is used; and

(3) Synthetic abrasives containing less than one percent free silica are used. "Free silica" includes amorphous silica and the crystalline forms that are not chemically combined with any other elements.

~~(ii) ((You must ensure that abrasive blasters working in the open are protected as required in subsection (1) of this section.~~

Exception: When synthetic abrasives containing less than one percent free silica are used, the employer may substitute particulate or dust filter respirators that are approved by the National Institute of Safety and Health (NIOSH) and used according to chapter 296-842 WAC.

~~(iii))~~ You must ensure that employees, including machine tenders and abrasive recovery workers, working in areas where unsafe concentrations of abrasive materials and dusts are present are protected by eye and respiratory protective equipment that meets the requirements of WAC 296-304-09005 (1) and (2) and chapter 296-842 WAC.

Exception: This requirement does not apply to blasters.

~~((iv))~~ (iii) You must ensure that a blaster is protected against injury from exposure to the blast by appropriate protective

clothing, including gloves that meet the requirements of WAC 296-304-09015(1).

~~((v))~~ (iv) A surge from a drop in pressure in the hose line can throw a blaster off the staging. To protect against this hazard, you must ensure that a blaster is protected by a personal fall arrest system, that meets the requirements of ~~((WAC 296-304-09021))~~ chapter 296-880 WAC, Unified safety standards for fall protection. The personal fall arrest system must be tied off to the ship or other structure during blasting from elevations where adequate fall protection cannot be provided by railings.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-304-03005, filed 9/5/17, effective 10/6/17; WSR 06-12-074, § 296-304-03005, filed 6/6/06, effective 9/1/06; WSR 05-03-093, § 296-304-03005, filed 1/18/05, effective 3/1/05. Statutory Authority: RCW 49.17.010, [49.17].040 and [49.17].050. WSR 99-10-071, § 296-304-03005, filed 5/4/99, effective 9/1/99. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. WSR 98-02-006, § 296-304-03005, filed 12/26/97, effective 3/1/98. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-006, § 296-304-03005, filed 1/18/95, effective 3/10/95; WSR 93-19-142 (Order 93-04), § 296-304-03005, filed 9/22/93, effective 11/1/93; Order 76-7, § 296-304-03005, filed 3/1/76; Order 74-25, § 296-304-03005, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-04001 Ventilation and protection in welding, cutting and heating. (1) Mechanical ventilation requirements. ~~((a))~~ For the purposes of this section, mechanical ventilation must meet the following requirements:

~~((i))~~ (a) Mechanical ventilation must consist of either general mechanical ventilation systems or local exhaust systems.

~~((ii))~~ (b) General mechanical ventilation must be of sufficient capacity and so arranged as to produce the number of air changes necessary to maintain welding fumes and smoke within safe limits.

~~((iii))~~ (c) Local exhaust ventilation must consist of freely movable hoods intended to be placed by the welder or burner as close as practicable to the work. This system must be of sufficient capacity and so arranged as to remove fumes and smoke at the source and keep the concentration of them in the breathing zone within safe limits.

~~((iv))~~ (d) Contaminated air exhausted from a working space must be discharged into the open air or otherwise clear of the source of intake air.

~~((v))~~ (e) All air replacing that withdrawn must be clean and respirable.

~~((vi))~~ (f) Oxygen must not be used for ventilation purposes, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area.

(2) Welding, cutting and heating in confined spaces.

(a) Except as provided in ~~((WAC 296-304-04001-2))~~ (c) of this subsection and subsection (3)(b) of this section, either general mechanical or local exhaust ventilation meeting the requirements of sub-

section (1) of this section must be provided whenever welding, cutting or heating is performed in a confined space.

(b) The means of access must be provided to a confined space and ventilation ducts to this space must be arranged in accordance with WAC 296-304-05011 (2) (a) and (b).

(c) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space must be protected by air line respirators in accordance with the requirements of chapter 296-842 WAC, and an employee on the outside of such a confined space must be assigned to maintain communication with those working within it and to aid them in an emergency.

(3) Welding, cutting or heating of metals of toxic significance.

(a) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection must be performed with either general mechanical or local exhaust ventilation meeting the requirements of subsection (1) of this section.

(i) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials.

(ii) Lead base metals.

(iii) Cadmium-bearing filler materials.

(iv) Chromium-bearing metals or metals coated with chromium-bearing materials.

(b) Welding, cutting, or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection must be performed with local exhaust ventilation in accordance with the requirements of subsection (1) of this section or employees must be protected by air line respirators in accordance with the requirements of chapter 296-842 WAC.

(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

(ii) Cadmium-bearing or cadmium coated base metals.

(iii) Metals coated with mercury-bearing metals.

(iv) Beryllium-containing base or filler metals. Because of its high toxicity, work involving beryllium must be done with both local exhaust ventilation and air line respirators.

(c) Employees performing such operations in the open air must be protected by filter type respirators in accordance with the requirements of WAC 296-304-09003, except that employees performing such operations on beryllium-containing base or filler metals must be protected by air line respirators in accordance with the requirements of chapter 296-842 WAC.

(d) Other employees exposed to the same atmosphere as the welders or burners must be protected in the same manner as the welder or burner.

(4) Inert-gas metal-arc welding. (~~((a))~~) Since the inert-gas metal-arc welding process involves the production of ultraviolet radiation of intensities of (~~((5))~~) five to 30 times that produced during shielded metal-arc welding, the decomposition of chlorinated solvents by ultraviolet rays, and the liberation of toxic fumes and gases, employees must not be permitted to engage in, or be exposed to the process until the following special precautions have been taken:

(~~((i))~~) (a) The use of chlorinated solvents must be kept at least (~~((two hundred))~~) 200 feet from the exposed arc, and surfaces prepared with chlorinated solvents must be thoroughly dry before welding is permitted on such surfaces.

(~~((ii))~~) (b) Helpers and other employees in the area not protected from the arc by screening as provided in WAC 296-304-04011(5) must

be protected by filter lenses meeting the requirements of Tables I-1A and B (see below). When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of WAC 296-304-09001 (1) and (3) must be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.

~~((iii))~~ (c) Welders and other employees who are exposed to radiation must be suitably protected so that the skin is covered completely to prevent burns and other damage by ultraviolet rays. Welding helmets and hand shields must be free of leaks and openings, and free of highly reflective surfaces.

~~((iv))~~ (d) When inert-gas metal-arc welding is being performed on stainless steel, the requirements of subsection (3)(b) of this section must be met to protect against dangerous concentrations of nitrogen dioxide.

(5) General welding, cutting and heating.

(a) Welding, cutting and heating not involving conditions or materials described in subsection (2), (3), or (4) of this section may normally be done without mechanical ventilation or respiratory protective equipment, but where, because of unusual physical or atmospheric conditions, an unsafe accumulation of contaminants exists, suitable mechanical ventilation or respiratory protective equipment must be provided.

(b) Employees performing any type of welding, cutting or heating must be protected by suitable eye protective equipment in accordance with the requirements of Tables I-1A and B (see below).

(6) Residues and cargos of metallic ores of toxic significance must be removed from the area or protected from the heat before welding, cutting or heating ~~((is))~~ has begun.

TABLE I-1A

FILTER LENSES FOR PROTECTION AGAINST
RADIANT ENERGY

OPERATIONS	ELECTRODE SIZE 1/32 IN	ARC CURRENT	MINIMUM PROTECTIVE SHADE
Shielded metal arc welding	Less than 3	Less than 60	7
	3-5	60-160	8
	5-8	160-250	10
	More than 8	250-550	11
Gas metal arc welding and flux cored arc welding		Less than 60	7
		60-160	10
		160-250	10
		((250-550)) <u>250-500</u>	10
Gas Tungsten arc welding		Less than 50	8
		50-150	8
		150-500	10
Air carbon ((are cutting))	(Light)	Less than 500	10
	((Heavy))	((500-1000))	((11))
<u>Arc cutting</u>	<u>(Heavy)</u>	<u>500-1000</u>	<u>11</u>
Plasma arc welding		Less than 20	6
		20-100	8
		100-400	10
		400-800	11
Plasma arc cutting	(Light)**	Less than 300	8
	(Medium)**	300-400	9
	(Heavy)**	400-800	10
Torch brazing	—	—	3
Torch soldering	—	—	2
Carbon Arc welding	—	—	14

** These values apply where the actual arc is clearly seen. Lighter filters may be used when the arc is hidden by the workplace.

TABLE I-1B

FILTER LENSES FOR PROTECTION AGAINST
RADIANT ENERGY

OPERATIONS	PLATE THICKNESS... INCHES	PLATE THICKNESS... MM	MINIMUM* PROTECTIVE SHADE
Gas welding:			
Light	Under 1/8	Under 3.2	4
Medium	1/8 ((-)) to 1/2	3.2 ((-)) to 12.7	5
Heavy	Over 1/2	Over 12.7	6
Oxygen cutting:			
Light	Under 1	Under 25	3
Medium	1 ((-)) to 6	((25-100)) 25 to	4
Heavy	Over 6	150 Over 150	5

* As rule of thumb, start with a shade that is too dark to see the weld zone. Then go to a lighter shade which gives sufficient view of the weld zone without going below the minimum. In oxyfuel gas welding or cutting where the torch produces a high yellow light, it is desirable to use a filter lens that absorbs the yellow or sodium line in the viable light of the (spectrum) operation.

Note: A worker may use an auto-darkening helmet that allows for the selection of final filtration settings inside the appropriate range as described in the tables above. The auto-darkening helmet must be in good working order and maintained in accordance with the manufacturers recommendations and guidance.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-304-04001, filed 9/5/17, effective 10/6/17; WSR 05-03-093, § 296-304-04001, filed 1/18/05, effective 3/1/05; WSR 03-04-099, § 296-304-04001, filed 2/4/03, effective 8/1/03. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-006, § 296-304-04001, filed 1/18/95, effective 3/10/95; WSR 93-19-142 (Order 93-04), § 296-304-04001, filed 9/22/93, effective 11/1/93; Order 74-25, § 296-304-04001, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 18-04-096, filed 2/6/18, effective 3/9/18)

WAC 296-304-05001 Scaffolds or staging. (1) General requirements.

(a) All scaffolds and their supports whether of lumber, steel or other material, must be capable of supporting the load they are designed to carry with a safety factor of not less than four.

(b) All lumber used in the construction of scaffolds must be spruce, fir, long leaf yellow pine, Oregon pine or wood of equal strength. The use of hemlock, short leaf yellow pine, or short fiber lumber is prohibited.

(c) Lumber dimensions as given are nominal except where given in fractions of an inch.

(d) All lumber used in the construction of scaffolds must be sound, straight-grained, free from cross grain, shakes and large, loose or dead knots. It must also be free from dry rot, large checks, worm holes or other defects which impair its strength or durability.

(e) Scaffolds must be maintained in a safe and secure condition. Any component of the scaffold which is broken, burned or otherwise defective must be replaced.

(f) Barrels, boxes, cans, loose bricks, or other unstable objects must not be used as working platforms or for the support of planking intended as scaffolds or working platforms.

(g) No scaffold must be erected, moved, dismantled or altered except under the supervision of competent persons.

(h) No welding, burning, riveting or open flame work must be performed on any staging suspended by means of fiber rope.

(i) Lifting bridles on working platforms suspended from cranes must consist of four legs so attached that the stability of the platform is assured.

(j) Unless the crane hook has a safety latch or is moused, the lifting bridles on working platforms suspended from cranes must be attached by shackles to the lower lifting block or other positive means must be taken to prevent them from becoming accidentally disengaged from the crane hook.

(2) Independent pole wood scaffolds.

(a) All pole uprights must be set plumb. Poles must rest on a foundation of sufficient size and strength to distribute the load and to prevent displacement.

(b) In light-duty scaffolds not more than 24 feet in height, poles may be spliced by overlapping the ends not less than ((4)) four feet and securely nailing them together. A substantial cleat must be nailed to the lower section to form a support for the upper section except when bolted connections are used.

(c) All other poles to be spliced must be squared at the ends of each splice, abutted, and rigidly fastened together by not less than two cleats securely nailed or bolted thereto. Each cleat must overlap each pole end by at least 24 inches and must have a width equal to the face of the pole to which it is attached. The combined cross sectional area of the cleats must be not less than the cross sectional area of the pole.

(d) Ledgers must extend over two consecutive pole spaces and must overlap the poles at each end by not less than ((4)) four inches. They must be left in position to brace the poles as the platform is raised with the progress of the work. Ledgers must be level and must be securely nailed or bolted to each pole and must be placed against the inside face of each pole.

(e) All bearers must be set with their greater dimension vertical and must extend beyond the ledgers upon which they rest.

(f) Diagonal bracing must be provided between the parallel poles, and cross bracing must be provided between the inner and outer poles or from the outer poles to the ground.

(g) Minimum dimensions and spacing of members must be in accordance with Table E-1 in WAC 296-304-07011.

(h) Platform planking must be in accordance with the requirements of subsection (8) of this section.

(i) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(3) Independent pole metal scaffolds.

(a) Metal scaffold members must be maintained in good repair and free of corrosion.

(b) All vertical and horizontal members must be fastened together with a coupler or locking device which will form a positive connection. The locking device must be of a type which has no loose parts.

(c) Posts must be kept plumb during erection and the scaffold must be subsequently kept plumb and rigid by means of adequate bracing.

(d) Posts must be fitted with bases supported on a firm foundation to distribute the load. When wooden sills are used, the bases must be fastened thereto.

(e) Bearers must be located at each set of posts, at each level, and at each intermediate level where working platforms are installed.

(f) Tubular bracing must be applied both lengthwise and crosswise as required.

(g) Platform planking must be in accordance with the requirements of subsection (8) of this section.

(h) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(4) Wood trestle and extension trestle ladders.

(a) The use of trestle ladders, or extension sections or base sections of extension trestle ladders longer than 20 feet is prohibited. The total height of base and extension may, however, be more than 20 feet.

(b) The minimum dimensions of the side rails of the trestle ladder, or the base sections of the extension trestle ladder, must be as follows:

(i) Ladders up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 3/4 inch lumber.

(ii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber.

(c) The side rails of the extension section of the extension trestle ladder must be parallel and must have minimum dimensions as follows:

(i) Ladders up to and including 12 feet long must have side rails of not less than 1 5/16 x 2 1/4 inch lumber.

(ii) Ladders over 12 feet long and up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 1/2 inch lumber.

(iii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber. (Rev. 2-17-76)

(d) Trestle ladders and base sections of extension trestle ladders must be so spread that when in an open position the spread of the trestle at the bottom, inside to inside, must not be less than 5 1/2 inches per foot of the length of the ladder.

(e) The width between the side rails at the bottom of the trestle ladder or of the base section of the extension trestle ladder must not be less than 21 inches for all ladders and sections ((6)) six feet or less in length. For longer lengths of ladder the width must be increased at least ((±)) one inch for each additional foot of length. The width between the side rails of the extension section of the trestle ladder must be not less than 12 inches.

(f) In order to limit spreading, the top ends of the side rails of both the trestle ladder and of the base section of the extension trestle ladder must be beveled, or of equivalent construction, and must be provided with a metal hinge.

(g) A metal spreader or locking device to hold the front and back sections in an open position, and to hold the extension section securely in the elevated position, must be a component of each trestle ladder or extension trestle ladder.

(h) Rungs must be parallel and level. On the trestle ladder, or on the base section of the extension trestle ladder, rungs must be spaced not less than ((8)) eight inches nor more than 18 inches apart;

on the extension section of the extension trestle ladder, rungs must be spaced not less than ((6)) six inches nor more than 12 inches apart.

(i) Platform planking must be in accordance with the requirements of subsection (8) of this section, except that the width of the platform planking must not exceed the distance between the side rails.

(j) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(5) Painters' suspended scaffolds.

(a) The supporting hooks of swinging scaffolds must be constructed to be equivalent in strength to mild steel or wrought iron, must be forged with care, must not be less than 7/8 inch in diameter, and must be secured to a safe anchorage at all times.

(b) The ropes supporting a swinging scaffold must be equivalent in strength to first-grade 3/4 inch diameter manila rope properly rigged into a set of standard ((6)) six inch blocks consisting of at least one double and one single block.

(c) Manila and wire ropes must be carefully examined before each operation and thereafter as frequently as may be necessary to ensure their safe condition.

(d) Each end of the scaffold platform must be supported by a wrought iron or mild steel stirrup or hanger, which in turn is supported by the suspension ropes.

(e) Stirrups must be constructed so as to be equivalent in strength to wrought iron 3/4 inch in diameter.

(f) The stirrups must be formed with a horizontal bottom member to support the platform, must be provided with means to support the guardrail and midrail and must have a loop or eye at the top for securing the supporting hook on the block.

(g) Two or more swinging scaffolds must not at any time be combined into one by bridging the distance between them with planks or any other form of platform.

(h) No more than two persons must be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this section. Where heavier construction is used, the number of persons permitted to work on the scaffold must be determined by the size and the safe working load of the scaffold.

(i) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(j) The swinging scaffold platform must be one of the three types described in (k), (l), and (m) of this ((~~section~~)) subsection.

(k) The ladder-type platform consists of boards upon a horizontal ladder-like structure, referred to herein as the ladder, the side rails of which are parallel. If this type of platform is used the following requirements must be met:

(i) The width between the side rails must be no more than 20 inches.

(ii) The side rails of ladders in ladder-type platforms must be equivalent in strength to a beam of clear straight-grained spruce of the dimensions contained in Table E-2 in WAC 296-304-07011.

(iii) The side rails must be tied together with tie rods. The tie rods must not be less than 5/16 inch in diameter, located no more than ((5)) five feet apart, pass through the rails, and be riveted up tight against washers at both ends.

(iv) The rungs must be of straight-grained oak, ash, or hickory, not less than 1 1/8 inches diameter, with 7/8 inch tenons mortised in-

to the side rails not less than 7/8 inch and must be spaced no more than 18 inches on centers.

(v) Flooring strips must be spaced no more than 5/8 inch apart except at the side rails, where ((±)) one inch spacing is permissible.

(vi) Flooring strips must be cleated on their undersides.

(l) The plank-type platform consists of planks supported on the stirrups or hangers. If this type of platform is used, the following requirements must be met:

(i) The planks of plank-type platforms must not be less than 2 x 10 inch lumber.

(ii) The platform must not be more than 24 inches in width.

(iii) The planks must be tied together by cleats of not less than 1 x 6 inch lumber, nailed on their undersides at intervals of not more than ((4)) four feet.

(iv) The planks must extend not less than ((6)) six inches nor more than 18 inches beyond the supporting stirrups.

(v) A cleat must be nailed across the platform on the underside at each end outside the stirrup to prevent the platform from slipping off the stirrup.

(vi) Stirrup supports must not be more than 10 feet apart.

(m) The beam-type platform consists of longitudinal side stringers with cross beams set on edge and spaced not more than ((4)) four feet apart on which longitudinal platform planks are laid. If this type platform is used the following requirements must be met:

(i) The side stringers must be of sound, straight-grained lumber, free from knots, and of not less than 2 x 6 inch lumber, set on edge.

(ii) The stringers must be supported on the stirrups with a clear span between stirrups of not more than 16 feet.

(iii) The stringers must be bolted to the stirrups by U-bolts passing around the stirrups and bolted through the stringers with nuts drawn up tight on the inside face.

(iv) The ends of the stringers must extend beyond the stirrups not less than ((6)) six inches nor more than 12 inches at each end of the platform.

(v) The platform must be supported on cross beams of 2 x 6 inch lumber between the side stringers securely nailed thereto and spaced not more than ((4)) four feet on centers.

(vi) The platform must not be more than 24 inches wide.

(vii) The platform must be formed of boards 7/8 inch in thickness by not less than ((6)) six inches in width, nailed tightly together, and extending to the outside face of the stringers.

(viii) The ends of all platform boards must rest on the top of the cross beams, must be securely nailed, and at no intermediate points in the length of the platform must there be any cantilever ends.

(6) Horse scaffolds.

(a) The minimum dimensions of lumber used in the construction of horses must be in accordance with Table E-3 in WAC 296-304-07011.

(b) Horses constructed of materials other than lumber must provide the strength, rigidity and security required of horses constructed of lumber.

(c) The lateral spread of the legs must be equal to not less than one-third of the height of the horse.

(d) All horses must be kept in good repair, and must be properly secured when used in staging or in locations where they may be insecure.

(e) Platform planking must be in accordance with the requirements of subsection (8) of this section.

(f) Backrails and toeboards must be in accordance with subsection (9) of this section.

(7) Other types of scaffolds. Scaffolds of a type for which specifications are not contained in this section must meet the general requirements of subsections (1), (8) and (9) of this section, must be in accordance with recognized principles of design and must be constructed in accordance with accepted standards covering such equipment.

(8) Scaffold or platform planking.

(a) Except as otherwise provided in subsection (5)(k) and (m) of this section, platform planking must not be less than 2 x 10 inch lumber. Platform planking must be straight-grained and free from large or loose knots and may be either rough or dressed.

(b) Platforms of staging must not be less than two 10 inch planks in width except in such cases as the structure of the vessel or the width of the trestle ladders make it impossible to provide such a width.

(c) Platform planking must project beyond the supporting members at either end by at least ~~((6))~~ six inches but in no case must it project more than 12 inches unless the planks are fastened to the supporting members.

(d) Table E-4 in WAC 296-304-07011 must be used as a guide in determining safe loads for scaffold planks.

(9) Backrails and toeboards.

(a) Scaffolding, staging, runways, or working platforms which are supported or suspended more than ~~((5))~~ five feet above a solid surface, or at any distance above the water, must be provided with a railing which has a top rail whose upper surface is from 42 to 45 inches above the upper surface of the staging, platform, or runway and a midrail located halfway between the upper rail and the staging, platform, or runway.

(b) Rails must be of 2 x 4 inch lumber, flat bar or pipe. When used with rigid supports, taut wire or fiber rope of adequate strength may be used. If the distance between supports is more than ~~((8))~~ eight feet, rails must be equivalent in strength to 2 x 4 inch lumber. Rails must be firmly secured. Where exposed to hot work or chemicals, fiber rope rails must not be used.

(c) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted employees working more than ~~((5))~~ five feet above solid surfaces must be protected by safety belts and life lines meeting the requirements of WAC ~~((296-304-09021(2)))~~ chapter 296-880 WAC, Unified safety standards for fall protection, and employees working over water must be protected by personal flotation devices meeting the requirements of WAC 296-304-09017(1).

(d) Employees working from swinging scaffolds which are triced out of a vertical line below their supports or from scaffolds on paint floats subject to surging, must be protected against falling toward the vessel by a railing or a safety belt and line attached to the backrail.

(e) When necessary, to prevent tools and materials from falling on men below, toeboards of not less than 1 x 4 inch lumber must be provided.

(10) Access to staging.

(a) Access from below to staging more than ~~((5))~~ five feet above a floor, deck or the ground must consist of well secured stairways, cleated ramps, fixed or portable ladders meeting the applicable re-

quirements of WAC 296-304-05003 or rigid type noncollapsible trestles with parallel and level rungs.

(b) Ramps and stairways must be provided with 36-inch handrails with midrails.

(c) Ladders must be so located or other means must be taken so that it is not necessary for employees to step more than one foot from the ladder to any intermediate landing or platform.

(d) Ladders forming integral parts of prefabricated staging are deemed to meet the requirements of these regulations.

(e) Access from above to staging more than ((3)) three feet below the point of access must consist of a straight, portable ladder meeting the applicable requirements of WAC 296-304-05003 or a Jacob's ladder properly secured, meeting the requirements of WAC 296-304-05007(4).

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 18-04-096, § 296-304-05001, filed 2/6/18, effective 3/9/18; WSR 17-18-075, § 296-304-05001, filed 9/5/17, effective 10/6/17; WSR 03-04-099, § 296-304-05001, filed 2/4/03, effective 8/1/03; Order 76-7, § 296-304-05001, filed 3/1/76; Order 74-25, § 296-304-05001, filed 5/7/74.]

WSR 22-17-132
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-04—Filed August 23, 2022, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-064.

Title of Rule and Other Identifying Information: Statement requirement for consumer adverse benefit determination notices.

Hearing Location(s): On September 27, 2022, at 3:00 p.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website <https://www.insurance.wa.gov/statement-requirement-consumer-adverse-benefit-determination-notices-r-2022-04>.

Date of Intended Adoption: September 29, 2022.

Submit Written Comments to: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by September 28, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by September 28, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend existing rules so a required statement for consumer adverse benefit determination notices will be at a lower, more accessible reading level.

Reasons Supporting Proposal: OIC was made aware that a required statement in the existing rules is at a higher reading level than appropriate for consumer correspondence.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.530.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7173; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7138, fax 360-586-3109, email Simon.Casson@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: As part of rule making for 2SSB 5313 (chapter 280, Laws of 2021), a requirement was added for adverse benefit determination (ABD) notices to include a statement regarding identification of experts who provided advice for ABD. Based on feedback received by OIC, amendments to the rules are needed to ensure this language is at a reading level more appropriate for consumer correspondence.

Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will im-

pose more than minor costs on businesses in an industry ..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... To determine whether the proposed rule will have a disproportionate cost impact on small businesses."

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under RCW 19.85.025(4), the businesses that must comply with the proposed rule are not small businesses under chapter 19.85 RCW. OIC has found that none of the existing health insurance issuers may be considered small businesses under RCW 19.85.020(3).

The average number of employees per firm was determined below using Bureau of Labor Statistics data:

Average number of firms: 58.

Average annual employment over 12 months: 6,777.

Average number of employees per firm: 118.

The average number of employees for a direct health and medical insurance carrier is 118 employees, above the small business threshold of 50 under chapter 19.85.020(3).

OIC determines that this rule is exempt from SBEIS requirements.

Scope of exemption for rule proposal:

Is fully exempt.

August 23, 2022

Mike Kreidler

Insurance Commissioner

OTS-4024.1

AMENDATORY SECTION (Amending WSR 21-24-072, filed 11/30/21, effective 1/1/22)

WAC 284-43-3070 Notice and explanation of adverse benefit determination—General requirements. (1) A carrier must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided:

(a) To an appellant or their authorized representative;

(b) To the provider if the adverse benefit determination involves the preservice denial of treatment or procedure prescribed by the provider; and

(c) Whenever an adverse benefit determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2) A carrier or health plan's notice must include the following information, worded in plain language:

(a) The specific reasons for the adverse benefit determination;

(b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;

(c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;

(d) The time limits applicable to the review;

(e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination;

(f) Effective April 1, 2022, through December 31, 2022, the following statement or the statement from (g) of this subsection: "Enrollees may request that a health insurer identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. Health insurers may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address."; ~~((and))~~

(g) No later than January 1, 2023, the following statement: "You can ask a health carrier to identify the experts who were consulted about the adverse benefit determination - even if the expert's advice was not used to make the determination. The carrier is not required to identify the expert by name or provide their address. The carrier can instead provide the expert's job title and specialty, board certification status or other information related to their qualifications and also state whether or not they are employed by the carrier."; and

(h) When the adverse benefit determination concerns gender affirming treatment or services, a confirmation that a health care provider experienced with prescribing or delivering gender affirming treatment has reviewed the determination and confirmed that an adverse benefit determination denying or limiting the service is appropriate and provide information to confirm that the reviewing provider has clinically appropriate expertise prescribing or delivering gender affirming treatment.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a statement that such explanation is available free of charge upon request.

(4) A health carrier must not issue an adverse benefit determination concerning gender affirming services or treatment until a health care provider with experience prescribing or delivering gender affirming treatment has reviewed and confirmed the appropriateness of the adverse benefit determination.

(5) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request.

(6) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determina-

tion, regardless of whether the document, record, or information was relied on in making the determination.

(b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(7) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(8) An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination.

(9) The notice must include language substantially similar to the following:

"If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review if you are currently receiving services or supplies under the disputed benefit. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received during the review period. The decision at the external review level is binding unless other remedies are available under state or federal law."

[Statutory Authority: RCW 48.02.060, 48.43.515 and 2021 c 280. WSR 21-24-072 (Matter No. R 2021-14), § 284-43-3070, filed 11/30/21, effective 1/1/22. Statutory Authority: RCW 48.02.060, 48.43.505, and 48.43.5051. WSR 20-24-120, § 284-43-3070, filed 12/2/20, effective 1/2/21. WSR 16-01-081, recodified as § 284-43-3070, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.43.525, 48.43.530, 48.43.535, and The Patient Protection and Affordable Care Act, P.L. 111-148, as amended (2010). WSR 12-23-005 (Matter No. R 2011-11), § 284-43-515, filed 11/7/12, effective 11/20/12.]

WSR 22-17-133
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-06—Filed August 23, 2022, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-182.

Title of Rule and Other Identifying Information: General filing instructions for carrier submission of provider agreements and health care benefit manager (HCBM) contracts.

Hearing Location(s): On October 5, 2022, at 10:00 a.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website <https://www.insurance.wa.gov/general-filing-instructions-carrier-submission-provider-agreements-and-hcbm-contracts-r-2022-06>.

Date of Intended Adoption: October 7, 2022.

Submit Written Comments to: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 6, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by October 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend existing rules in order to establish unique general filing instructions for the submission of provider agreements and HCBM contracts by carriers.

Reasons Supporting Proposal: Requirements for the submission of provider agreements were originally placed in the Washington state system for electronic rate and form filing (SERFF) health and disability form filing general instructions. At that time, the health forms unit at OIC reviewed both health forms and provider agreements. Now the subject matter expertise for review of provider agreements is located in the provider network oversight program at OIC, and most carriers have a separate team for submission of these agreements, which have different filing requirements than health forms. Due to legislation passed in 2020 (2SSB 5601), carriers are also now required to file HCBM contracts, which include provider network management and other services that direct provider activity. The subject matter expertise for the review of HCBM contracting is located in the provider network oversight program that reviews provider agreements at OIC. Health carriers similarly have units that specialize in these types of agreement and contracting arrangements.

Statutory Authority for Adoption: RCW 48.02.060, 48.19.035, 48.43.730, 48.43.731, 48.44.050, 48.46.200, and 48.200.900.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7173; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Requirements for the submission of provider agreements were originally placed in the Washington state SERFF health and disability form filing general instructions. At that time, the health forms unit at OIC reviewed both health forms and provider agreements. Now the subject matter expertise for review of provider agreements is located in the provider network oversight program at OIC, and most carriers have a separate team for submission of these agreements, which have different filing requirements than health forms. Due to legislation passed in 2020 (2SSB 5601), carriers are also now required to file HCBM contracts, which include provider network management and other services that direct provider activity. The subject matter expertise for the review of HCBM contracting is located in the provider network oversight program that reviews provider agreements at OIC. Health carriers similarly have units that specialize in these types of agreement and contracting arrangements. This rule will amend existing rules to establish unique general filing instructions for the submission of provider agreements and HCBM contracts by carriers.

Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry¹..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... To determine whether the proposed rule will have a disproportionate cost impact on small businesses²."

¹ RCW 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

² RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under RCW 19.85.025(4), the businesses that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW. OIC has found that none of the existing health insurance issuers may be considered small businesses under RCW 19.85.020(3).

The average number of employees per firm was determined below using Bureau of Labor Statistics data:

Average number of firms: 58.

Average annual employment over 12 months: 6,777.

Average number of employees per firm: 118.

The average number of employees for a direct health and medical insurance carrier is 118 employees, above the small business threshold of 50 under chapter 19.85.020(3).

OIC determines that this rule is exempt from SBEIS requirements.

Scope of exemption for rule proposal:

Is fully exempt.

August 23, 2022
Mike Kreidler

OTS-4030.1

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-44A-010 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for an HCSC; or

(b) A person employed by the HCSC to file under this chapter.

(4) "Form" means a:

(a) "Contract" as defined in WAC 284-43-6020; and includes:

(i) Applications;

(ii) Certificates of coverage;

(iii) Disclosure forms;

(iv) Enrollment forms;

(v) Policy forms, including riders;

(vi) Termination notice forms;

(vii) Short form filing summary, as outlined in the SERFF filing instructions; and

(viii) All other forms that are part of the contract.

(b) "Contract form" as defined in WAC 284-43-6020;

(c) Network enrollment forms described in WAC 284-170-280(3);

(d) Participating provider agreements as required by RCW

~~((48.44.070))~~ 48.43.730 and WAC 284-170-480; and

(e) Medicare supplement forms required to be filed under chapter 48.66 RCW.

(5) "Health care benefit manager contract" or "HCBM contract" means a contract that includes the services under RCW 48.200.020(4) and any amendments made to such contracts.

~~((6))~~ (6) "Health care service contractor" or "HCSC" means the same as in RCW 48.44.010.

~~((7))~~ (7) "NAIC" means the National Association of Insurance Commissioners.

~~((8))~~ (8) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a form under RCW 48.44.020 or ~~((48.44.070))~~

48.43.730.

~~((9))~~ (9) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules that must be filed under RCW 48.44.040 or 48.66.035.

~~((9))~~ (10) "Rate schedule" means the same as in WAC 284-43-6020.

~~((10))~~ (11) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

~~((11))~~ (12) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

[Statutory Authority: RCW 48.02.060, WSR 16-14-106 (Matter No. R 2016-11), § 284-44A-010, filed 7/6/16, effective 8/6/16. Statutory Authority: RCW 48.02.060, 48.44.050, and 48.46.200. WSR 10-01-118 (Matter No. R 2009-04), § 284-44A-010, filed 12/17/09, effective 1/17/10.]

AMENDATORY SECTION (Amending WSR 20-01-048, filed 12/9/19, effective 1/9/20)

WAC 284-44A-040 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF website into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) State specific rate and form filing instructions posted on the commissioner's website (www.insurance.wa.gov), including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions*;

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions*;

(c) *Washington State SERFF Health and Disability Form Filing General Instructions*; ~~(and)~~

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions* (also called "plan management instructions"); and

(e) *Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions*.

[Statutory Authority: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030. WSR 20-01-048 (Matter No. R 2019-06), § 284-44A-040, filed 12/9/19, effective 1/9/20. Statutory Authority: RCW 48.02.060, 48.44.050, 48.46.200, and 48.110.150. WSR 12-01-103 (Matter No. R 2011-24), § 284-44A-040, filed 12/21/11, effective 1/21/12. Statutory Authority: RCW 48.02.060, 48.44.050, and 48.46.200. WSR 10-01-118 (Matter No. R 2009-04), § 284-44A-040, filed 12/17/09, effective 1/17/10.]

AMENDATORY SECTION (Amending WSR 20-01-048, filed 12/9/19, effective 1/9/20)

WAC 284-44A-050 General form and rate filing rules. (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

(i) Be attached to the form schedule; and

(ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in (~~ten-point~~) 10-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and state specific instructions applicable to the particular filing, as revised from time to time and posted on the commissioner's website (www.insurance.wa.gov) including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions*;

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions*;

(c) *Washington State SERFF Health and Disability Form Filing General Instructions*; (~~and~~)

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions* (also called "plan management instructions"); and

(e) *Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions*.

(4) Filers must submit separate filings for each type of insurance.

[Statutory Authority: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030. WSR 20-01-048 (Matter No. R 2019-06), § 284-44A-050, filed 12/9/19, effective 1/9/20. Statutory Authority: RCW 48.02.060, 48.44.050, 48.46.200, and 48.110.150. WSR 12-01-103 (Matter No. R 2011-24), § 284-44A-050, filed 12/21/11, effective 1/21/12. Statutory Authority: RCW 48.02.060, 48.44.050, and 48.46.200. WSR 10-01-118 (Matter No. R 2009-04), § 284-44A-050, filed 12/17/09, effective 1/17/10.]

OTS-4031.1

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-46A-010 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the

commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for an HMO; or

(b) A person employed by the HMO to file under this chapter.

(4) "Form" means a:

(a) "Contract" as defined in WAC 284-43-6020; and includes:

(i) Applications;

(ii) Certificates of coverage;

(iii) Disclosure forms;

(iv) Enrollment forms;

(v) Policy forms, including riders;

(vi) Termination notice forms;

(vii) Short form filing summary, as outlined in the SERFF filing instructions; and

(viii) All other forms that are part of the contract.

(b) "Contract form" as defined in WAC 284-43-6020;

(c) Network enrollment forms described in WAC 284-170-280(3);

(d) Prepayment agreements described in RCW 48.46.060;

(e) Participating provider agreements as required by RCW

((48.46.243)) 48.43.730 and WAC 284-170-480; and

(f) Medicare supplement forms required to be filed under chapter 48.66 RCW.

(5) "Health care benefit manager contract" or "HCBM contract" means a contract that includes the services under RCW 48.200.020(4) and any amendments made to such contracts.

(6) "Health maintenance organization" or "HMO" means the same as in RCW 48.46.020.

((6)) (7) "NAIC" means the National Association of Insurance Commissioners.

((7)) (8) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a form under RCW 48.46.060 or ((48.46.243)) 48.43.730.

((8)) (9) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules that must be filed under RCW 48.46.060 or 48.66.035.

((9)) (10) "Rate schedule" means the same as in WAC 284-43-6020.

((10)) (11) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

((11)) (12) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

[Statutory Authority: RCW 48.02.060. WSR 16-14-106 (Matter No. R 2016-11), § 284-46A-010, filed 7/6/16, effective 8/6/16. Statutory Authority: RCW 48.02.060, 48.44.050, and 48.46.200. WSR 10-01-118 (Matter No. R 2009-04), § 284-46A-010, filed 12/17/09, effective 1/17/10.]

AMENDATORY SECTION (Amending WSR 20-01-048, filed 12/9/19, effective 1/9/20)

WAC 284-46A-040 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF website into this chapter. By reference, the commissioner incorporates these documents into this chapter:

- (1) The *SERFF Industry Manual* available within the SERFF application; and
- (2) State specific rate and form filing instructions posted on the commissioner's website (www.insurance.wa.gov), including the:
 - (a) *Washington State SERFF Life and Disability Form Filing General Instructions*;
 - (b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions*;
 - (c) *Washington State SERFF Health and Disability Form Filing General Instructions*; (~~and~~)
 - (d) *Washington State SERFF Health and Disability Binder Filing General Instructions* (also called "plan management instructions"); and
 - (e) *Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions*.

[Statutory Authority: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030. WSR 20-01-048 (Matter No. R 2019-06), § 284-46A-040, filed 12/9/19, effective 1/9/20. Statutory Authority: RCW 48.02.060, 48.44.050, 48.46.200, and 48.110.150. WSR 12-01-103 (Matter No. R 2011-24), § 284-46A-040, filed 12/21/11, effective 1/21/12. Statutory Authority: RCW 48.02.060, 48.44.050, and 48.46.200. WSR 10-01-118 (Matter No. R 2009-04), § 284-46A-040, filed 12/17/09, effective 1/17/10.]

AMENDATORY SECTION (Amending WSR 20-01-048, filed 12/9/19, effective 1/9/20)

WAC 284-46A-050 General form and rate filing rules. (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

- (a) Every form filed in SERFF must:
 - (i) Be attached to the form schedule; and
 - (ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.
- (b) Filers must send all written correspondence related to a form or rate filing in SERFF.
- (2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.
- (3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and state specific instructions applicable to the particular filing as revised from time to time and posted on the commissioner's website (www.insurance.wa.gov), including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions;*

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions;*

(c) *Washington State SERFF Health and Disability Form Filing General Instructions; ((and))*

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions (also called "plan management instructions"); and*

(e) Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions.

(4) Filers must submit separate filings for each type of insurance.

[Statutory Authority: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030. WSR 20-01-048 (Matter No. R 2019-06), § 284-46A-050, filed 12/9/19, effective 1/9/20. Statutory Authority: RCW 48.02.060, 48.44.050, 48.46.200, and 48.110.150. WSR 12-01-103 (Matter No. R 2011-24), § 284-46A-050, filed 12/21/11, effective 1/21/12. Statutory Authority: RCW 48.02.060, 48.44.050, and 48.46.200. WSR 10-01-118 (Matter No. R 2009-04), § 284-46A-050, filed 12/17/09, effective 1/17/10.]

OTS-4032.1

AMENDATORY SECTION (Amending WSR 20-01-048, filed 12/9/19, effective 1/9/20)

WAC 284-58-025 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF website into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) State specific rate and form filing instructions posted on the commissioner's website (www.insurance.wa.gov), including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions;*

(b) *Washington State Life, Health and Disability Rate Filing General Instructions;*

(c) *Washington State SERFF Health and Disability Form Filing General Instructions; ((and))*

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions (also called "plan management instructions"); and*

(e) Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions.

[Statutory Authority: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030. WSR 20-01-048 (Matter No. R 2019-06), § 284-58-025, filed 12/9/19, effective 1/9/20. Statutory Authority: RCW 48.02.060, 48.44.050,

48.46.200, and 48.110.150. WSR 12-01-103 (Matter No. R 2011-24), § 284-58-025, filed 12/21/11, effective 1/21/12. Statutory Authority: RCW 48.02.060, 48.110.150. WSR 08-21-091 (Matter No. 2007-11), § 284-58-025, filed 10/15/08, effective 2/1/09.]

AMENDATORY SECTION (Amending WSR 21-03-008, filed 1/7/21, effective 2/7/21)

WAC 284-58-030 General form and rate filing rules. (1) Each credit, life or disability insurance form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must be attached to the form schedule.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and state specific filing instructions applicable to the particular filing, as revised from time to time and posted on the commissioner's website (www.insurance.wa.gov), including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions*;

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions*;

(c) *Washington State SERFF Health and Disability Form Filing General Instructions*; ~~((and))~~

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions* (also called "plan management instructions"); and

(e) *Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions*.

(4) Filers must submit separate filings for each type of insurance. This section does not apply to:

(a) Credit insurance filings made under RCW 48.34.040; or

(b) Group insurance where different types of insurance are incorporated into a single certificate.

(5) All stand-alone prescription drug plans which exclusively supplement a medicare Part D employer group waiver plan and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used.

[Statutory Authority: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030. WSR 21-03-008, § 284-58-030, filed 1/7/21, effective 2/7/21; WSR 20-01-048 (Matter No. R 2019-06), § 284-58-030, filed 12/9/19, effective 1/9/20. Statutory Authority: RCW 48.02.060, 48.44.050, 48.46.200, and 48.110.150. WSR 12-01-103 (Matter No. R 2011-24), § 284-58-030, filed 12/21/11, effective 1/21/12. Statutory Authority: RCW 48.02.060, 48.110.150. WSR 08-21-091 (Matter No. 2007-11), § 284-58-030, filed 10/15/08, effective 2/1/09. Statutory Authority: RCW 48.02.060, 48.44.050, 48.46.200, 48.18.100, 48.19.040, 48.19.050, 48.19.070,

48.20.012, 48.21.045(2), 48.29.140, 48.43.055, 48.44.023(2),
48.44.040, 48.44.070, 48.46.030, 48.46.060, 48.46.066(2), 48.46.243,
48.96.025, 48.102.020. WSR 96-11-004 (Matter No. R 96-1), §
284-58-030, filed 5/2/96, effective 6/2/96. Statutory Authority: RCW
48.02.060. WSR 82-23-009 (Order R 82-5), § 284-58-030, filed 11/5/82.]

WSR 22-17-134

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 23, 2022, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-004.

Title of Rule and Other Identifying Information: WAC 308-110-030 Administration of examinations and 308-104-046 Instruction permit—Verification of enrollment.

Hearing Location(s): On September 27, 2022, at 1:00 p.m. Pacific Time (United States and Canada), Zoom. Join Zoom meeting <https://dol-wa.zoom.us/j/85979759135?pwd=OHFPU0IvQkVJN3VkOHFJVXV2ckxWZz09>, Meeting ID 859 7975 9135, Passcode 995413, One tap mobile +12532158782,,85979759135#,,,,*995413# US (Tacoma). Find your local number [https://dol-wa.zoom.us/u/kcYyXTNBwV](https://dol-wa.zoom.us/j/85979759135?pwd=OHFPU0IvQkVJN3VkOHFJVXV2ckxWZz09).

If you are having issues joining the meeting at the time of the hearing, please call 360-902-3846.

Date of Intended Adoption: September 28, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street N.E., email rulescoordinator@dol.wa.gov, 360-902-3846, by September 26, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by September 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is considering rule making to better align WAC 308-110-030 and 308-104-046 with age requirements in RCW 46.20.055.

Reasons Supporting Proposal: Currently, WAC restricts the age a person can take the knowledge exam to obtain a permit beyond what is required by law. This proposal would align WAC 308-110-030 with WAC 308-104-046 for age requirements found within RCW 46.20.055.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and 46.20.119 Reasonable rules.

Statute Being Implemented: WAC 308-110-030 Administration of examinations.

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: Not applicable.

Name of Agency Personnel Responsible for Drafting: Colton Myers, 1125 Washington Street S.E., Olympia, WA 98504, 360-634-5094; Implementation and Enforcement: Cara Jockumsen, 1125 Washington Street S.E., Olympia, WA 98504, 360-794-2600.

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. These rules impact individual drivers under age 18 seeking a driver's permit. The only impact to driver training schools is that this will allow them to test drivers under age 18 prior to enrollment in driver's education, as they have requested.

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. These rules do not impose requirements on businesses, nor will businesses be required to adjust their processes.

August 23, 2022
Ellis Starrett
Rules and Policy Manager

OTS-4053.1

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-110-030 Administration of examinations. (1) Schools and examiners must conduct skills tests using routes that meet department standards.

(2) Knowledge test questions must be supplied by the department or meet department criteria.

(3) Knowledge tests must be conducted in an area separate from classroom instruction or when a class is not in session, minimizing distractions or interactions.

(4) Examinations must be conducted by examiners.

(5) Knowledge test results may be used to obtain a driver license for no more than two years from the date of completion.

(6) Skills test results may be used to obtain a driver license for no more than one year from the date of completion.

(7) In accordance with the department's guidelines, schools must refer to the department for testing any applicant who has a condition that may impair their ability to operate a motor vehicle safely.

(8) Prior to administering the knowledge and skills tests, schools ~~((must))~~ will ensure that applicants are ~~((at least fifteen years of age. When the applicant is less than eighteen years of age, the applicant must have successfully completed a traffic safety education course.~~

~~((9))~~ properly informed regarding testing requirements and their test results. Schools must also inform applicants of the school's current retesting, refund, and grievance policies and procedures.

(9) Prior to administering the knowledge exam, schools must ensure the applicants are at least 15 1/2 years old; or 15 years old and have successfully completed a traffic safety education course.

(10) Prior to administering the skills ~~((test))~~ exam, schools ~~((will))~~ must ensure that applicants are ~~((properly informed regarding testing requirements and their test results. Schools must also inform applicants of the school's current retesting, refund, and grievance policies and procedures))~~ at least 15 years of age. When the applicant is less than 18 years of age, the applicant must have successfully completed a traffic safety education course.

~~((11))~~ (11) Applicants must possess one of the following to participate in the skills testing portion of the examination:

(a) A Washington instruction permit issued under RCW 46.20.055;

(b) A temporary authorization to drive issued on a form prescribed by the department; or

(c) A valid foreign driver's license.

[Statutory Authority: RCW 46.01.110 and 46.82.450. WSR 12-17-059, § 308-110-030, filed 8/10/12, effective 9/10/12.]

WSR 22-17-135
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-05—Filed August 23, 2022, 12:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-066.

Title of Rule and Other Identifying Information: Prescription drug cost sharing—Enrollee contribution calculation, implementation of SSB 5610 (chapter 228, Laws of 2022).

Hearing Location(s): On September 28, 2022, at 9:00 [a.m.], via Zoom. Register at <https://www.insurance.wa.gov/cost-sharing-prescription-drugs-r-2022-05>.

Date of Intended Adoption: October 7, 2022.

Submit Written Comments to: Barb Jones, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, email rulescoordinator@oic.wa.gov, fax 360-586-3109, www.insurance.wa.gov, by October 3, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by October 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implementation of SSB 5610 (chapter 228, Laws of 2022) Prescription drug cost sharing—Enrollee contribution calculation. The rule making will provide consistency and transparency to enrollees using third-party payment assistance. The definitions of cost sharing and out-of-pocket maximum are clarified to include coupons and carriers are required to provide enrollees disclosure of their benefits and appeal rights when third-party payments are used.

Reasons Supporting Proposal: Given the input of interested parties, rule making is needed to clarify any potential ambiguity in implementation, thereby providing the consumer protection the legislation intended.

Statutory Authority for Adoption: Section 1(3), chapter 228, Laws of 2022, SSB 5610.

Statute Being Implemented: SSB 5610 (chapter 228, Laws of 2022).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Barb Jones, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, 360-725-7041; Implementation: Molly Nollette, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7117; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7050.

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 Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@OIC.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: SSB 5610 Cost sharing for prescription drugs was passed to address consumer complaints about the incon-

sistency with the use of discount prescription drug cards, assistance programs and/or coupons. The legislation provides direction for applying payments to cost-sharing amounts and the out-of-pocket maximum, except in specified conditions.

The commissioner is pursuing rule making to address definitions within current regulations and undefined terms used in chapter 228, Laws of 2022, for consistency with the intent of the law. Further, consumers' exceptions and appeals process will be reviewed for compliance.

Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry¹..." The small business economic impact statement (SBEIS) must include: "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... To determine whether the proposed rule will have a disproportionate cost impact on small businesses²."

¹ RCW 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

² RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under RCW 19.85.025(4), the businesses that must comply with the proposed rule are not small businesses under chapter 19.85 RCW. The office of the insurance commissioner (OIC) has found that none of the existing health insurance issuers may be considered small businesses under the definition found in RCW 19.85.020(3).

The average number of employees per firm was determined below using Bureau of Labor Statistics data:

Average number of firms: 58.

Average annual employment over 12 months: 6,777.

Average number of employees per firm: 118.

The average number of employees for a direct health and medical insurance carrier is 118 employees, above the small business threshold of 50 under RCW 19.85.020(3).

OIC determines that this rule is exempt from SBEIS requirements.

Scope of exemption for rule proposal:

Is fully exempt.

August 23, 2022

Mike Kreidler

Insurance Commissioner

OTS-3915.3

AMENDATORY SECTION (Amending WSR 20-24-105, filed 12/1/20, effective 1/1/21)

WAC 284-43-5080 Prescription drug benefit design. (1) A carrier may design its prescription drug benefit to include cost control measures, including requiring preferred drug substitution in a given ther-

apeutic class, if the restriction is for a less expensive, equally therapeutic alternative product available to treat the condition.

(2) A carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but are not limited to, refusal to pay for higher cost drugs until it can be shown that a lower cost drug or medication is not effective (also known as step therapy protocols or fail-first policies), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand name drugs, subject to a substitution process as set forth in subsection (3) of this section.

(3) A carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over-the-counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.

(4) A carrier may require an enrollee to try an AB-rated generic equivalent or a biological product that is an interchangeable biological product prior to providing coverage for the equivalent branded prescription drug.

(5) A nongrandfathered health plan issued or renewed on or after January 1, 2023, that provides coverage for prescription drugs must comply with RCW 48.43.435.

(a) For the purposes of this subsection, any cost sharing amount paid directly by or on behalf of the enrollee by another person for a covered prescription drug, at the time it is rendered, must be applied in full toward the enrollee's applicable cost-sharing as defined in WAC 284-43-0160 and out-of-pocket maximum as defined in RCW 48.43.005 consistent with RCW 48.43.435.

(b) If an enrollee requests an exception under RCW 48.43.420 or appeals a denial of an exception request, and the request or appeal is still pending, any amount paid by or on behalf of an enrollee for a covered prescription drug must be applied towards the enrollee's contribution to any applicable deductible, copayment, coinsurance, or out-of-pocket maximum until the review is resolved and the status of the request is communicated to the carrier.

(c) The health carrier must disclose to the enrollee information about when third-party payments, including payments made through application of a manufacturer drug coupon or other manufacturer discount, are applied towards the enrollee's annual cost-sharing obligations, including applicable deductibles, copayments, coinsurances, or out-of-pocket maximums. The disclosure shall be included in the certificate of coverage (also commonly referred to as the member booklet or member handbook). Carriers are not required to use verbatim language from either the statute or regulation; however, the information provided to the enrollee about the application of third-party payments must be sufficiently detailed to address the situations set forth in RCW 48.43.435 (1) (a) (i) through (iii).

[Statutory Authority: RCW 48.02.060, 48.43.400, 48.43.410, and 48.43.420. WSR 20-24-105, § 284-43-5080, filed 12/1/20, effective 1/1/21. Statutory Authority: RCW 48.02.060, 48.18.140, and 48.43.510. WSR 17-03-087 (Matter No. R 2016-22), § 284-43-5080, filed 1/12/17,

effective 2/12/17. WSR 16-01-081, recodified as § 284-43-5080, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.02.062, 48.18.140, 48.43.525, 48.44.050, 48.44.440(2), 48.44.460(2), 48.46.200, and 48.46.510. WSR 12-21-019 (Matter No. R 2012-03), § 284-43-817, filed 10/8/12, effective 11/8/12.]

WSR 22-17-136

PROPOSED RULES

WASHINGTON STATE LOTTERY

[Filed August 23, 2022, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-048.

Title of Rule and Other Identifying Information: Washington's lottery is proposing revisions to WAC 315-04-180 Obligations of lottery retailers, which requires licensed lottery retailers to reimburse the lottery for lost or stolen tickets, in order to allow the director some discretion to waive reimbursement if certain conditions are met.

Hearing Location(s): On October 27, 2022, at 8:30 a.m., virtual. In response to the COVID-19 public health emergency, the commission will not provide a physical location for this hearing. See walottery.com or call or email Kristi Weeks for details on how to participate virtually.

Date of Intended Adoption: October 27, 2022.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300[0], Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, by October 26, 2022.

Assistance for Persons with Disabilities: Debbie Robinson, phone 360-791-3045, fax 360-742-3902, TTY 360-586-0933, email DRobinson@walottery.com, by October 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule language will grant the director discretion to waive payment or reimbursement for lost or stolen lottery tickets if the retailer can show they have consistently and demonstrably stored them in a safe and secure manner, in addition to reporting the loss promptly and cooperating with all investigations.

Reasons Supporting Proposal: The current rule does not provide the director of the lottery discretion to waive reimbursement for lost or stolen tickets in any situation. This places a burden on retailers in light of the recent and significant increase in theft of lottery tickets.

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

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington's lottery, governmental.

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

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

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

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

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

Scope of exemption for rule proposal:
Is fully exempt.

August 23, 2022
Kristi Weeks
Director of Legal Services

OTS-4055.1

AMENDATORY SECTION (Amending WSR 21-06-052, filed 2/25/21, effective 3/28/21)

WAC 315-04-180 Obligations of lottery retailers. (1)(a) Upon acceptance of a pack of instant tickets from the director, the retailer shall be responsible for the condition and security of the pack. The retailer shall hold the pack in its own safekeeping until it is ready to begin sale of the pack. Immediately prior to beginning sale, the retailer shall place the pack in "activated" status on the lottery-issued terminal. Placement in activated status designates that the tickets in the pack may be sold, and prizes in the pack may be paid. Tickets must not be sold before being placed in active status.

(b) In the event that instant tickets accepted by the retailer are lost, stolen, or in any way unaccounted for prior to their being placed in activated status, the retailer shall, upon discovery of their disappearance, immediately notify the director of each pack or portion of a pack so unaccounted for, lost, or stolen. The retailer may be required to provide the director a police report or other evidence of the pack's disappearance. The retailer may be charged (~~twenty-five dollars~~) \$25 for each pack or portion of a pack unaccounted for, lost, or stolen.

(c) A retailer may return an unopened pack, at no charge, to the director at any time prior to the pack having been placed in activated status. Within (~~thirty~~) 30 days of the official end of an instant game, a retailer shall return to the director all packs never activated in that game.

(d) Upon placement of a pack in activated status, the retailer shall be liable to the director for payment for the pack, in the amount calculated under WAC 315-06-035. Payment for a pack shall be due to the director (~~(+1)~~) (i) no later than (~~fifty~~) 50 calendar days after the pack has been placed in activated status or when (~~eighty~~) 80 percent of the low tiered prizes have been validated, thereby validating the pack; or (~~(+2)~~) (ii) payment for a pack shall be due to the director no later than (~~twenty-one~~) 21 days after activation. The director shall not reimburse the retailer for any ticket losses which occur after activation of the pack from which the tickets came, except as allowed by subsection (2) of this section, WAC 315-04-210(2), or 315-06-190.

(e) Each lottery retailer and lottery license applicant shall sign and comply with a lottery retailer contract. Failure to sign or

to comply shall result in revocation or denial of a retailer's lottery license.

(2) (a) A retailer shall maintain and store all activated instant tickets in a secure manner. For purposes of this subsection "secure manner" means:

(i) Instant tickets are removed from the in-counter dispenser and secured in a locked room or container when the retail location is closed for business;

(ii) Instant tickets are not allowed to hang loosely from, or otherwise be located outside of, the in-counter dispenser when the retail location is open for business; and

(iii) Instant tickets are given, or otherwise made accessible, to customers only after the purchase is complete.

(b) In the case of theft of activated instant tickets from a retailer or retail location, the director may waive payment or reimburse the retailer for some or all of those stolen instant tickets if, in the sole discretion of the director, each of the following conditions is fully met:

(i) Prior to the theft, the retailer consistently and demonstrably maintained and stored activated instant tickets in a secure manner.

(ii) The retailer reported the theft to the lottery, including an accurate accounting of the stolen instant tickets (i.e., game, pack, and ticket number(s)), within two hours of discovery of the event and cooperates fully with any lottery investigation.

(iii) The retailer reported the theft to appropriate law enforcement within two hours of discovery of the event and cooperates fully with any investigation and prosecution.

(iv) The retailer reported the theft to their appropriate insurance company, if any, and cooperates fully with any investigation and recovery. Waived payment or reimbursement from the lottery under this subsection may supplement, but shall not be used in place of, available insurance coverage.

(v) The retailer has not been reimbursed or had payment waived by the director for a separate theft within the 12 months immediately preceding the current event.

(vi) The person who committed, or is reasonably suspected to have committed, the theft is not an employee of the retailer or other person known to the retailer and who had more access to the instant tickets than a typical retail customer.

(c) A retailer whose request for waiver of payment or reimbursement under this subsection is denied by the director may request a brief adjudicative proceeding pursuant to WAC 315-20-125.

(3) Each lottery retailer shall abide by the law, these rules, and all other directives or instructions issued by the director.

~~((3))~~ (4) Each lottery retailer grants to the director an irrevocable license to enter upon the premises of the lottery retailer in which tickets may be sold or any other location under the control of the lottery retailer where the director may have good cause to believe lottery materials and/or tickets are stored or kept in order to inspect said lottery materials and/or tickets and the licensed premises.

~~((4))~~ (5) All property given, except tickets, to a lottery retailer remains the property of the director, and, upon demand, the lottery retailer agrees to deliver forthwith the same to the director. The lottery retailer also agrees to be responsible for the maintenance and security of such property.

~~((5))~~ (6) All books and records pertaining to the lottery retailer's lottery activities shall be made available for inspection and copying, during the normal business hours of the lottery retailer and between 8:00 a.m. and 5:00 p.m., Monday through Friday, upon demand by the director.

~~((6))~~ (7) All books and records pertaining to the lottery retailer's lottery activities shall be subject to seizure by the director without prior notice.

~~((7))~~ (8) No lottery retailer shall advertise or otherwise display advertising in any part of the lottery retailer's premises as a licensed location which may be considered derogatory or adverse to the operations or dignity of the lottery.

[Statutory Authority: RCW 67.70.040 (1), (3). WSR 21-06-052, § 315-04-180, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 67.70.040 (1) and (3). WSR 16-13-090, § 315-04-180, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 67.70.040 (1), (3) and 67.70.040. WSR 07-11-154, § 315-04-180, filed 5/22/07, effective 6/22/07. Statutory Authority: RCW 67.70.040. WSR 98-11-091, § 315-04-180, filed 5/20/98, effective 6/20/98; WSR 94-11-027, § 315-04-180, filed 5/6/94, effective 6/6/94; WSR 94-03-020, § 315-04-180, filed 1/7/94, effective 2/9/94; WSR 86-01-060 (Order 83), § 315-04-180, filed 12/16/85; WSR 84-05-008 (Order 51), § 315-04-180, filed 2/7/84; WSR 83-19-019 (Order 36), § 315-04-180, filed 9/12/83. Statutory Authority: 1982 2nd ex.s. c 7. WSR 82-21-037 (Order 2), § 315-04-180, filed 10/15/82.]

WSR 22-17-139

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed August 23, 2022, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-084.

Title of Rule and Other Identifying Information: WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645, in-home services agencies rules. The department of health (department) is proposing to expand the use of telemedicine to include supervisory activities and to align definitions with recent telemedicine legislation in ESHB 1196 (chapter 157, Laws of 2021) and ESHB 1821 (chapter 213, Laws of 2022).

Hearing Location(s): On September 27, 2022, at 9:00 a.m. In response to the coronavirus disease 2019 (COVID-19), the department will not provide a physical location for this hearing. This promotes social distancing and helps provide for the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_aVGEpEIDSQgkjf6hj-gfg. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 4, 2022.

Submit Written Comments to: John Hilger, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, john.hilger@doh.wa.gov, by September 27, 2022.

Assistance for Persons with Disabilities: Contact John Hilger, phone 360-236-2929, TTY 711, email john.hilger@doh.wa.gov, by September 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to expand the use of telemedicine for home health and hospice supervisory visits. The proposed rule would give home health and hospice agencies the option to conduct supervisory visits either on-site or via telemedicine. In an effort to align with recent telemedicine legislation, the proposed rule also amends the definition of telemedicine to include supervision activities and creates new definitions for "audio-only telemedicine" and "established relationship." In addition to aligning with ESHB 1196 and 1821, the proposed rules would be consistent with the federal government's "Patients Over Paperwork" initiative.

Reasons Supporting Proposal: Shortly after the COVID-19 public health emergency was declared in early 2020, state and federal waivers were put in place to allow licensed health care facilities a range of compliance flexibilities that would enable them to implement new social distancing and masking requirements. The department issued various waivers for in-home services agencies, one of which was the ability to conduct supervisory visits through telemedicine. Over the course of 2020 and 2021, agencies utilized the waivers to perform supervisory visits via telemedicine to reduce unnecessary in-person contact with patients and thus reduce the spread of the virus. Agencies also redirected the time they were saving (nursing staff not traveling for on-site supervision) into more clinical care activities. Agencies saw telemedicine supervisory visits as a success in terms of gained efficiencies while maintaining quality of care.

The home care association of Washington submitted a rules petition in December 2020, requesting that the department make telemedi-

cine supervisory visits a permanent option in rule. The department approved the petition but indicated that rule making would be delayed due to priority COVID-19 related response work. Petitioners were concerned that rule making may not be completed by the time the public health emergency is declared over. The decision was made to file emergency rules that would allow telemedicine supervisory visits until permanent rule making was completed. The emergency rules were filed and later extended under WSR 21-16-096, filed August 3, 2021; WSR 21-24-099, filed December 1, 2021; WSR 22-08-044, filed March 31, 2022; and WSR 22-16-067, filed July 29, 2022.

Recent telemedicine legislation, ESHB 1196 and 1821, expands the concept to include "audio-only telemedicine" for patients that have an "established relationship" with their provider. These "audio-only telemedicine" bills do not directly impact in-home services law, chapter 70.127 RCW, but do amend chapter 48.43 RCW, which governs how health insurance plans bill for many telehealth services, including home health and hospice services. Incorporating core concepts from these new laws into the in-home services rules will align home health and hospice agencies with new health insurance plan laws and help streamline patient access to services.

In addition to aligning with ESHB 1196 and 1821, the proposed rules would be consistent with the federal government's "Patients Over Paperwork" initiative, allowing supervision options that translate into more time being available for patient clinical care activities.

Statutory Authority for Adoption: RCW 70.127.120, 43.70.250.

Statute Being Implemented: RCW 70.127.120, 43.70.250; ESHB 1196 (chapter 157, Laws of 2021); and ESHB 1821 (chapter 213, Laws of 2022).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: John Hilger, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2929; Enforcement: John Williams, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2950.

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 John Hilger, P.O. Box 47852, Olympia, WA 98504, phone 360-236-2929, TTY 711, email john.hilger@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: WAC 246-355-510 [246-335-510] and 246-335-610 clarify terms used in the rules.

Scope of exemption for rule proposal:

Is partially exempt.

Proposed WAC Sections and Title	This proposed rule section is not exempt - analysis is required	This proposed rule section is exempt - provide RCW to support this exemption
246-335-510 Definitions— Home health		The proposed changes are exempt under RCW 34.05.310 (4)(d) because the proposed rules clarify terms used throughout the rules.

Proposed WAC Sections and Title	This proposed rule section is not exempt - analysis is required	This proposed rule section is exempt - provide RCW to support this exemption
246-335-545 Supervision of home health services	X	
246-335-610 Definitions—Hospice		The proposed changes are exempt under RCW 34.05.310 (4)(d) because the proposed rules clarify terms used throughout the rules.
246-335-645 Supervision of hospice services	X	

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 do not impose any anticipated new costs on home health or hospice agencies. The proposed rules give agencies new supervision options that will instead potentially reduce costs and could increase clinical productivity. Current rules allow home health and hospices to utilize telemedicine (outside of supervision) and agencies already have technology and policies and procedures in place. The proposed rules would provide agencies with cost-saving options to perform supervisory activities via telemedicine. Agencies pursuing the option for remote supervision would use their existing telemedicine systems, which would not result in any new costs.

August 23, 2022
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3165.5

AMENDATORY SECTION (Amending WSR 21-06-054, filed 2/25/21, effective 3/28/21)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Audio-only telemedicine" means the delivery of health care services through the use of HIPAA-compliant audio-only technology (in-

cluding web-based applications), permitting real-time communication between the patient and the agency provider for the purpose of consultation, education, diagnosis, or treatment, as appropriate per scope of practice. "Audio-only telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Audio-only telemedicine" does not include the use of facsimile, electronic mail, or text messages.

(4) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW;

(c) A physician assistant licensed under chapter 18.71A (~~(or 18.57A)~~) RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

~~((4))~~ (5) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

~~((5))~~ (6) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

~~((6))~~ (7) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

~~((7))~~ (8) "Established relationship" means the patient has had, within the past two years, at least one in-person appointment with the agency provider providing audio-only telemedicine or with a provider employed at the same agency as the provider providing audio-only telemedicine; or the patient was referred to the agency provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment with the patient and has provided relevant medical information to the provider providing audio-only telemedicine.

(9) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

~~((8))~~ (10) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

~~((9))~~ (11) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in pa-

tients' conditions and needs, completing appropriate records, and personal care or homemaker services.

~~((10))~~ (12) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

~~((11))~~ (13) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

~~((12))~~ (14) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

~~((13))~~ (15) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

~~((14))~~ (16) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

~~((15))~~ (17) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

~~((16))~~ (18) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

~~((17))~~ (19) "Patient" means an individual receiving home health services.

~~((18))~~ (20) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

~~((19))~~ (21) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

~~((20))~~ (22) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in

RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

~~((21))~~ (23) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

~~((22))~~ (24) "Telemedicine" means the delivery of health care services through the use of HIPAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient ~~((at the originating site))~~ and the agency provider, for the purpose of consultation, education, supervision, diagnosis, ((consultation,)) or treatment, as appropriate per scope of practice. "Telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Telemedicine" does not include the use of audio-only telephone, facsimile, ~~((or))~~ electronic mail, or text messages.

~~((23))~~ (25) "Therapist" means an individual who is:

- (a) A physical therapist licensed under chapter 18.74 RCW;
- (b) A respiratory therapist licensed under chapter 18.89 RCW;
- (c) An occupational therapist licensed under chapter 18.59 RCW;
- (d) A speech therapist licensed under chapter 18.35 RCW; or
- (e) A massage therapist licensed under chapter 18.108 RCW.

~~((24))~~ (26) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

[Statutory Authority: RCW 70.127.120 and 42 U.S.C. 1395f. WSR 21-06-054, § 246-335-510, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-510, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-545 Supervision of home health services. (1) A licensee must employ a director of clinical services~~((r))~~.

(2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence~~((r))~~.

(3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ~~((ten))~~ 10 hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of home health services. Examples of appropriate training include, but are not limited to:

- (a) Agency sponsored in-services;
- (b) Community venues;
- (c) Community classes;
- (d) Conferences;
- (e) Seminars;

(f) Continuing education related to the director's health care professional credential, if applicable; and

(g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.

(4) The director of clinical services or designee must be available during all hours patient care is being provided(~~(7)~~).

(5) The director of clinical services or designee must ensure:

(a) Coordination, development, and revision of written patient care policies and procedures related to each service provided;

(b) Supervision of all patient care provided by personnel and volunteers. The director of clinical services may delegate staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;

(c) Evaluation of services provided by contractors;

(d) Coordination of services when one or more licensed agencies are providing care to the patient;

(e) Compliance with the plan of care;

(f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and

(g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.

(6) The licensee must document supervision including, but not limited to:

(a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW; and

(b) Licensed therapist supervision when using the services of a therapy assistant in accordance with the appropriate practice acts.

~~(7)~~ For patients receiving acute care services, supervision of the home health aide services (~~during an on-site visit~~) with or without the home health aide present must occur once a month to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine and must be conducted by a licensed nurse or therapist in accordance with the appropriate practice acts(~~(7)~~).

~~((e))~~ ~~(8)~~ For patients receiving maintenance care or home health aide only services, supervision of the home health aide services (~~during an on-site visit~~) with or without the home health aide present must occur every six months to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine and must be conducted by a licensed nurse or licensed therapist in accordance with the appropriate practice acts(~~(7) and~~

~~(d) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts).~~

~~((7))~~ (9) A supervisory visit conducted via audio-only telemedicine in subsection (7) or (8) of this section is only permitted for patients that have an established relationship with the provider consistent with WAC 246-335-510(8).

(10) A supervisory visit conducted via telemedicine or via audio-only telemedicine in subsection (7) or (8) of this section may not be used to fulfill the annual performance evaluations and on-site observation of care and skills requirements in WAC 246-335-525(16).

(11) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to pro-

viding home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-545, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-610 Definitions—Hospice. The definitions in this section apply throughout WAC 246-335-605 through 246-335-660 unless the context clearly indicates otherwise:

(1) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's physical, psychosocial, emotional and spiritual status related to their terminal illness and other health conditions. This includes evaluating the caregiver's and family's willingness and capability to care for the patient.

(2) "Audio-only telemedicine " means the delivery of health care services through the use of HIPAA-compliant audio-only technology (including web-based applications), permitting real-time communication between the patient and the agency provider for the purpose of consultation, education, diagnosis, or treatment, as appropriate per scope of practice. "Audio-only telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Audio-only telemedicine" does not include the use of facsimile, electronic mail, or text messages.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state and authorized to approve a hospice plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW; or

(b) An advanced registered nurse practitioner as authorized under chapter 18.79 RCW.

~~((3))~~ (4) "Bereavement services" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

~~((4))~~ (5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

~~((5))~~ (6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, or related services that support the plan of care provided by in-home health and hospice agencies.

~~((6))~~ (7) "Established relationship" means the patient has had, within the past two years, at least one in-person appointment with the agency provider providing audio-only telemedicine or with a provider employed at the same agency as the provider providing audio-only telemedicine; or the patient was referred to the agency provider providing

audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment with the patient and has provided relevant medical information to the provider providing audio-only telemedicine.

~~(8)~~ (8) "Home health aide" means an individual who is a nursing assistant certified under chapter 18.88A RCW.

~~((7))~~ (9) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of permanent or temporary residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

~~((8))~~ (10) "Hospice services" means symptom and pain management to a terminally ill individual, and emotional, spiritual and bereavement services for the individual and their family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

~~((9))~~ (11) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

~~((10))~~ (12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

~~((11))~~ (13) "Medication administration" means assistance in the application, instillation or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide hospice or hospice care center services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW, 246-840 WAC, and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

~~((12))~~ (14) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice services according to WAC 246-335-615 (4) (a).

~~((13))~~ (15) "Patient" means an individual receiving hospice services.

~~((14))~~ (16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

~~((15))~~ (17) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

~~((16))~~ (18) "Restraint" means:

(a) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely. Restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient from falling out of bed, or to permit the patient to participate in activities without the risk of

physical harm, or to physically guide a patient from one location to another; or

(b) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard hospice or palliative care treatment or dosage for the patient's condition.

~~((17))~~ (19) "Seclusion" means the involuntary confinement of a patient alone in a room or an area from which the patient is physically prevented from leaving.

~~((18))~~ (20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

~~((19))~~ (21) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

~~((20))~~ (22) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

~~((21))~~ (23) "Telemedicine" means the delivery of health care services through the use of HIPAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient ~~((at the originating site))~~ and the agency provider~~((r))~~ for the purpose of consultation, education, supervision, diagnosis, ((consultation),) or treatment, as appropriate per scope of practice. "Telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Telemedicine" does not include the use of audio-only telephone, facsimile, ~~((or))~~ electronic mail, or text messages.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-610, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-645 Supervision of hospice services. (1) A licensee must employ a director of clinical services.

(2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence.

(3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ~~((ten))~~ 10 hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of hospice services. Examples of appropriate training include, but are not limited to:

- (a) Agency sponsored in-services;
- (b) Community venues;
- (c) Community classes;
- (d) Conferences;
- (e) Seminars;

- (f) Continuing education related to the director's health care professional credential, if applicable; and
- (g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.
- (4) The director of clinical services or designee must be available (~~(twenty-four)~~) 24 hours per day, seven days per week.
- (5) The director of clinical services or designee must ensure:
- (a) Coordination, development, and revision of written patient and family care policies and procedures related to each service provided;
- (b) Supervision of all patient and family care provided by personnel and volunteers. The director of clinical services may assign staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;
- (c) Evaluation of services provided by contractors;
- (d) Coordination of services when one or more licensed agency is providing care to the patient and family;
- (e) Compliance with the plan of care;
- (f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and
- (g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.
- (6) The licensee must document supervision including, but not limited to:
- (a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW; and
- (b) Licensed therapist supervision when using the services of a therapy assistant in accordance with the appropriate practice acts.
- ~~(7) Licensed nurse supervision of home health aide services ((during an on-site visit)) with or without the home health aide present once a month to evaluate compliance with the plan of care and patient and family satisfaction with care(;~~and~~~~
- ~~(c) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts)). The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine.~~
- ~~((~~7~~))~~ (8) A supervisory visit conducted via audio-only telemedicine in subsection (7) of this section is only permitted for patients that have an established relationship with the provider consistent with WAC 246-335-610(7).
- (9) A supervisory visit conducted via telemedicine or via audio-only telemedicine in subsection (7) of this section may not be used to fulfill the annual performance evaluations and on-site observation of care and skills requirements in WAC 246-335-625(15).
- (10) The licensee using home health aides must ensure:
- (a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and
- (b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-645, filed 3/6/18, effective 4/6/18.]

WSR 22-17-140

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed August 23, 2022, 2:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-010.

Title of Rule and Other Identifying Information: Chapter 246-341 WAC, Behavioral health agency licensing and certification requirements. The department of health (department) is proposing to update the chapter of rules for licensed and certified behavioral health agencies as the next step in a multi-phase plan to modernize licensing and certification requirements.

Hearing Location(s): On September 27, 2022, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19), the department will not provide a physical location for this hearing. This promotes social distancing and helps provide for the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_M4_9fcEWRmW04gnp5_crXg. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 4, 2022.

Submit Written Comments to: Julie Tomaro, P.O. Box 47843, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2321, by September 27, 2022.

Assistance for Persons with Disabilities: Contact Julie Tomaro, phone 360-236-2937, fax 360-236-2321, TTY 711, email Julie.tomaro@doh.wa.gov, by September 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 246-341 WAC to continue implementing a multi-phase workplan that was initiated in 2020, focused on modernizing licensing and certification requirements for behavioral health agencies. The proposed rules reduce duplicative, inefficient, burdensome, and unnecessary regulations; align mental health and substance use disorder standards to support agencies providing cooccurring services and create consistency in service delivery; allow agencies more flexibility to adjust their services to meet the needs of their community; and increase access to care by supporting the use of telehealth and mobile services.

Reasons Supporting Proposal: The department began regulating behavioral health agencies in 2018, at which time it became aware of several policy issues that needed to be addressed to bring the regulations up to date and in alignment with the department's mission. Phase one of the rule-making project, consisting of general clean-up and clarification of the chapter, was completed in 2020. Since then, the coronavirus disease 2019 (COVID-19) pandemic has changed the landscape of behavioral services, resulting in an increased need for accessible services and innovative ways of delivering them. The rules must be amended to complete phase two of the workplan, incorporate new policy ideas to address the needs identified during the pandemic, and to support increased and equitable access to quality behavioral health services.

Statutory Authority for Adoption: RCW 71.24.037, 71.05.560, 71.34.380.

Statute Being Implemented: RCW 71.24.015, 71.24.400.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Julie Tomaro, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2937.

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 Julie Tomaro, P.O. Box 47843, Olympia, WA 98504, phone 360-236-2937, fax 360-236-2321, TTY 711, email Julie.tomaro@doh.wa.gov.

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.

Explanation of exemptions: See explanation in Section 2 of this form.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The following are exempt under RCW 34.05.310 as follows:

WAC Sections and Title	Exempt Proposed Rules
WAC 246-341-0100 Behavioral health—Purpose and scope.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0200 Behavioral Health—Definitions	The proposed changes are exempt under RCW 34.05.310 (4)(d). The proposed changes clarify the meaning of terms used throughout the rules.
WAC 246-341-0320 Agency licensure and certification—On-site reviews and plans of correction.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0365 Agency licensure and certification—Fee requirements.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(f), as it relates to the setting or adjusting of fees.
WAC 246-341-0425 Agency Administration—Individual service record system.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0510 Personnel—Agency record requirements.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0605 Complaint process.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0650 Access to individual service records.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-0680 Emergency service patrol—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.

WAC Sections and Title	Exempt Proposed Rules
WAC 246-341-0720 Supported employment mental health and substance use disorder services—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0722 Supportive housing mental health and substance use disorder services—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0725 Mental health peer respite-Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
NEW 246-341-0737 Behavioral health outpatient intervention, assessment, and treatment services—Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0740 Deferred prosecution under RCW 10.05.150—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0746 Alcohol and drug information school—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0805 Outpatient less restrictive alternative (LRA) or conditional release support behavioral health services—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0815 Substance use disorder counseling for RCW 46.61.5056—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-0912 Designated crisis responder services—Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1015 Opioid treatment programs (OTP)—Individual service record content and documentation requirements.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1020 Opioid treatment programs (OTP)—Medical director responsibility.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1100 Withdrawal management—Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1108 Residential and inpatient substance use disorder treatment services—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1118 Residential and inpatient mental health services—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1124 Residential and inpatient mental health services—Rights related to antipsychotic medication.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-1131 Involuntary behavioral health residential and inpatient services—Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-1133 Evaluation and treatment services—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-1135 Secure withdrawal management and stabilization services—Service standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1137 Intensive behavioral health treatment services—Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.

WAC Sections and Title	Exempt Proposed Rules
WAC 246-341-1140 Crisis stabilization unit and triage—Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1154 Competency evaluation and restoration.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1156 Competency evaluation and restoration—Rights.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1158 Competency evaluation and restoration—Seclusion and restraint.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-1200 Problem gambling and gambling disorder services—Certification standards.	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The change clarifies the language in the rule without changing its effect.

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

Small Business Economic Impact Statement (SBEIS)

Description of 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. In 2018, the legislature transferred authority and responsibility for behavioral health agency licensing and certification from the department of social and health services (DSHS) to the department pursuant to Section 10002 of 2ESHB 1388 (chapter 201, Laws of 2018). Subsequently, the department transferred DSHS' chapter of rules to department authority in chapter 246-341 WAC, only incorporating changes necessary to reflect the department's new authority for licensing and certification of behavioral health agencies.

After the establishment of chapter 246-341 WAC, the department became aware of several policy issues that needed to be addressed to bring these regulations up-to-date and in alignment with the department's mission. The department engaged interested parties and partners to develop a rule-making work plan that identified the desired scope of this rule-making project and the preferred approach to addressing the various topics within the chapter. The agreed upon work plan consisted of a three-phase approach:

- Phase one (completed in 2020) - general clean-up and clarification.
- Phase two (current) - reorganization of the chapter including aligning mental health and substance use disorder service standards and streamlining certifications.
- Phase three (proposed for 2022) - aligning standards across behavioral health facility types.

In addition to previously identified policy issues, the pandemic has changed the landscape of behavioral health services resulting in an increased need for accessible services and innovative ways of delivering them. The rules must be amended to continue to implement the multi-phase work plan, incorporate new policy ideas to address the needs identified during the pandemic, and to support increased and equitable access to quality behavioral health services. The department examined and discussed the rules with interested parties and partners

to consider what changes might be made to the licensure and certification of services in behavioral health facilities, and to consider incorporating and implementing other recommendations and legislative directives.

The majority of the proposed changes to the rule are intended to increase flexibility and decrease the administrative burden associated with licensing processes. The areas of the proposed rule that do add compliance requirements for providing certain services are meant to align requirements for substance use disorder and mental health services, making it easier for agencies to provide cooccurring services and assuring that similar standards are applied to both services. The additional compliance requirements do not require changes in staffing or the need for professional services in order for the agency to be in compliance.

The following businesses are required to comply with the proposed rule. The North American Industry Classification System (NAICS) codes are used. The minor cost thresholds are as follows.

SBEIS Table 1. NAICS codes and minor cost thresholds.

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
621420	This industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse.	423	\$27,711.25	\$3,911.27
623220	This industry comprises establishments primarily engaged in providing residential care and treatment for patients with mental health and substance abuse illnesses.	34	\$33,718.17	\$21,139.34

The following is an analysis of the probable cost of compliance. The probable costs to comply with the proposed rule may include: Cost of equipment; supplies; labor; professional services; and increased administrative costs. Whether compliance with the proposed rule will cause businesses to lose sales or revenue was also considered.

The department worked with behavioral health agency workshop participants to determine which of the proposed rule changes or new rule sections represent a change in cost. Based on these discussions, the department distributed a cost survey to all participants, partners, and interested parties asking for their cost information. The survey was distributed via email and a SurveyMonkey link was included. The survey was open from March 23 through April 6, 2022. Twenty-one behavioral health agencies responded to the survey.

Survey questions were grouped based on the type of certification held by a behavioral health agency or types of services provided. Survey respondents were asked whether they currently hold a particular certification or provide a distinct type of service. If they answered "yes" they were directed to the applicable question/set of questions. If they answered "no" they were directed to the next certification/service type. Several questions were applicable to all agencies.

For purposes of the analysis, increased cost was defined as the costs to adhere to the proposed rule that are in addition to what an agency already expends, both up front and ongoing. One-time costs or initial cost estimates were defined as a cost that occurs only once.

Recurrent costs were defined as costs that occur each year on a continuous basis.

The probable costs of compliance to the proposed rule are presented by WAC section in SBEIS Table 2 below.

SBEIS Table 2. Probable costs of compliance to the proposed rule by WAC section.

WAC Section and Title	Probable One-Time Cost(s) (Range)	Probable Annual Recurrent Cost(s) (Range)
WAC 246-341-0110 Behavioral health—Available certifications.	Cost neutral or insignificant up to \$2,000	Cost neutral or insignificant up to \$2,000
WAC 246-341-0335 Agency licensure and certification—Denials, suspensions, revocations, and penalties.	Cost neutral or insignificant	Cost neutral or insignificant
WAC 246-341-0342 Agency licensure and certification—Off-site locations.	Cost neutral or insignificant up to \$1,000,000	Cost neutral or insignificant up to \$300,000
WAC 246-341-0420 Agency administration—Policies and procedures.	Cost neutral or insignificant up to \$10,000	Cost neutral or insignificant up to \$5,000
WAC 246-341-0515 Personnel—Agency staff requirements.	Cost neutral or insignificant	Cost neutral or insignificant
WAC 246-341-0640 Individual service record content.	Cost neutral or insignificant	Cost neutral or insignificant
NEW WAC 246-341-0660 Behavioral health information and assistance—Certification standards.	Cost neutral or insignificant	Cost neutral or insignificant
NEW WAC 246-341-0670 Crisis telephone support services—Service standards.	Cost neutral or insignificant up to \$400	Cost neutral or insignificant
WAC 246-341-0700 Behavioral health support services—Certification standards.	Cost neutral or insignificant	Cost neutral or insignificant up to \$70,000
WAC 246-341-0713 Psychiatric medication monitoring services—Service standards.	Cost neutral or insignificant up to \$2,000	Cost neutral or insignificant up to \$500
NEW WAC 246-341-0715 Crisis support services—Service standards.	Cost neutral or insignificant	Cost neutral or insignificant
WAC 246-341-0730 Clubhouses—Certification standards.	No costs were indicated	No costs were indicated
WAC 246-341-0820 Driving under the influence (DUI) substance use disorder assessment services—Service standards.	Cost neutral or insignificant up to \$500	Cost neutral or insignificant
NEW WAC 246-341-0901 Outpatient behavioral health crisis outreach, observation and intervention services—Certification standards	Cost neutral or insignificant up to \$200	Cost neutral or insignificant
NEW WAC 246-341-1105 Behavioral health residential and inpatient intervention, assessment, and treatment services—Certification standards.	Cost neutral or insignificant up to \$400	Cost neutral or insignificant
NEW WAC 246-341-1300 Applied behavior analysis mental health services—Certification standards.	The department does not anticipate costs for this proposed rule change.	The department does not anticipate costs for this proposed rule change.
All WAC Sections: Policies and Procedures.	Cost neutral or insignificant up to \$150,000 Median response: \$3,200	Cost neutral or insignificant up to \$10,000 Median response: \$0

The following is an analysis of whether the proposed rule may impose more-than-minor costs on businesses in the industry. Of the 21 behavioral health agencies that responded to the survey, 18 indicated that they are certified by the department to provide outpatient services and two indicated that they are certified to provide both outpa-

tient and residential services. The department was unable to ascertain the certification status of one survey respondent because they did not provide any identifying information. Since no survey respondents are certified solely for residential services, the department made the decision to use the minor cost threshold associated with outpatient services, and subsequently the lower minor cost threshold within the relevant NAICS codes of \$3,911.27.

This analysis captures the cost responses from 15 of the 21 respondents. Four respondents were excluded from the analysis because they did not provide any responses to the survey questions and the department cannot verify nor assume that they had a cost impact. One respondent was excluded from the analysis because they provided a cost estimate but indicated that they did not understand the question. One respondent was excluded from the analysis because although they provided cost estimates for several of the questions, their explanation of the costs indicated that they were incorrectly interpreting the proposed rule change.

For the purpose of this analysis, probable one-time costs include all costs that the business indicated were needed to comply with all of the proposed rule changes. Probable recurrent costs include all of the costs that the business indicated were needed to comply with all of the proposed rule changes. Probable first year costs are the one-time costs plus single year annual recurrent costs. An answer of "cost neutral or insignificant" was assigned a value of \$0 in calculating the median but reported out as cost neutral or insignificant.

One agency provided a qualitative response for the ceiling of probable recurrent costs (significant increase). Since the department was unable to assign a dollar amount to this response, it was excluded from the calculations for probable annual recurrent costs and for median annual recurrent costs in SBEIS Table 2 and SBEIS Table 3.

SBEIS Table 3. Probable cost per business to comply with the proposed rule.

	Probable One-Time Cost(s) (Range)	Probable Annual Recurrent Cost(s) (Range)	Probable First Year Cost(s)* (Range)
Cost per business to comply with the proposed rule	Cost neutral or insignificant up to \$150,000** Median response: \$1,600	Cost neutral or insignificant up to \$70,000** Median response: Cost neutral or insignificant	Cost neutral or insignificant up to \$220,000 Median response: \$3,050

* Probable first year costs are one-time costs plus one year of annual recurrent costs.

** One agency estimated a probable one-time cost of \$1,000,000 and a probable recurrent cost of \$300,000 for the proposed rule change pertaining to licensure of mobile units. No explanation of costs was provided, and since the proposed rule change is not requiring agencies to purchase and set up mobile units, but rather comply with the rules of having a mobile unit, these estimates were excluded from the analysis in the portions identifying the minor costs and the disproportionate impacts. Other one-time and recurrent costs provided by this agency were included in the analysis.

The department decided to analyze the data to show the median cost of compliance per business in SBEIS Table 3 in order to show the vast variability between responses. The department's analysis shows that the median cost of compliance with the proposed rule per business in the first year is \$3,050 (one-time cost-plus single year recurrent costs). The median cost of compliance per business is below the minor cost threshold of \$3,911.27. Less than half of respondents (47 percent) had a probable first year cost that was over the minor cost threshold.

Due to the fact that 47 percent of businesses surveyed reported cost impacts to comply with the proposed rule of more-than-minor cost threshold of \$3,911.27, the department determines that the proposed rule may impose more-than-minor costs on the industry.

The following is an analysis of 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. Of the 21 behavioral health agencies that responded to the survey, eight indicated that they are small businesses (50 or fewer employees) and 12 indicated that they are large businesses (51 or more employees). The department was unable to ascertain the status of one survey respondent, because they did not answer the question and did not provide any identifying information.

This analysis captures the cost responses of 14 of 21 respondents (six small businesses and eight large businesses). The same six businesses were excluded as from Section 4. One additional respondent was excluded because the department could not categorize them as either a small or large business.

The method used to calculate the median one-time and recurrent costs is the same as that described when identifying whether the proposed rule may impose more-than-minor costs on businesses in an industry. The method used to calculate probable first year costs is the same as described in Section 4. An answer of "cost neutral or insignificant" was assigned a value of \$0 in calculating the median but reported out as cost neutral or insignificant.

SBEIS Table 4. Cost of compliance to the proposed rule for small businesses and large businesses.

	Probable One-Time Cost(s) (Range)	Probable Annual Recurrent Cost(s) (Range)	Probable First Year* Cost(s) (Range)
Cost per small business to comply with the proposed rule	Cost neutral or insignificant up to \$10,000** Median response: \$1,150	Cost neutral or insignificant up to \$15,000** Median response: \$150	Cost neutral or insignificant up to \$25,000 Median response: \$1,300
Cost per large business to comply with the proposed rule	Cost neutral or insignificant up to \$150,000 Median response: \$9,500	Cost neutral or insignificant up to \$70,000 Median response: Cost neutral or insignificant	Cost neutral or insignificant up to \$220,000 Median response: \$12,000

* Probable first year costs are one-time costs plus one year of annual recurrent costs.

** One small business estimated a probable one-time cost of \$1,000,000 and a probable recurrent cost of \$300,000 for the rule change pertaining to licensure of mobile units. No explanation of costs was provided, and since the rule change is not requiring agencies to purchase and set up mobile units, but rather comply with the rules of having a mobile unit, these estimates were excluded from the analysis in Sections 4 and 5. Other one-time and recurrent costs provided by this agency were included in the analysis.

The department decided to analyze the data to show the median cost of compliance per business in SBEIS Table 4 in order to show the vast variability between responses. The department's analysis shows that the median cost of compliance with the proposed rule per small business in the first year is \$1,300 (one-time cost-plus single year recurrent costs). The median cost of compliance per small business is below the minor cost threshold of \$3,911.27.

The median cost of compliance with the proposed rule per large business in the first year is \$12,000 (one-time cost-plus single year recurrent costs). The median cost of compliance per large business is above the minor cost threshold of \$3,911.27.

One out of six (17 percent) small businesses that responded to the survey had a probable first year cost above the minor cost threshold. The highest probable cost for the first year of compliance for a small business was \$25,000. Two small businesses had probable first year costs that were neutral or insignificant. The three remaining small businesses had probable first year costs of \$1,000, \$1,600 and \$3,050, all below the minor cost threshold of \$3,911.27.

Six out of eight (75 percent) large businesses had a probable first year cost that was over the minor cost threshold. The highest

possible cost for the first year of compliance for a large business was \$220,000. One large business had a probable first year cost that was neutral or insignificant. The six remaining large businesses had probable first year costs of \$1,600, \$4,800, \$9,000, \$15,000, \$24,000 and \$28,000.

In line with the department's analysis, the department concludes that the proposed rule does not have a disproportionate impact on small businesses as compared to large businesses.

If the proposed rule has a disproportionate impact on small businesses, the following identifies the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, a clear explanation of why is provided. The proposed rule does not have a disproportionate impact on small businesses as compared to large businesses.

The following is a description of how small businesses were involved in the development of the proposed rule. Behavioral health agencies that are subscribed to the department's behavioral health agency GovDelivery listserv received invitations to participate in rule-making workshops and provided written feedback throughout the entirety of this Phase 2 project. Additionally, the department asked the health care authority and the Washington council of behavioral health to disseminate workshop invitations and information regarding this rules project to their listservs as well.

The following identifies the estimated number of jobs that will be created or lost as a result of compliance with the proposed rule. The department does not anticipate that compliance with the proposed rule will result in either jobs created or lost. The proposed rule changes either provide clarification on existing requirements or modify an administrative process with the intent of decreasing administrative burden or cost.

A copy of the statement may be obtained by contacting Julie Tomaro, P.O. Box 47843, Olympia, WA 98504, phone 360-236-2937, fax 360-236-2321, TTY 711, email Julie.tomaro@doh.wa.gov.

August 23, 2022
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3709.4

BEHAVIORAL HEALTH ((SERVICES))—PURPOSE AND SCOPE

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

WAC 246-341-0100 Behavioral health ((services))—Purpose and

scope. (1) This chapter establishes state minimum standards for licensed behavioral health agencies.

(2) This chapter does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW or facilities owned or operated by the department of veterans affairs or other agencies of the United States government.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0100, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0100, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0110 Behavioral health ((services))—Available cer-

tifications. (1) A behavioral health agency licensed by the department ~~((may become certified to provide one or more of the mental health, substance use disorder, and problem gambling and gambling disorder services listed below:~~

- ~~(1) Outpatient and recovery support:~~
- ~~(a) Individual mental health treatment services;~~
- ~~(b) Brief mental health intervention treatment services;~~
- ~~(c) Group mental health therapy services;~~
- ~~(d) Family therapy mental health services;~~
- ~~(e) Rehabilitative case management mental health services;~~
- ~~(f) Psychiatric medication management services;~~
- ~~(g) Medication monitoring services;~~
- ~~(h) Day support mental health services;~~
- ~~(i) Recovery support: Supported employment mental health services;~~
- ~~(j) Recovery support: Supported employment substance use disorder services;~~
- ~~(k) Recovery support: Supportive housing mental health services;~~
- ~~(l) Recovery support: Supportive housing substance use disorder services;~~
- ~~(m) Recovery support: Peer support mental health services;~~
- ~~(n) Recovery support: Peer support substance use disorder services;~~
- ~~(o) Recovery support: Mental health peer respite center;~~
- ~~(p) Recovery support: Applied behavior analysis (ABA) mental health services;~~
- ~~(q) Consumer-run recovery support: Clubhouse mental health services;~~
- ~~(r) Substance use disorder level one outpatient services;~~
- ~~(s) Substance use disorder level two intensive outpatient services;~~
- ~~(t) Substance use disorder assessment only services;~~

- ~~(u) Substance use disorder alcohol and drug information school services;~~
 - ~~(v) Substance use disorder information and crisis services;~~
 - ~~(w) Substance use disorder emergency service patrol services; and~~
 - ~~(x) Problem gambling and gambling disorder services.~~
 - ~~(2) Involuntary and court-ordered outpatient services:~~
 - ~~(a) Less restrictive alternative (LRA) or conditional release support behavioral health services;~~
 - ~~(b) Designated crisis responder (DCR) services;~~
 - ~~(c) Substance use disorder counseling services subject to RCW 46.61.5056; and~~
 - ~~(d) Driving under the influence (DUI) substance use disorder assessment services.~~
 - ~~(3) Crisis mental health services:~~
 - ~~(a) Crisis mental health telephone support services;~~
 - ~~(b) Crisis mental health outreach services; and~~
 - ~~(c) Crisis mental health stabilization services.~~
 - ~~(4) Opioid treatment program (OTP) services.~~
 - ~~(5) Withdrawal management, residential substance use disorder treatment, and mental health inpatient services:~~
 - ~~(a) Withdrawal management facility services:~~
 - ~~(i) Withdrawal management services — Adult;~~
 - ~~(ii) Withdrawal management services — Youth;~~
 - ~~(iii) Secure withdrawal management and stabilization services — Adult; and~~
 - ~~(iv) Secure withdrawal management and stabilization services — Youth.~~
 - ~~(b) Residential substance use disorder treatment services:~~
 - ~~(i) Intensive substance use disorder inpatient services;~~
 - ~~(ii) Low-intensity (recovery house) residential treatment services;~~
 - ~~(iii) Long-term treatment services; and~~
 - ~~(iv) Youth residential services.~~
 - ~~(c) Mental health inpatient services:~~
 - ~~(i) Evaluation and treatment services — Adult;~~
 - ~~(ii) Evaluation and treatment services — Youth;~~
 - ~~(iii) Intensive behavioral health treatment services;~~
 - ~~(iv) Child long-term inpatient program services;~~
 - ~~(v) Crisis stabilization unit services;~~
 - ~~(vi) Triage — Involuntary services;~~
 - ~~(vii) Triage — Voluntary services; and~~
 - ~~(viii) Competency evaluation and restoration treatment services))~~
- must hold one or more of the following certifications:
- (a) Behavioral health information and assistance;
 - (b) Behavioral health support;
 - (c) Mental health peer respite;
 - (d) Clubhouse;
 - (e) Behavioral health outpatient intervention, assessment and treatment;
 - (f) Behavioral health outpatient crisis, observation, and intervention;
 - (g) Designated crisis responder services;
 - (h) Opioid treatment program;
 - (i) Medically supported withdrawal management;
 - (j) Behavioral health residential or inpatient intervention, assessment and treatment;
 - (k) Involuntary behavioral health residential or inpatient;

- (l) Intensive behavioral health treatment;
- (m) Crisis stabilization unit and triage;
- (n) Competency restoration;
- (o) Problem gambling and gambling disorder; or
- (p) Applied behavior analysis.

(2) The type of certification(s) held by the agency determines which behavioral health services the agency is approved to provide.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0110, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0110, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0110, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES))—DEFINITIONS

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

WAC 246-341-0200 Behavioral health ((services))—Definitions.

The definitions in this section and RCW ((~~71.05.010~~)) 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Adult" means an individual ((~~eighteen~~)) 18 years of age or older. For purposes of the medicaid program, adult means an individual ((~~twenty-one~~)) 21 years of age or older.

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

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

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

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

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

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

~~((8))~~ (9) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

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

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

~~((9))~~ (10) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

~~((10))~~ (11) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific ~~((substance use disorder, mental health, and problem gambling and gambling disorder program-specific services))~~ types of behavioral health services included under the certification category.

~~((11))~~ (12) "Child," "minor," and "youth" mean:

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

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

~~((12))~~ "Clinical record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.)

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

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

(15) "Consent" means agreement given by an individual after being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the individual can reasonably be expected to understand. Consent can be ob-

tained from an individual's parent or legal representative, when applicable.

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

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

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

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

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

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

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

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

(23) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and gambling disorder treatment programs under RCW 43.20A.890.

~~((22))~~ (24) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A (~~or 18.57A~~) RCW.

~~((23))~~ (25) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

~~((24))~~ (26) "Mental health professional" or "MHP" means a person who meets the qualifications in WAC 246-341-0515(~~(+5))~~ (4).

~~((25))~~ (27) "Peer counselor" means the same as defined in WAC 182-538D-0200.

~~((26))~~ (28) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide sub-

stance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

~~(29)~~ (29) "Problem gambling and gambling disorder" means one or more of the following disorders:

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

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

~~((27))~~ (30) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment or support services, progress in recovery, and progress toward intended outcomes.

~~((28))~~ (31) "Secretary" means the secretary of the department of health.

~~((29))~~ (32) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

~~((30))~~ (33) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

~~((31))~~ (34) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

~~((32))~~ (35) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

~~((33))~~ (36) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

~~((34))~~ (37) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0200, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0200, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0200, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES))—AGENCY LICENSURE AND CERTIFICATION

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

WAC 246-341-0300 Agency licensure and certification—General information. The department licenses behavioral health agencies and certifies them to provide behavioral health treatment services. To obtain and maintain licensure and certification, an applicant (~~must~~) shall meet the requirements of this chapter, applicable local and state rules, and applicable state and federal statutes and regulations. (~~In addition, the applicant must meet the applicable specific service requirements for all behavioral health treatment services certified by the department.~~)

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

~~((1))~~ (2) Initial licensure of a behavioral health agency - Main site. The applicant shall submit a licensing application for a main site to the department that is signed by the agency's designated official. The application must include the following:

(a) The physical address of the agency;

(b) (~~A list of the specific services for which the applicant is seeking certification;~~) The type of certification(s) the agency is requesting, including the behavioral health services the agency will provide under the type of certification(s);

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

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

(ii) Not a personal residence; and

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

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

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

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

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

~~((2))~~ (3) The department may issue a single agency license when the applicant identifies behavioral health treatment services will be provided in multiple buildings and either:

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

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

~~((3))~~ (4) Initial licensure of a behavioral health agency - Branch site. To add a branch site, an existing behavioral health agency shall meet the application requirements in subsection (1)(a) through (c) of this section and submit to the department:

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

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

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

~~((4))~~ (5) License renewal. ~~((a))~~ To renew a main site or branch site license and certification, an agency shall submit to the department a renewal request signed by the agency's designated official. The renewal request must:

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

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

~~((b))~~ ~~The department shall renew an agency's main site or branch site license if all the requirements for renewal are met and the renewal request is received before the expiration date of the agency's current license.~~

~~(5))~~ (6) Amending a license. A license amendment is required when there is a change in the administrator, when adding or removing a certification or behavioral health service, or when closing a location. To amend a license the agency shall submit to the department a licensing application requesting the amendment that is signed by the agency's designated official. The application ~~((process))~~ shall include the following requirements as applicable to the amendment being requested:

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

(b) Adding a ~~((service))~~ certification. The agency must obtain certification before providing the behavioral health services listed under the certification. The application must include:

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

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

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

(c) Adding a behavioral health service. The agency may add a behavioral health service that is included under its existing certifica-

tion by submitting the notification of the added service to the department within 30 days of beginning the service. The notification must include:

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

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

(d) Canceling a behavioral health service or certification.

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

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

~~((d))~~ (e) Closing a location.

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

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

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

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

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

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

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

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

~~((6))~~ (7) Change of ownership.

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

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

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

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

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

(i) An initial license application from the new owner in accordance with subsection (1) of this section. The new agency must receive a new license under the new ownership before providing any behavioral health service; and

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

~~((7))~~ (8) Change in location. A licensed behavioral health agency must receive a new license under the new location's address before providing any behavioral health service at that address. The agency shall submit to the department a licensing application request-

ing a change in location that is signed by the agency's designated official. The application must include:

- (a) The new address;
- (b) A statement assuring the location meets the Americans with Disabilities Act (ADA) standards and that any agency-operated facility where behavioral health services will be provided is:
 - (i) Suitable for the purposes intended, including having adequate space for private personal consultation with an individual and (~~clinical~~) individual service record storage that adheres to confidentiality requirements;
 - (ii) Not a personal residence; and
 - (iii) Approved as meeting all local and state building and safety requirements, as applicable.

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

~~((8))~~ (9) Granting a license. A new or amended license or (~~service-specific~~) certification will not be granted to an agency until:

- (a) All of the applicable notification and application requirements of this section are met; and
- (b) The department has reviewed and approved the policies and procedures for initial licensure or addition of new (~~services~~) certifications that demonstrate that the agency will operate in compliance with the licensure and (~~service-specific~~) certification standards.

~~((9))~~ (10) Effective date. An agency's license and any behavioral health services certification is effective for up to (~~twelve~~) 12 months from the effective date, subject to the agency maintaining compliance with the minimum license and certification standards in this chapter.

~~((10))~~ (11) After receiving the license. The agency shall post the department-issued license and certification(s) in a conspicuous place on the agency's premises, and, if applicable, on the agency's branch site premises.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0300, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0300, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0310 Agency licensure and certification—Deeming.

(1) The department shall deem an agency or branch site as meeting state minimum standards for licensing and certification described in this chapter as a result of accreditation by a national accreditation organization that is recognized by and has a current agreement with the department.

(2) To implement deemed status when opening a new main site agency, adding a new type of certification or behavioral health service to a main site agency, or adding a new type of certification or behavio-

ral health service to a branch site location that is not currently offered at the main site agency, an agency must:

- (a) Submit proof of accreditation for the services provided by the agency to the department; and
 - (b) Complete a department initial on-site review.
- (3) To implement deemed status when opening a new branch site location that is providing the same services as a deemed main site agency, or a certification or behavioral health service is being added to a branch site location that is a deemed service at a main site location, an agency must submit proof of accreditation for the services provided by the agency to the department.
- (4) The department will not conduct an on-site review as part of the deeming process for tribal behavioral health agencies who seek licensure pursuant to WAC 246-341-0310.
- (5) Deeming will be in accordance with the established written agreement between the national accreditation organization and the department.
- (6) Specific licensing and certification requirements of any:
- (a) State rule may only be waived through a deeming process consistent with the established written agreement between the recognized behavioral health accrediting body and the department.
 - (b) State or federal statute or regulation will not be waived through a deeming process.
- (7) A deemed main site agency or branch site must submit to the department a copy of any relevant reports such as audits, findings, or documentation related to accreditation status.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0310, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0310, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0320 Agency licensure and certification—On-site reviews and plans of correction. Each agency is subject to an initial on-site review and each agency that is not deemed in accordance with WAC 246-341-0310 is subject to routine, ongoing on-site reviews to determine if the agency is in compliance with the minimum licensure and certification standards.

- (1) (~~(A department review team representative(s) conducts)~~) The agency shall participate in an entrance conference ((with the agency)) conducted by the department review team representative(s) and an on-site review ((that)). This may include:
- (a) A review of:
 - (i) Agency policies and procedures;
 - (ii) Personnel records;
 - (iii) (~~(Clinical)~~) Individual service records;
 - (iv) Facility accessibility;
 - (v) The agency's internal quality management plan, process, or both, that demonstrates how the agency evaluates program effectiveness and individual participant satisfaction; and

(vi) Any other information, including the criteria in WAC 246-341-0335 (1)(b), that the department determines to be necessary to confirm compliance with the minimum standards of this chapter; and

(b) Interviews with:

(i) Individuals served by the agency; and

(ii) Agency staff members.

(2) The ~~((department review team representative(s) concludes an on-site review with))~~ agency shall participate in an exit conference ((that)) with the department review team representative(s) at the conclusion of the on-site review which includes a discussion of findings.

(3) The department will send the agency a statement of deficiencies report that will include instructions and time frames for submission of a plan of correction.

(4) The ~~((department requires the))~~ agency ~~((to))~~ shall correct the deficiencies listed on the plan of correction:

(a) By the negotiated time frame agreed upon by the agency and the department review team representative; or

(b) Immediately if the department determines health and safety concerns require immediate corrective action.

(5) On-site reviews of branch sites will occur at the same time as the main site review and take place at the main site location so long as the department can access the following either electronically or by hard copies brought to the main site agency location:

(a) Personnel records of employees hired since the previous review;

(b) A sample of individual ~~((clinical))~~ service records that reflect the services provided at each branch site location; and

(c) Policies and procedures that are unique to the services provided at the branch site locations.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0320, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0320, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0335 Agency licensure and certification—Denials, suspensions, revocations, and penalties. (1) The department will deny issuing or renewing an agency's license or ~~((specific service))~~ certification(s), place an agency on probation, or suspend, or revoke an agency's license ~~((or specific service))~~, certification, or ability to provide specific behavioral health service(s) for any of the following reasons:

(a) The agency fails to meet requirements in this chapter.

(b) The agency fails to cooperate or disrupts department representatives during an on-site review or complaint investigation.

(c) The agency fails to assist the department in conducting individual interviews with either staff members or individuals receiving services, or both.

(d) The agency owner or governing person of a nonprofit corporation or agency administrator:

(i) Had a license or (~~(specific service)~~) certification issued by the department subsequently denied, suspended, revoked, or any other sanction placed upon a license;

(ii) Was convicted of child abuse or adjudicated as a perpetrator of a founded child protective services report;

(iii) Was convicted of abuse of a vulnerable adult or adjudicated as a perpetrator of substantiated abuse of a vulnerable adult. A vulnerable adult means the same as defined in (~~chapter 74.34~~) RCW 74.34.020;

(iv) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(v) Committed, permitted, aided or abetted the committing of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(vi) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of an individual or displayed acts of discrimination;

(vii) Misappropriated patient (individual) property or resources;

(viii) Failed to meet financial obligations or contracted service commitments that affect care of individuals;

(ix) Has a history of noncompliance with state or federal rules in an agency with which the applicant has been affiliated;

(x) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:

(A) The submitted application or materials attached; or

(B) Any matter under department investigation.

(xi) Refused to allow the department access to view records, files, books, or portions of the premises relating to operation of the program;

(xii) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;

(xiii) Is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds (this also applies to any person or business entity named in the agency's application for licensure or certification);

(xiv) Does not meet background check requirements;

(xv) Fails to provide satisfactory application materials; or

(xvi) Advertises the agency as certified when licensing or certification has not been granted, or has been revoked or canceled.

(e) The department determines there is imminent risk to health and safety.

(f) The agency's licensure or (~~(specific service)~~) certification is in probationary status and the agency fails to correct the noted health and safety deficiencies within the agreed-upon time frames.

(2) The department may deny issuing or renewing an agency's license or (~~(specific service)~~) certification(s), place an agency on probation, or suspend or revoke an agency's license (~~(or specific service)~~), certification(s), or ability to provide specific behavioral health service(s) for any of the following reasons:

(a) The agency voluntarily cancels licensure or certification(s).

(b) The agency fails to pay the required license or certification fees.

(c) The agency stops providing the services for which the agency is certified.

(d) The agency fails to notify the department before changing ownership.

(e) The agency fails to notify the department before relocating its licensed location.

(3) If the department denies, suspends, revokes, or modifies the agency's license (~~(or specific service)~~), certification, or ability to provide specific behavioral health service(s), the department will send a written notice including the reason(s) for the decision and the agency's right to appeal a department decision according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

(4) The department may summarily suspend an agency's license (~~(or specific service)~~), certification(s) (of a), or ability to provide specific behavioral health service(s) when an immediate danger to the public health, safety, or welfare requires emergency action.

(5) If an agency fails to comply with the requirements of this chapter, the department may:

(a) Assess fees to cover costs of added licensing and (~~(service-specific)~~) certification activities, including when the department determines a corrective action is required due to a complaint or incident investigation; and

(b) (~~(Stop referral(s) of an individual who is a service recipient of either a state or federally funded service or both; and~~

~~(e-))~~ Notify the health care authority and the managed care organization of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or (~~(service-specific)~~) certification(s).

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0335, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0335, filed 4/16/19, effective 5/17/19.]

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

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

(2) For the purposes of this section:

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

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

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

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

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

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

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

(iii) The service(s) provided; and

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

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

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

~~((2))~~ (4) In addition to meeting the requirements in subsection ~~((1))~~ (3) of this section, an agency providing services to an individual in their place of residence or services in a public setting that is not an established off-site location where services are provided on a regularly scheduled ongoing basis must:

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

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

~~((3) For the purposes of this section:~~

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

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

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

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

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

(b) Comply with 21 C.F.R. Parts 1300, 1301, and 1304.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0342, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0342, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0365 Agency licensure and certification—Fee requirements. (1) ~~((Payment of licensing and specific service certification fees required under this chapter must be included))~~ An agency must include payment of licensing and certification fees required under this chapter with the initial application, renewal application, or with requests for other services.

(2) ~~((Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.~~

~~(3))~~ The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

~~((4) Fees))~~ (3) The department will not ~~((be refunded))~~ refund fees when licensure or certification is denied, revoked, or suspended.

~~((5) The department charges))~~ (4) The applicant shall submit the following fees for approved substance use disorder treatment programs:

((Application fees for agency certification for approved substance use disorder treatment programs))	
New agency application	\$1,000
Branch agency application	\$500
Application to add one or more ((services)) <u>certifications</u>	\$200
Application to change ownership	\$500
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
Withdrawal management and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 246-341-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 246-341-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

~~((6) Agencies))~~ (5) An agency providing substance use disorder treatment programs must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

(a) The number of licensed withdrawal management and residential beds; and

(b) The agency provider's national accreditation status.

~~((7) The department charges))~~ (6) The applicant shall submit the following fees for approved mental health treatment programs:

((Initial licensing application fee for mental health treatment programs))	
<u>Initial licensing application fee</u>	\$1,000 ((initial licensing fee))
Initial and annual licensing fees for agencies not deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
Annual licensing fees for deemed agencies	
<u>Annual licensing fee for deemed agencies licensed by the department</u>	\$500 ((annual licensing fee))
Complaint/critical incident investigation fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

~~((8))~~ (7) Agencies providing nonresidential mental health services or inpatient or residential mental health services in accordance with WAC 246-341-1118 must report the number of annual service hours provided.

(a) Existing licensed agencies must compute the annual service hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first ~~((twelve))~~ 12 months of operation.

~~((9))~~ (8) Agencies providing mental health peer respite services, intensive behavioral health treatment services, evaluation and treatment services, and competency evaluation and restoration treatment services must pay the following certification fees:

(a) Ninety dollars initial certification fee, per bed; and

(b) Ninety dollars annual certification fee, per bed.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0365, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0365, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0365, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-0370 Agency licensure and certification—Appealing a department decision. An agency may appeal a decision made by the department regarding agency licensure (~~((e))~~), certification (~~((e-f-a))~~), or ability to provide a specific behavioral health service(s) according to WAC 246-341-0335.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0370, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH (~~((SERVICES))~~)—AGENCY ADMINISTRATION

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

WAC 246-341-0420 Agency policies and procedures. Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain policies and procedures that address all of the applicable licensing and certification requirements of this chapter including administrative and personnel policies and procedures. Administrative policies and procedures must demonstrate the following, as applicable:

(1) Ownership. Documentation of the agency's governing body, including a description of membership and authorities, and documentation of the agency's:

(a) Articles and certificate of incorporation and bylaws if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership; or

(c) Sole proprietorship if one person is the owner.

(2) ~~((Licensure. A copy of the agency's master business license that authorizes the organization to do business in Washington state that lists all addresses where the entity performs services.~~

~~((3))~~ (3) Organizational description. An organizational description detailing all positions and associated licensure or certification, updated as needed.

~~((4))~~ (3) Agency staffing. Documentation that shows the agency has adequate staffing to provide treatment in accordance with regulations relevant to their specialty or specialties and registration, certification, licensing, and trainee or volunteer status.

~~((5))~~ (4) Interpreter services for individuals with limited-English proficiency (LEP) and individuals who have sensory disabilities. Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities. This means:

(a) Certified interpreters or other interpreter services must be available for individuals with LEP and individuals who have sensory disabilities; or

(b) The agency must have the ability to effectively provide, coordinate or refer individuals in these populations for appropriate assessment or treatment.

~~((6))~~ (5) Reasonable access for individuals with disabilities. A description of how reasonable accommodations will be provided to individuals with disabilities.

~~((7))~~ (6) Nondiscrimination. A description of how the agency complies with all state and federal nondiscrimination laws, rules, and plans.

~~((8))~~ (7) State and federal rules on confidentiality. A description of how the agency implements state and federal rules on individuals' confidentiality consistent with the service or services being provided.

~~((9))~~ (8) Reporting and documentation of suspected abuse, neglect, or exploitation. A description how the agency directs staff to report and document suspected abuse, neglect, or exploitation of a child or vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

~~((10))~~ (9) Reporting of impaired practitioners in accordance with chapters 18.130 RCW and 246-16 WAC.

~~((11))~~ (10) Protection of youth. Documentation of how the agency addresses compliance with service-specific rules and the protection of youth participating in group or residential treatment with adults and how the agency will follow the requirements of chapter 71.34 RCW when an adolescent seeks treatment for themselves and for family initiated treatment of an adolescent.

~~((12))~~ (11) Completing and submitting reports. A description of how the agency directs staff to complete and submit in a timely manner, all reports required by entities such as the courts, department of corrections, department of licensing, the department of social and health services, the health care authority, and the department of health.

~~((13))~~ (12) Reporting critical incidents. A description of how the agency directs staff to report to the department within ~~((forty-eight))~~ 48 hours any critical incident that occurs involving an individual, and actions taken as a result of the incident. A critical incident is a serious or undesirable outcome that occurs in the agency including:

- (a) Allegations of abuse, neglect, or exploitation;
- (b) Death, including death by suicide;
- (c) Injuries resulting in admission to a hospital as an inpatient; or
- (d) Outbreak of communicable disease within the agency.

~~((14))~~ (13) A smoking policy. Documentation that a smoking policy consistent with chapter 70.160 RCW, and in compliance with applicable county ordinances, is in effect.

~~((15))~~ (14) Evacuation plan. Documentation that the residential or inpatient agency has an evacuation plan consistent with chapter 246-320, 246-322, 246-324, or 246-337 WAC. For a nonresidential agency, documentation of an evacuation plan for use in the event of a disaster or emergency that addresses:

- (a) Different types of disasters or emergencies;
- (b) Placement of posters showing routes of exit;
- (c) The need to mention evacuation routes at public meetings;

- (d) Communication methods for individuals, staff, and visitors, including persons with a visual or hearing impairment or limitation;
- (e) Evacuation of mobility impaired individuals; and
- (f) Evacuation of children if child care is offered.

~~((16))~~ (15) Individual rights. A description of how the agency has individual participation rights and policies consistent with WAC 246-341-0600.

~~((17))~~ (16) Individual complaints. A description of how the agency addresses an individual's right to report an alleged violation of chapter 70.41, 71.05, 71.12, 71.24, or 71.34 RCW, and this chapter consistent with WAC 246-341-0605~~((7))~~.

~~((18))~~ (17) Personnel policies and procedures must address the following:

(a) Background checks and disclosure statements. Identification of how the agency conducts Washington state background checks and obtains disclosure statements on each agency employee with unsupervised access to individuals receiving services, consistent with RCW 43.43.830 through 43.43.842.

(b) Drug-free workplace. Identification of how the agency provides for a drug-free workplace that includes:

- (i) Agency program standards of prohibited conduct; and
- (ii) Actions to be taken in the event a staff member misuses alcohol or other drugs, including referral to a department-approved impaired practitioner or voluntary substance use monitoring program.

(c) Supervision. Identification of how supervision is provided to assist clinical and nonclinical staff and volunteers to increase their skills and improve quality of services to individuals and families.

(d) Staff training. A description of how the agency provides training initial orientation and annual training thereafter in accordance with WAC 246-341-0510.

(e) Mental health advanced directives. A description of how the agency will comply with the mental health advanced directive requirements in chapter 71.32 RCW.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0420, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0420, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0425 Agency administration—Individual ~~((clinical))~~ service record system. Each behavioral health agency must:

- (1) Maintain a comprehensive ~~((clinical))~~ individual service record system that includes policies and procedures that protect an individual's personal health information;
- (2) Ensure that the individual's personal health information is shared or released only in compliance with applicable state and federal law;
- (3) If maintaining electronic individual ~~((clinical))~~ service records:

- (a) Provide secure, limited access through means that prevent modification or deletion after initial preparation;
- (b) Provide for a backup of records in the event of equipment, media, or human error;
- (c) Provide for protection from unauthorized access, including network and internet access;
- (d) Provide that each entry made in an individual's ~~((clinical))~~ individual service record(~~(s)~~) clearly identifies the author and who approved the entry, if applicable; and
- (e) Prohibit agency employees from using another employee's credentials to access, author, modify, or delete an entry from an individual's ~~((clinical))~~ individual service record;
- (4) Retain an individual's ~~((clinical))~~ individual service record, including an electronic record, for a minimum of six years after the most recent discharge or transfer of any individual;
- (5) Retain a youth's or child's individual ~~((clinical))~~ service record, including an electronic record, for at least six years after the most recent discharge, or until the youth's or child's ~~((twenty-first))~~ 21st birthday, whichever is longer; ~~((and))~~
- (6) Ensure secure storage of active or closed confidential records;
- (7) When providing access to individual service records to an individual, the agency must allow appropriate time and privacy for the review and have a clinical staff member available to answer questions;
- (8) If the agency maintains electronic health records, the agency must make the records available in hard copy form;
- (9) The agency must allow the department access to individual service records; and
- (10) When an individual receiving mental health services is under the supervision of the department of corrections (DOC), the agency must make information available to DOC, in accordance with RCW 71.05.445. The information released does not require the consent of the individual.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0425, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0425, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES))—PERSONNEL

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

WAC 246-341-0510 Personnel—Agency record requirements.

~~((Each))~~ A behavioral health agency must maintain a personnel record for each person employed by the agency.

- (1) The personnel record must contain all of the following:
- (a) A signed position description.
 - (b) A signed and dated commitment to maintain patient (individual) confidentiality in accordance with state and federal confidentiality requirements.
 - (c) A record of an orientation to the agency within ((ninety)) 90 days of hire that includes all of the following:
 - (i) An overview of the agency's policies and procedures.
 - (ii) Staff ethical standards and conduct, including reporting of unprofessional conduct to appropriate authorities.
 - (iii) The process for resolving client concerns.
 - (iv) Cultural competency.
 - (v) Violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.
 - (vi) If providing substance use disorder services, prevention and control of communicable disease, bloodborne pathogens, and tuberculosis.
 - (d) A record of annual training that includes:
 - (i) Cultural competency; and
 - (ii) If providing substance use disorder services, prevention and control of communicable disease, bloodborne pathogens, and tuberculosis.
 - (e) A record of violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; annually for employees working directly with clients receiving mental health services per RCW 71.05.720 or according to the agency's workplace violence plan required per RCW 49.19.020.
 - (f) A copy of the staff member's valid current credential issued by the department if they provide clinical services.
- (2) Staff members who have received services from the agency must have personnel records that:
- (a) Are separate from ((clinical)) individual service records; and
 - (b) Have no indication of current or previous service recipient status, unless the information is shared voluntarily for the purposes of employment as a certified peer counselor.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0510, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0510, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0515 Personnel—Agency staff requirements. Each behavioral health agency must ensure that all of the following staff requirements are met:

- (1) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.
- (2) All staff providing clinical services receive clinical supervision((÷)).

(3) (~~All staff providing clinical mental health services have access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner, or psychologist who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.~~

~~(4))~~ An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every ~~((sixteen))~~ 16 individuals during group counseling or therapy sessions.

~~((5))~~ (4) A mental health professional is:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or

(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:

(i) Holds a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;

(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(iii) Who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.

~~((6))~~ (5) An agency providing problem gambling and gambling disorder treatment services must ensure staffing in accordance with WAC ~~((246-341-0754))~~ 246-341-1200.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0515, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0515, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES—CLINICAL))—GENERAL REQUIREMENTS

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

WAC 246-341-0600 ((Clinical)) Individual rights. (1) Each behavioral health agency must protect and promote individual participant rights applicable to the services the agency is certified to provide in compliance with this chapter, and chapters 70.41, 71.05, 71.12, 71.24, and 71.34 RCW, as applicable.

(2) Each agency must develop a statement of individual participant rights applicable to the services the agency is certified to provide, to ensure an individual's rights are protected in compliance with chapters 70.41, 71.05, 71.12, 71.24, and 71.34 RCW, as applicable. To the extent that the rights set out in those chapters do not specifically address the rights in this subsection or are not applicable to all of the agency's services, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements.

"You have the right to:"

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. Individual participants have the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited-English proficiency, and cultural differences;

(d) Be treated with respect, dignity and privacy, except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises or to address risk of harm to the individual or others. "Reasonable" is defined as minimally invasive searches to detect contraband or invasive searches only upon the initial intake process or if there is reasonable suspicion of possession of contraband or the presence of other risk that could be used to cause harm to self or others;

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality regulations;

(h) Participate in the development of your individual service plan and receive a copy of the plan if desired;

(i) Make a mental health advance directive consistent with RCW 71.32.150;

(j) Review your ~~((clinical))~~ individual service record in the presence of the administrator or designee and be given an opportunity to request amendments or corrections; and

~~((j))~~ (k) Submit a report to the department when you feel the agency has violated your rights or a WAC requirement regulating behavioral health agencies.

(3) Each agency must ensure the applicable individual participant rights described in subsections (1) and (2) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Available in alternative formats for individuals who are visually impaired;

(c) Translated to the most commonly used languages in the agency's service area;

(d) Posted in public areas; and

(e) Available to any participant upon request.

(4) At the time of admission and upon client request, the agency must provide each client with information on how to file a report to the department if they feel their rights or requirements of this chapter have been violated.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0600, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0600, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0605 Complaint process. (1) Any person may submit a report to the department of an alleged violation of licensing and certification laws and rules.

(2) Health care professionals credentialed by the department (~~must~~) shall comply with the mandatory reporting requirements in chapters 18.130 RCW and 246-16 WAC.

(3) If the department determines a report should be investigated, the report becomes a complaint. If the department conducts a complaint investigation, behavioral health agency representatives must cooperate to allow department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate agency records including, but not limited to:

(i) An individual's (~~clinical~~) individual service record and personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by the department to determine compliance and to resolve the complaint; and

(c) Conduct individual interviews with staff members and individuals receiving services.

(4) An agency or agency provider must not retaliate against any:

(a) Individual or individual's representative for making a report with the department or being interviewed by the department about a complaint;

(b) ~~(A)~~ Witness involved in the complaint issue; or

(c) ~~(An)~~ Employee of the agency.

(5) The department may assess a fine under RCW (~~43.70.250~~) 43.70.095, or deny, suspend, or modify a license or certification under RCW 43.70.115, if:

(a) Any allegation within the complaint is substantiated; or

(b) The (~~department's finding~~) department finds that the individual or individual's representative, a witness, or employee of the agency experienced an act of retaliation by the agency as described in subsection (4) of this section during or after a complaint investigation.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0605, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0605, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0640 ((Clinical)) Individual service record content.

((Each)) A behavioral health agency is responsible for the components and documentation in an individual's ((clinical)) individual service record content unless specified otherwise in ((specific service)) certification or individual service requirements.

(1) The ((clinical)) individual service record must include:

(a) Documentation the individual received a copy of counselor disclosure requirements as required for the counselor's credential.

(b) Identifying information.

(c) An assessment which is an age-appropriate, strengths-based psychosocial assessment that considers current needs and the individual's relevant behavioral and physical health history according to best practices, completed by a person appropriately credentialed or qualified to provide the type of assessment pertaining to the service(s) being sought, which includes:

(i) Presenting issue(s);

(ii) An assessment of any risk of harm to self and others, including suicide, homicide, and a history of self-harm and, if the assessment indicates there is such a risk, a referral for provision of emergency/crisis services;

(iii) Treatment recommendations or recommendations for additional program-specific assessment; ((and))

(iv) A diagnostic assessment statement, including sufficient information to determine a diagnosis supported by the current and applicable *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, or *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood (DC:0-5)*;

(v) A placement decision, using ASAM criteria dimensions, when the assessment indicates the individual is in need of substance use disorder services.

(d) Individual service plan that:

(i) Is completed or approved by a person appropriately credentialed or qualified to provide mental health, substance use, co-occurring, or problem gambling disorder services;

(ii) Addresses issues identified in the assessment and by the individual or, if applicable, the individual's parent(s) or legal representative;

(iii) Contains measurable goals or objectives and interventions;

(iv) Must be mutually agreed upon and updated to address changes in identified needs and achievement of goals or at the request of the individual or, if applicable, the individual's parent or legal representative;

(v) Must be in a terminology that is understandable to the individuals and the individual's family or legal representative, if applicable.

(e) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative.

(f) Progress and group notes including the date, time, duration, participant's name, response to interventions or clinically significant behaviors during the group session, and a brief summary of the individual or group session and the name and credential of the staff member who provided it.

(g) If treatment is for a substance use disorder, documentation that ASAM criteria was used for admission, continued services, referral, and discharge planning and decisions.

(h) Discharge information as follows:

(i) A discharge statement if the individual left without notice; or

(ii) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including:

(A) The date of discharge;

(B) Continuing care plan; and

(C) If applicable, current prescribed medication.

(2) When the following situations apply, the ~~((clinical))~~ individual service record must include:

(a) Documentation of confidential information that has been released without the consent of the individual under:

(i) RCW 70.02.050;

(ii) The Health Insurance Portability and Accountability Act (HIPAA); ~~((and))~~

(iii) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services; and

(iv) 42 C.F.R. Part 2.

(b) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred.

(c) If treatment is court-ordered, a copy of the order.

(d) Medication records.

(e) Laboratory reports.

(f) Properly completed authorizations for release of information.

(g) Documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider with the individual's permission.

(h) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of health, and the date the report was submitted.

(i) Documentation of coordination with any systems or organizations the individual identifies as being relevant to treatment, with the individual's consent or if applicable, the consent of the individual's parent or legal representation.

(j) A crisis plan, if one has been developed.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0640, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0640, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0650 ((Clinical—))Access to ((clinical)) individual service records. (1) Each behavioral health agency must only provide access to ((clinical)) individual service records in compliance with applicable state and federal statutes and regulations.

(2) When providing access to ((clinical)) individual service records to an individual, the agency must allow appropriate time and privacy for the review and have a clinical staff member available to answer questions.

(3) If the agency maintains electronic ((clinical)) individual service records, the agency must make the records available in hard-copy form.

(4) The agency must allow the department access to individual ((clinical)) service records.

(5) When an individual receiving mental health services is under the supervision of the department of corrections (DOC), the agency must make information available to DOC, in accordance with RCW 71.05.445. The information released does not require the consent of the individual.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0650, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0650, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH INFORMATION AND ASSISTANCE SERVICES

NEW SECTION

WAC 246-341-0660 Behavioral health information and assistance—Certification standards. (1) Agencies certified for behavioral health information and assistance services provide information and assistance services that are considered nontreatment behavioral health services that support an individual who has a need for interventions related to behavioral health. Behavioral health information and assistance services under this certification include services such as:

(a) Crisis telephone support in accordance with the service standards in WAC 246-341-0670; and

(b) Emergency service patrol in accordance with the service standards in WAC 246-341-0680.

(2) Agencies providing information and assistance services are not required to meet the requirements under WAC 246-341-0640.

(3) Agencies providing information and assistance services must maintain and provide a list of resources, including self-help groups,

behavioral health services referral options, legal, employment, education, interpreter, and social and health services that can be used by staff members to refer an individual to appropriate services.

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NEW SECTION

WAC 246-341-0670 Crisis telephone support services—Service standards. Crisis telephone support services are services provided as a means of first contact for an individual in crisis or need of assistance. These services may include de-escalation and referral.

(1) A behavioral health agency providing crisis telephone support services must:

(a) Have services available 24 hours per day, seven days per week;

(b) Assure communication and coordination with the individual's mental health or substance use treatment provider, if indicated and appropriate;

(c) Remain on the phone with an individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;

(d) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder; and

(e) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member to unsupervised duties.

(2) Documentation of a crisis telephone support service must include the following:

(a) A brief summary of each service encounter, including the date, time, and duration of the encounter;

(b) The names of the participants;

(c) A follow-up plan or disposition, including any referrals for services, including emergency medical services;

(d) Whether an individual has a crisis plan and any request to obtain the crisis plan; and

(e) The name and credential, if applicable, of the staff person providing the service.

(3) A behavioral health agency providing crisis telephone services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available or on staff 24 hours a day, seven days a week.

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NEW SECTION

WAC 246-341-0680 Emergency service patrol—Service standards. Emergency service patrol services provide transport assistance to an intoxicated individual in a public place when a request has been re-

ceived from police, merchants, or other persons. A behavioral health agency providing emergency service patrol services must:

- (1) Ensure the staff member providing the service:
 - (a) Has proof of a valid Washington state driver's license;
 - (b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training; and
 - (c) Has completed 40 hours of training in substance use disorder crisis intervention techniques and alcoholism and substance use disorder, to improve skills in handling crisis situations.
- (2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place;
- (3) Patrol assigned areas and give assistance to an individual intoxicated in a public place;
- (4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention;
- (5) Transport the individual to their home or shelter, or to a substance use disorder treatment program if the individual is intoxicated, but subdued and willing to be transported;
- (6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is incapacitated, unconscious, or has threatened or inflicted harm on another person;
- (7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody; and
- (8) Maintain a log, including:
 - (a) The date, time, and origin of each call received for assistance;
 - (b) The time of arrival at the scene;
 - (c) The location of the individual at the time of the assistance;
 - (d) The name of the individual transported;
 - (e) The results of the preliminary screening;
 - (f) The destination and address of the transport and time of arrival; and
 - (g) In case of nonpickup of a person, documentation of why the pickup did not occur.

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((OUTPATIENT AND RECOVERY)) CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH SUPPORT SERVICES

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

WAC 246-341-0700 ~~((Outpatient and recovery)) Behavioral health support services—((General)) Certification standards.~~ ((Outpatient behavioral health services and recovery support services are intended

~~to improve or reduce symptoms and help facilitate resolution of situational disturbances for individuals in the areas of relationships, employment, and community integration.~~

~~(1) Outpatient services include the certifications described in WAC 246-341-0702 through 246-341-0754.~~

~~(2) Recovery support services include the certifications described in WAC 246-341-0720 through 246-341-0730.)~~ (1) Agencies certified for behavioral health support provide services to promote socialization, recovery, self-advocacy, development of natural supports, and maintenance of community living skills for individuals with a behavioral health diagnosis. Behavioral health support services may be provided in community, outpatient, residential and inpatient settings. Behavioral health support services under this certification include services such as:

(a) Psychiatric medication monitoring in accordance with the service standards in WAC 246-341-0713;

(b) Crisis support in accordance with the service standards in WAC 246-341-0715;

(c) Peer support;

(d) Rehabilitative case management;

(e) Day support;

(f) Supported employment in accordance with the service standards in WAC 246-341-0720; and

(g) Supportive housing in accordance with the service standards in WAC 246-341-0722.

(2) An agency certified to provide behavioral health support services is not required to meet the requirements in WAC 246-341-0640, but must instead meet the requirements in subsection (3) of this section.

(3) An agency providing any behavioral health support service must:

(a) Conduct a needs assessment or screening process that determines the appropriateness of the support service(s) based on the individual's needs and goals;

(b) Develop a support plan that indicates the goal(s) the individual intends to achieve through receiving the support service(s) and the progress made toward the goal(s);

(c) Maintain an individual's individual service record that contains documentation of the following:

(i) The name of the agency or other sources through which the individual was referred, if applicable;

(ii) Determination of the appropriateness of the support service(s);

(iii) A copy of the support plan and progress toward meeting the individual's goal(s);

(iv) Any referral made to a more intensive level of care or emergency services when appropriate;

(v) Consent to include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual;

(vi) A brief summary of each service encounter, including the date, time, and duration of the encounter;

(vii) Name(s) of participant(s), including the name of the individual who provided the service;

(viii) Any information or copies of documents shared by or with a behavioral health agency or credentialed behavioral health professional; and

(ix) A discharge or disposition statement if the individual left without notice, or discharge or disposition information for an individual who did not leave without notice, completed within seven working days of the individual's discharge or disposition, including the date of discharge and continuing care or follow-up plan.

(4) An agency may use a full assessment and individual service plan if it is certified for intervention, assessment and treatment services or has an agreement with a licensed behavioral health agency certified for intervention, assessment and treatment services in order to meet the requirements in subsection (3) (a) and (b) of this section. The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements.

(5) For the purposes of this section:

(a) Rehabilitative case management means mental health services that meet the ongoing assessment, facilitation, care coordination and advocacy for options and services to meet an individual's needs through communication and available resources, to promote quality and effective outcomes during and following a hospitalization. Services support individual employment, education, and participation in other daily activities appropriate to the individual's age, gender, and culture, and assist individuals in resolving crises in the least restrictive setting. Services include specific rehabilitative services provided to:

(i) Assist in an individual's discharge from an inpatient facility; and

(ii) Minimize the risk of readmission to an inpatient setting.

(b) Day support means an intensive rehabilitative program which provides a range of integrated and varied life skills training such as health, hygiene, nutritional issues, money management, maintaining living arrangement and symptom management to promote improved functioning or a restoration to a previous higher level of functioning. If counseling or therapy is provided, the agency must obtain a certification for outpatient intervention, assessment and treatment.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0700, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0700, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0700, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0713 ((Outpatient services—)) Psychiatric medication monitoring services—Service standards. (1) Psychiatric medication monitoring services ((occur face-to-face and)):

(a) Include one-on-one cueing, observing, and encouraging an individual to take medication as prescribed;

(b) Include reporting any pertinent information related to the individual's adherence to the medication back to the agency that is providing psychiatric medication services; and

(c) May take place at any location and for as long as it is clinically necessary.

(2) An agency providing medication monitoring services must:

(a) Ensure that the staff positions responsible for providing either medication monitoring, or delivery services, or both, are clearly identified in the agency's medication monitoring services policy;

(b) Have appropriate policies and procedures in place when the agency providing medication monitoring services maintains or delivers medication to the individual that address:

(i) The maintenance of a medication log documenting the type and dosage of medications, and the time and date;

(ii) Reasonable precautions that need to be taken when transporting medications to the intended individual and to assure staff safety during the transportation; and

(iii) The prevention of contamination of medication during delivery, if delivery is provided.

(c) Ensure that the individual's (~~clinical~~) individual service record includes documentation of medication monitoring services.

(3) A support plan or an individual service plan is not required when providing psychiatric medication monitoring services.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0713, filed 5/25/21, effective 7/1/21.]

NEW SECTION

WAC 246-341-0715 Crisis support services—Service standards.

Crisis support services are short-term (less than two weeks per episode) services that include face-to-face and other means of assistance with life skills training and understanding of medication effects on an individual.

(1) An agency providing crisis support services must:

(a) Assure communication and coordination with the individual's mental health or substance use treatment provider, if indicated and appropriate;

(b) If an individual is found to be experiencing an acute crisis, remain with the individual in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;

(c) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder;

(d) Transport or arrange for transport of an individual in a safe and timely manner, when necessary;

(e) Document whether the individual has a crisis plan and any request to obtain the crisis plan;

(f) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member unsupervised duties; and

(g) Maintain a current list of local resources for referrals, legal, employment, education, interpreter and social and health services.

(2) An agency providing crisis support services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available or on staff 24 hours a day, seven days a week.

(3) When services are provided in a private home or nonpublic setting, the agency must:

(a) Have a written plan for training, staff back-up, information sharing and communication for staff members who respond to a crisis in an individual's personal residence or in a nonpublic location;

(b) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's personal residence or other nonpublic location;

(c) Ensure that any staff member who engages in home visits is provided access, by their employer, to a wireless telephone or comparable device for the purpose of emergency communication as described in RCW 71.05.710;

(d) Provide staff members who are sent to a personal residence or other nonpublic location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

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

WAC 246-341-0720 ((~~Outpatient services—Recovery support~~)) Supported employment mental health and substance use disorder services—Service standards. Supported employment mental health and substance use disorder services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department of social and health services' division of vocational rehabilitation (DVR);

(b) The department of social and health services' community services offices;

(c) State board for community and technical colleges;

(d) The business community;

(e) WorkSource, Washington state's official site for online employment services;

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

(2) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the department of social and health services' division of vocational rehabilitation;

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;

(c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;

(e) Provide and document any outreach, job coaching, and support at the individual's worksite when requested by the individual or the individual's employer; and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state antidiscrimination law.

(3) Supported employment services are not required to be provided under clinical supervision.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0720, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0720, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0722 ((Outpatient services—Recovery support—) Supportive housing mental health and substance use disorder services—Service standards. Supportive housing mental health and substance use disorder services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city;

(c) Community action councils;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state antidiscrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sublease.

(3) Supportive housing services are not required to be provided under clinical supervision.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0722, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0722, filed 4/16/19, effective 5/17/19.]

CERTIFICATION STANDARDS FOR MENTAL HEALTH PEER RESPITE

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

WAC 246-341-0725 ~~((Recovery support services—Recovery support —))Mental health peer respite—Certification standards.~~ (1) Mental health peer respite ~~((services are))~~ facilities provide voluntary, holistic, trauma-informed, short-term, noncrisis, peer support services, ~~((provided))~~ in a home-like environment, which focus on recovery and wellness. These services are limited to individuals who are:

(a) At least ~~((eighteen))~~ 18 years of age;

(b) Experiencing psychiatric distress but who are not detained or involuntarily committed under chapter 71.05 RCW; and

(c) Independently seeking respite services by their own choice.

(2) An agency certified to provide mental health peer respite services must ~~((be licensed according to this chapter and))~~ meet the ~~((general))~~ behavioral health support certification requirements in ~~((~~

~~((a) WAC 246-341-0718 for recovery support services; and~~

~~(b) WAC 246-341-0724 for peer support services)~~ WAC 246-341-0700.

(3) An agency certified to provide mental health peer respite services must develop and implement policies and procedures that address how the agency will:

(a) Have ~~((a memorandum of understanding))~~ an agreement with the local crisis system, including the closest agency providing evaluation and treatment services and designated crisis responders to ensure timely response to and assessment of individuals who need a higher level of care;

(b) Be staffed ~~((twenty-four hours))~~ 24 hours per day, seven days a week by certified peer counselors;

(c) Be peer-run. This includes:

(i) Having a managing board, with a majority of members who are peers, that manages the day-to-day operations of the mental health peer respite center and reports to the agency's governing board; and

(ii) Supervision of services by a certified peer counselor who meets the qualifications of a mental health professional.

(d) Limit services to an individual to a maximum of seven nights in a ~~((thirty-day))~~ 30-day period; and

(e) Develop and implement a guest agreement that establishes expectations for individuals receiving mental health peer respite services, including expectations for things such as: Cooking, cleaning, self-management of medications, and personal hygiene.

(4) An agency certified to provide mental health peer respite services must provide the services in a residence that meets local building and zoning codes and must develop and implement policies and procedures that address the following:

(a) Kitchen environment, including kitchen equipment that is in good working repair and follows general principles of safe food handling;

(b) Food storage, including how the agency will provide each individual with adequate storage for perishable and nonperishable food items;

(c) Laundry facilities, including how the agency will give residents access to laundry facilities and equipment that is clean and in good repair;

(d) Housekeeping, including cleaning, maintenance, and refuse disposal;

(e) Bedding and linens, including how the agency will provide each individual with clean, sanitary bedding and linens that are in good repair;

(f) Secure storage, including how each individual is provided with secure storage for personal belongings including medications;

(g) Furnishings, including how the agency will provide appropriate furniture for bedrooms and common spaces, as well as other furnishings appropriate to create a home-like setting; and

(h) Accessibility needs of individuals with disabilities as it relates to program operations and communications.

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0725, filed 3/17/20, effective 5/1/20.]

CERTIFICATION AND SERVICE STANDARDS FOR CLUBHOUSES

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

- WAC 246-341-0730** (~~(Outpatient services—Consumer-run recovery support—)~~) **Clubhouses**. (1) A clubhouse is a community-based program that provides rehabilitation services.
- (2) The clubhouse may be peer-operated and must:
 - (a) Be member-run with voluntary participation;
 - (b) Be recovery-focused;
 - (c) Focus on strengths, talents, and abilities of its members;
 - (d) Have a clubhouse director who:
 - (i) Engages members and staff in all aspects of the clubhouse operations; and
 - (ii) Is ultimately responsible for the operation of the clubhouse.
 - (e) Be comprised of structured activities including:
 - (i) Personal advocacy;
 - (ii) Help with securing entitlements;
 - (iii) Information on safe, appropriate, and affordable housing;
 - (iv) Community resource development;
 - (v) Connecting members with adult education opportunities in the community;
 - (vi) An active employment program that assists members to gain and maintain employment in full- or part-time competitive jobs. Employment related activities may include resume building, education on how employment will affect benefits, information on other employment services, and information regarding protections against employment discrimination; and
 - (vii) An array of social and recreational opportunities.
 - (f) Use a work-ordered day to allow all members the opportunity to participate in all the work of the clubhouse including:
 - (i) Administration;
 - (ii) Research;
 - (iii) Intake and orientation;
 - (iv) Outreach;
 - (v) Training and evaluation of staff;
 - (vi) Public relations;
 - (vii) Advocacy; and
 - (viii) Evaluation of clubhouse effectiveness.
 - (g) Provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community.
 - (3) "Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours.
 - (a) Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse.

(b) Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning.

(c) Members and staff work side-by-side as colleagues as evidenced by both the member and the staff signature on progress towards goals.

(d) Members participate as they feel ready and according to their individual interests.

(e) Work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards.

(f) Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

(4) Agencies certified for clubhouse services are not required to follow the requirements in WAC 246-341-0640 but instead must:

(a) Conduct a screening process that determines the appropriateness of the program based on the individual's needs and goals;

(b) Develop a support plan that indicates the goal(s) the individual plans to achieve through receiving the program and the progress made toward the goal(s);

(c) Maintain an individual's individual service record that contains documentation of the following:

(i) The name of the agency or other sources through which the individual was referred, if applicable;

(ii) Determination of the appropriateness of the program's service(s);

(iii) A copy of the support plan and progress toward meeting the individual's goal(s);

(iv) Any referral made to a more intensive level of care when appropriate;

(v) Consent to include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual;

(vi) A brief summary of each service encounter, including the date and time;

(vii) Any information or copies of documents shared by or with a behavioral health agency or credentialed behavioral health professional; and

(viii) The date the individual is no longer engaged in the program and any attempts to follow-up with the individual, if applicable.

(5) A clubhouse is not required to operate under the supervision of a mental health professional unless providing other certified services that require clinical supervision.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0730, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0730, filed 4/16/19, effective 5/17/19.]

**CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH OUTPATIENT
INTERVENTION, ASSESSMENT AND TREATMENT SERVICES**

NEW SECTION

WAC 246-341-0737 Behavioral health outpatient intervention, assessment and treatment services—Certification standards. (1) Agencies certified for intervention, assessment and treatment services provide individualized intervention, assessment and treatment for mental health, substance use, or co-occurring disorders. Intervention, assessment and treatment services under this certification include services such as:

- (a) Assessments;
- (b) Counseling and therapy;
- (c) Psychiatric medication management in accordance with the service standards in WAC 246-341-0739; and
- (d) Outpatient involuntary court-ordered services in accordance with subsection (4) of this section and the service standards for the service being provided.

(2) Agencies providing only assessment, psychiatric medication management, or alcohol and drug information school services are not required to meet the individual service plan or discharge requirements in WAC 246-341-0640.

(3) Agencies providing intervention, assessment and treatment services may choose to provide involuntary or court-ordered outpatient services to individuals for:

- (a) Outpatient less restrictive alternative or conditional release under chapter 71.05 or 71.34 RCW in accordance with the service standards in WAC 246-341-0805;
- (b) Counseling, assessment and education under chapter 46.61 RCW, including:

- (i) Alcohol and drug information school in accordance with the service standards in WAC 246-341-0746;

- (ii) Substance use disorder counseling in accordance with the service standards in WAC 246-341-0815; and

- (iii) Driving under the influence (DUI) substance use assessment in accordance with the service standards in WAC 246-341-0820; or

- (c) Deferred prosecution under RCW 10.05.150 in accordance with the service standards in WAC 246-341-0740.

(4) Agencies choosing to provide outpatient involuntary or court-ordered services must report noncompliance, in all levels of care, for an individual ordered into substance use disorder treatment by a court of law or other appropriate jurisdictions in accordance with RCW 71.05.455 and chapter 182-538D WAC for individuals receiving court-ordered services under chapter 71.05 RCW, RCW 10.05.090 for individuals under deferred prosecution, or RCW 46.61.5056 for individuals receiving court-ordered treatment for driving under the influence (DUI). Additionally, agencies providing services to individuals under a court-order for deferred prosecution under RCW 10.05.090 or treatment under RCW 46.61.5056 must:

(a) Report and recommend action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(i) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third-party report confirmed by the agency, or blood alcohol content or other laboratory test;

(ii) An individual's report of subsequent alcohol or drug related arrests; or

(iii) An individual's leaving the program against program advice or an individual discharged for rule violation;

(b) Report and recommend action for nonemergency, noncompliance to the court, or other appropriate jurisdiction(s) within 10 working days from the end of each reporting period, upon obtaining information on:

(i) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups; or

(ii) An individual's failure to make acceptable progress in any part of the treatment plan;

(c) Transmit information on noncompliance or other significant changes as soon as possible, but no longer than 10 working days from the date of the noncompliance, when the court does not wish to receive monthly reports;

(d) Report compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

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NEW SECTION

WAC 246-341-0739 Psychiatric medication management services—

Service standards. Psychiatric medication management services are a variety of activities related to prescribing and administering psychiatric medication, including monitoring an individual for side effects and changes as needed.

(1) An agency providing psychiatric medication management services must:

(a) Ensure that medical direction and responsibility are assigned to a:

(i) Physician who is licensed to practice under chapter 18.57 or 18.71 RCW, and is board-certified or board-eligible in psychiatry;

(ii) Psychiatric advanced registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW; or

(iii) Physician assistant licensed under chapter 18.71A RCW working with a supervising psychiatrist;

(b) Ensure that the services are provided by a prescriber licensed by the department who is practicing within the scope of that practice;

(c) Ensure that all staff administering medications are appropriately credentialed;

(d) Have a process by which the medication prescriber informs either the individual, the legally responsible party, or both, and, as appropriate, family members, of the potential benefits and side effects of the prescribed medication(s);

(e) Ensure that all medications maintained by the agency are safely and securely stored, including assurance that:

(i) Medications are kept in locked cabinets within a well-lit, locked, and properly ventilated room;

(ii) Medications kept for individuals on medication administration or self-administration programs are clearly labeled and stored separately from medication samples kept on-site;

(iii) Medications marked "for external use only" are stored separately from oral or injectable medications;

(iv) Refrigerated food or beverages used in the administration of medications are kept separate from the refrigerated medications by the use of trays or other designated containers;

(v) Syringes and sharp objects are properly stored and disposed of;

(vi) Refrigerated medications are maintained at the required temperature; and

(vii) If the individual gives permission for disposal, outdated medications are disposed of in accordance with the regulations of the pharmacy quality assurance commission and no outdated medications are retained.

(2) An agency providing psychiatric medication management services may utilize a physician or ARNP without board eligibility in psychiatry if unable to employ or contract with a psychiatrist. In this case, the agency must ensure that:

(a) Psychiatrist consultation is provided to the physician or ARNP at least monthly; and

(b) A psychiatrist or psychiatric ARNP is accessible to the physician or ARNP for emergency consultation.

(3) An agency providing psychiatric medication management services must document the service in the individual service record.

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

WAC 246-341-0740 (~~((Outpatient services—Level two intensive outpatient substance use disorder services.))~~ Deferred prosecution under RCW 10.05.150—Service standards. (~~((1) Level two intensive outpatient substance use disorder services provide a higher-intensity, concentrated level of individualized treatment that may include individual and group counseling, education, and other activities.~~

~~((2))~~) An agency providing (~~((level two intensive outpatient))~~) treatment services for deferred prosecution under RCW 10.05.150 must:

~~((a))~~) (1) Ensure that services include a minimum of (~~((seventy-two))~~) 72 hours of treatment services within a maximum of (~~((twelve))~~) 12 weeks, which consist of the following during the first four weeks of treatment:

~~((i))~~) (a) At least three sessions each week, with each session occurring on separate days of the week;

~~((ii))~~) (b) Group sessions that must last at least one hour; and

~~((iii))~~) (c) Attendance at self-help groups in addition to the (~~((seventy-two))~~) 72 hours of treatment services.

~~((b))~~ (2) There must be approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this ~~((subsection))~~ section;

~~((e))~~ (3) The agency must refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary ~~(and~~

~~(d) The agency must report noncompliance with the court mandated treatment in accordance with WAC 246-341-0800).~~

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0740, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0740, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0746 ~~((Outpatient services—Substance use disorder information and assistance services—))~~ **Alcohol and drug information school—Service standards.** Alcohol and drug information school services provide an educational program about substance use. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. An agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a substance use disorder professional, a substance use disorder professional trainee, or a person who has received documented training in:

- (a) Effects of alcohol and other drugs;
- (b) Patterns of use;
- (c) Current laws and regulations pertaining to substance use violations, and consequences of the violations; and
- (d) Available resources and referral options for additional services that may be appropriate for the individual.

(2) Ensure the curriculum:

- (a) Provides no less than eight hours of instruction for each course;
- (b) Includes a post-test for each course after the course is completed;
- (c) Includes a certificate of completion; and
- (d) Covers the following topics:
 - (i) Information about the effects of alcohol and other drugs;
 - (ii) Patterns of use; and
 - (iii) Current laws, including Washington state specific laws and regulations, and consequences related to substance use violations.

(3) Ensure each student be advised that there is no assumption the student has a substance use disorder and that the course is not a therapy session;

(4) Ensure each individual student record contains:

- (a) An intake form, including demographics;
- (b) The hours of attendance, including dates; and
- (c) A copy of the scored post-test.

(5) An agency providing alcohol and drug information school services must include in the individual service record a copy of an assessment, if the individual was assessed, that indicates the individual does not have a substance use disorder.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0746, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0746, filed 4/16/19, effective 5/17/19.]

(~~INVOLUNTARY AND COURT-ORDERED OUTPATIENT TREATMENT~~)

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

WAC 246-341-0805 (~~Involuntary and court-ordered Outpatient~~)

Less restrictive alternative (LRA) or conditional release support behavioral health services—Service standards. An agency serving individuals on a less restrictive alternative (LRA) or conditional release court order shall provide or monitor the provision of court-ordered services, including psychiatric, substance use disorder treatment, and medical components of community support services. An agency providing court-ordered LRA support and conditional release services shall:

(1) Have a written policy and procedure that allows for the referral of an individual to an involuntary treatment facility (~~(twenty-four)~~) 24 hours a day, seven days a week.

(2) Have a written policy and procedure for an individual who requires involuntary detention that includes procedures for:

(a) Contacting the designated crisis responder (DCR) regarding revocations or extension of an LRA or conditional release; and

(b) The transportation of an individual, in a safe and timely manner, for the purpose of:

(i) Evaluation; or

(ii) Evaluation and detention.

(3) Ensure the individual is provided everything their rights afford them to and protect them from under chapter 71.05 or 71.34 RCW, as applicable.

(4) Include in the (~~clinical~~) individual service record a copy of the less restrictive alternative court order or conditional release and a copy of any subsequent modification.

(5) Ensure the individual service plan addresses the conditions of the less restrictive alternative court order or conditional release and a plan for transition to voluntary treatment.

(6) Ensure that the individual receives medication services including an assessment of the need for and prescription of medications to treat mental health or substance use disorders, appropriate to the needs of the individual as follows:

(a) At least one time in the initial (~~fourteen~~) 14 days following release from inpatient treatment for an individual on a (~~ninety-day or one hundred eighty-day~~) 90-day or 180-day less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's (~~clinical~~) individual service record; and

(b) At least one time every (~~thirty~~) 30 days for the duration of the less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric ARNP determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's (~~clinical~~) individual service record.

(7) Keep a record of the periodic evaluation of each committed individual for release from, or continuation of, an involuntary treatment order. Evaluations must occur at least every (~~thirty~~) 30 days for the duration of the commitments and include documentation of the evaluation and rationale:

(a) For requesting a petition for an additional period of less restrictive or conditional release treatment under an involuntary treatment order; or

(b) Allowing the less restrictive court order or conditional release to expire without an extension request.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0805, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0805, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0815 (~~Involuntary and court ordered~~) Substance use disorder counseling for RCW 46.61.5056—Service standards. An agency providing certified substance use disorder counseling services to an individual convicted of driving under the influence or physical control under RCW 46.61.5056 must ensure treatment is completed as follows:

(1) Treatment during the first (~~sixty~~) 60 days must include:

(a) Weekly group or individual substance use disorder counseling sessions according to the individual service plan;

(b) One individual substance use disorder counseling session of not less than (~~thirty~~) 30 minutes duration, excluding the time taken for a substance use disorder assessment, for each individual, according to the individual service plan;

(c) Alcohol and drug basic education for each individual;

(d) Participation in recovery oriented, community-based self-help groups according to the individual service plan. Participation must be documented in the individual's (~~clinical~~) individual service record; and

(e) Individuals who complete intensive inpatient substance use disorder treatment services must attend, at a minimum, weekly outpa-

tient counseling sessions for the remainder of their first ~~((sixty))~~ 60 days of treatment according to the individual service plan.

(2) The next ~~((one hundred twenty))~~ 120 days of treatment at a minimum shall include:

(a) Group or individual substance use disorder counseling sessions every two weeks according to the individual service plan;

(b) One individual substance use disorder counseling session of not less than ~~((thirty))~~ 30 minutes duration, every ~~((sixty))~~ 60 days according to the individual service plan; and

(c) Referral of each individual for ongoing treatment or support, as necessary, using ASAM criteria, upon completion of ~~((one hundred eighty))~~ 180 days of treatment.

(3) An individual who is assessed with insufficient evidence of a substance use disorder must be referred to alcohol/drug information school.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0815, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0815, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0820 ~~((Involuntary and court ordered--))~~ Driving under the influence (DUI) substance use disorder assessment services—Service standards. Driving under the influence (DUI) assessment services, as defined in chapter 46.61 RCW, are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) An agency certified to provide DUI assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include in the assessment information from external sources such as family, support individuals, legal entities, courts, and employers; and

~~(c) ((Is not required to meet the individual service plan requirements in WAC 246-341-0640 (1) (d); and~~

~~(d))~~ Must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(2) An agency certified to provide DUI assessment services must also ensure:

(a) The assessment is conducted face-to-face and document in the assessment whether the assessment was conducted in person or by synchronous video conferencing; and

(b) The individual has a summary included in the assessment that evaluates the individual's:

(i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and

(ii) Self-reported driving record and the abstract of the individual's legal driving record.

(3) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:

- (a) A copy of the police report;
- (b) A copy of the court originated criminal case history;
- (c) The results of a urinalysis or drug testing obtained at the time of the assessment; and
- (d) A referral to alcohol and drug information school.

(4) If the information in subsection (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.

(5) Upon completion of the DUI assessment, the individual must be:

- (a) Informed of the results of the assessment; and
- (b) Referred to the appropriate level of care according to ASAM criteria.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0820, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0820, filed 4/16/19, effective 5/17/19.]

((CRISIS OUTPATIENT MENTAL HEALTH SERVICES)) CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH OUTPATIENT CRISIS OUTREACH, OBSERVATION AND INTERVENTION SERVICES

NEW SECTION

WAC 246-341-0901 Behavioral health outpatient crisis outreach, observation and intervention services—Certification standards.

(1) Agencies certified for outpatient behavioral health crisis outreach, observation and intervention services provide face-to-face and other means of services to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment or intervention in the least restrictive environment at a location best suited to meet the needs of the individual which may be in the community, a behavioral health agency, or other setting.

(2) An agency certified for outpatient behavioral health crisis outreach, observation and intervention services does not need to meet the requirements in WAC 246-341-0640.

(3) An agency providing outpatient behavioral health crisis outreach, observation and intervention services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available or on staff 24 hours a day, seven days a week.

(4) An agency providing any outpatient behavioral health crisis outreach, observation and intervention services must:

- (a) Provide crisis telephone support in accordance with WAC 246-341-0670;
- (b) For mental health crisis, ensure face-to-face outreach services are provided by a mental health professional or department-credentialed staff person with documented training in crisis response;
- (c) For an SUD crisis, ensure face-to-face outreach services are provided by a professional appropriately credentialed to provide substance use disorder treatment, or individual who has completed training that covers substance use disorders;
- (d) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member unsupervised duties;
- (e) Resolve the crisis in the least restrictive manner possible;
- (f) Require that trained staff remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;
- (g) Determine if an individual has a crisis plan and request a copy if available;
- (h) Assure communication and coordination with the individual's mental health or substance use treatment provider, if indicated and appropriate;
- (i) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder;
- (j) Maintain a current list of local resources for referrals, legal, employment, education, interpreter and social and health services;
- (k) Transport or arrange for transport of an individual in a safe and timely manner, when necessary;
- (l) Be available 24 hours a day, seven days a week; and
- (m) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis.
- (5) Documentation of a crisis service must include the following:
- (a) A brief summary of each crisis service encounter, including the:
- (i) Date;
- (ii) Time, including time elapsed from initial contact to face-to-face contact, if applicable; and
- (iii) Nature and duration of the encounter.
- (b) The names of the participants;
- (c) A disposition including any referrals for services and individualized follow-up plan;
- (d) Whether the individual has a crisis plan and any request to obtain the crisis plan; and
- (e) The name and credential, if applicable, of the staff person providing the service.
- (6) An agency utilizing certified peer counselors to provide crisis outreach services must:
- (a) Ensure services are provided by a person recognized by the health care authority as a peer counselor, as defined in WAC 246-341-0200;
- (b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential;
- (c) Ensure peer counselors receive annual training that is relevant to their unique working environment.

(7) When services are provided in a private home or nonpublic setting, the agency must:

(a) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's personal residence or in a nonpublic location;

(b) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's personal residence or other nonpublic location;

(c) Ensure that any staff member who engages in home visits is provided access, by their employer, to a wireless telephone or comparable device, for the purpose of emergency communication as described in RCW 71.05.710;

(d) Provide staff members who are sent to a personal residence or other nonpublic location to evaluate an individual in crisis prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate, that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

(8) If utilizing peer counselors for crisis outreach response:

(a) Ensure that a peer counselor responding to an initial crisis visit is accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatments as appropriate to the crisis;

(b) Develop and implement policies and procedures for determining when peer counselors may provide follow-up crisis outreach services without being accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatments as appropriate to the crisis.

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CERTIFICATION STANDARDS FOR DESIGNATED CRISIS RESPONDER SERVICES

NEW SECTION

WAC 246-341-0912 Designated crisis responder (DCR) services— Certification standards. Designated crisis responder (DCR) services are services provided by a DCR to evaluate an individual in crisis and determine if involuntary services are required. An agency providing DCR services must do all of the following:

(1) Ensure that services are provided by a DCR;

(2) Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214;

(3) Document that services provided to the individual were in accordance with the requirements in chapter 71.05 or 71.34 RCW, as applicable; and

(4) Meet the outpatient behavioral health crisis outreach, observation and intervention services certification standards in WAC 246-341-0901.

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CERTIFICATION STANDARDS FOR OPIOID TREATMENT PROGRAMS (OTP)

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

WAC 246-341-1015 Opioid treatment programs (OTP)—(~~Clinical~~) Individual service record content and documentation requirements. An agency providing opioid treatment program services must maintain an individual's (~~clinical~~) individual service record. The (~~clinical~~) individual service record must contain:

(1) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opioid treatment program and take appropriate action;

(2) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction;

(3) Documentation that the individual service plan was reviewed quarterly and semi-annually after two years of continuous treatment;

(4) Documentation when an individual refuses to provide a drug testing specimen sample. The refusal is considered a positive drug screen specimen;

(5) Documentation in progress notes of timely interventions used to therapeutically address the disclosure of illicit drug use, a positive drug test, or possible diversion of opioid medication, as evidenced by the absence of opioids or related metabolites in drug toxicology test results;

(6) Documentation of all medical services including:

(a) Results of physical examination;

(b) Medical and family history;

(c) Nursing notes;

(d) Laboratory reports including results of regular toxicology screens, a problem list, and list of medications updated as clinically indicated; and

(e) Progress notes including documentation of all medications and dosages, if available.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1015, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1015, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-1020 Opioid treatment programs (OTP)—Medical director responsibility. An agency providing substance use disorder opioid treatment program services must ensure the program physician, or the medical practitioner under supervision of the medical director, performs and meets the following:

- (1) The program physician or medical practitioner under supervision of the medical director:
 - (a) Is responsible to verify an individual is currently addicted to an opioid drug and that the individual became addicted at least (~~twelve~~) 12 months before admission to treatment; or
 - (b) May waive the (~~twelve~~) 12 month requirement in (a) of this subsection upon receiving documentation that the individual:
 - (i) Was released from a penal institution, if the release was within the previous six months;
 - (ii) Is pregnant; or
 - (iii) Was previously treated within the previous (~~twenty-four~~) 24 months.
- (2) A documented physical evaluation must be completed on the individual before admission and before starting medications approved to treat opioid use disorder that includes the determination of opioid use disorder consistent with the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria;
- (3) A documented review of the department prescription drug monitoring program data on the individual:
 - (a) At admission;
 - (b) Annually after the date of admission; and
 - (c) Subsequent to any incidents of concern.
- (4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual;
- (5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:
 - (a) The concerns of possible substance use disorder, health risks, and benefits the opioid treatment medication may have on the individual and the developing fetus;
 - (b) The risk of not initiating opioid treatment medication on the individual and the developing fetus;
 - (c) The potential need for the newborn baby to be treated in a hospital setting or in a specialized support environment designed to address and manage neonatal opioid or other drug withdrawal syndromes; and
 - (d) Referral options to address and manage neonatal opioid or other drug withdrawal syndromes.
- (6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment;
- (7) Within (~~fourteen~~) 14 days of admission, a medical examination must be completed that includes:
 - (a) Documentation of the results of serology and other tests, as determined by the medical practitioner; and
 - (b) A documented assessment for the appropriateness of Sunday and holiday take-home medications as required by 42 C.F.R. Part 8.12(i).
- (8) When exceptional circumstances exist for an individual to be enrolled with more than one opioid treatment program agency, justifi-

ation granting permission must be documented in the individual's ~~((clinical))~~ individual service record at each agency;

(9) Each individual admitted to withdrawal management services must have an approved withdrawal management schedule that is medically appropriate;

(10) Each individual administratively discharged from services must have an approved withdrawal management schedule that is medically appropriate;

(11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful withdrawal management episodes within ~~((twelve))~~ 12 consecutive months; and

(12) An annual medical examination must be completed on each individual, either in person or via telehealth technologies, that includes the individual's overall physical condition and response to medication. The medical practitioner may use their professional and clinical judgment when determining the appropriateness of telehealth technologies for the annual medical exam and must document, in the patient's record, their decision to use telehealth technologies. The initial medical exam must be completed in person as required by 42 C.F.R. Part 8.12(f)(2).

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1020, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1020, filed 4/16/19, effective 5/17/19.]

~~((GENERAL REQUIREMENTS THAT APPLY TO RESIDENTIAL AND INPATIENT SERVICES))~~

~~CERTIFICATION STANDARDS FOR WITHDRAWAL MANAGEMENT ((, RESIDENTIAL SUBSTANCE USE DISORDER, AND MENTAL HEALTH INPATIENT SERVICES))~~

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

WAC 246-341-1100 Withdrawal management ~~((services))~~—Certification standards. (1) Substance use disorder withdrawal management services are provided ~~((to a voluntary individual))~~ to assist in the

process of withdrawal from psychoactive substances in a safe and effective manner that includes medical management or medical monitoring. Substance use disorder withdrawal management services under this certification include:

(a) Adult withdrawal management; and

(b) Youth withdrawal management.

~~((1))~~ (2) An agency certified for withdrawal management services must:

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

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

(i) Substance use disorder and motivation; and

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

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

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

~~((2))~~ (3) Ensure that each staff member providing withdrawal management services to an individual, with the exception of substance use disorder professionals, substance use disorder professional trainees, physicians, physician assistants, advanced registered nurse practitioners, or person with a co-occurring disorder specialist enhancement, completes a minimum of ~~(forty)~~ 40 hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

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

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

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

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1100, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1100, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH RESIDENTIAL OR INPATIENT INTERVENTION, ASSESSMENT AND TREATMENT SERVICES

NEW SECTION**WAC 246-341-1105 Behavioral health residential and inpatient intervention, assessment and treatment services—Certification standards.**

(1) Agencies certified for behavioral health residential and inpatient services provide behavioral health intervention, assessment and treatment services in a residential treatment facility or hospital. Residential and inpatient services under this certification include:

(a) In accordance with the service standards in WAC 246-341-1108:
 (i) Adult residential and inpatient substance use disorder treatment; and

(ii) Youth residential and inpatient substance use disorder treatment;

(b) In accordance with the service standards in WAC 246-341-1118:

(i) Adult residential and inpatient mental health treatment; and

(ii) Youth residential and inpatient mental health treatment.

(2) Agencies certified for behavioral health residential and inpatient services must:

(a) Be a facility licensed by the department as:

(i) A hospital licensed under chapter 70.41 RCW;

(ii) A private psychiatric hospital licensed under chapter 71.12 RCW;

(iii) A private alcohol and substance use disorder hospital licensed under chapter 71.12 RCW; or

(iv) A residential treatment facility licensed under chapter 71.12 RCW;

(b) Ensure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(c) Review the individual's crisis or recovery plan, if applicable and available;

(d) Determine the individual's risk of harm to self, others, or property;

(e) Coordinate with the individual's current treatment provider, if applicable, to assure continuity of care during admission and upon discharge;

(f) Develop and provide to the individual a discharge summary that must include:

(i) A continuing care recommendation; and

(ii) Scheduled follow-up appointments, including the time and date of the appointment(s), when possible.

(3) If providing services to adults and minors, an agency must ensure that a minor who is at least age 13 but not yet age 18 is served with adults only if the minor's individual service record contains:

(a) Documentation that justifies such placement;

(b) A professional judgment that placement in an inpatient facility that serves adults will not harm the minor; and

(c) Ensure the following for individuals who share a room:

(i) An individual 15 years of age or younger must not room with an individual 18 years of age or older;

(ii) Anyone under 13 years of age must be evaluated for clinical appropriateness before being placed in a room with an individual 13 to 16 years of age; and

(iii) An individual 16 or 17 years of age must be evaluated for clinical appropriateness before being placed in a room with an individual 18 years of age or older.

(4) An agency providing residential or inpatient mental health or substance use disorder services to youth must follow these additional requirements:

(a) Allow communication between the youth and the youth's parent, or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(b) Notify the parent or legal guardian within two hours of any significant decrease in the behavioral or physical health status of the youth and document all notification and attempts of notification in the individual service record.

(c) Discharge the youth to the care of the youth's parent, or if applicable, legal guardian. For an unplanned discharge and when the parent or legal guardian is not available, the agency must contact the state child protective services.

(d) Ensure a staff member who demonstrates knowledge of adolescent development and substance use disorders is available at the agency or available by phone.

(e) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:

(i) Verbal de-escalation;

(ii) Crisis intervention;

(iii) Emotional regulation;

(iv) Suicide assessment and intervention;

(v) Conflict management and problem solving skills;

(vi) Management of assaultive behavior;

(vii) Proper use of therapeutic physical intervention techniques;

and

(viii) Emergency procedures.

(f) Unless otherwise advised by the treatment provider:

(i) Provide group meetings to promote social and emotional growth.

(ii) Provide leisure and other therapy or related activities.

(iii) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.

(iv) For each youth who is unable to attend school for an estimated period of four weeks or more during the academic school year, the agency must work with the school district in which the youth is enrolled or the youth's educational provider to assure the academic needs of the youth are met.

(g) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.

(h) Ensure each individual's individual service record:

(i) Contains any consent or release forms signed by the youth and their parent or legal guardian;

(ii) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate, and if possible; and

(iii) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.

(5) An agency that provides services to youth may continue to provide services to a youth who turns 18 years old while admitted, so long as it is documented that it is in the best interest of the indi-

vidual and the agency meets the requirements in subsection (4) (h) of this section.

(6) An agency certified for behavioral health residential and inpatient intervention, assessment and treatment services may choose to provide services to individuals on a less restrictive alternative order in accordance with the requirements in WAC 246-341-0805.

[]

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

WAC 246-341-1108 Residential and inpatient substance use disorder treatment services—((General)) Service standards. Residential substance use disorder treatment services provide substance use disorder treatment for an individual in a facility with ~~((twenty-four))~~ 24 hours a day supervision.

~~(1) ((Residential treatment services include:~~

~~(a) Intensive inpatient services;~~

~~(b) Low intensity (recovery house) residential treatment services; and~~

~~(c) Long-term residential treatment services.~~

~~(2))~~ An agency ~~((certified to provide))~~ providing residential and inpatient substance use disorder treatment services must:

(a) Provide education to each individual admitted to the treatment facility on:

(i) Substance use disorders;

(ii) Relapse prevention;

(iii) Bloodborne pathogens;

(iv) Tuberculosis (TB);

(v) Emotional, physical, and sexual abuse; and

(vi) Nicotine use disorder ~~((-))~~ ;

(b) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services; and

(c) Develop and implement written procedures for:

(i) Urinalysis and drug testing, including laboratory testing; and

(ii) How agency staff members respond to medical and psychiatric emergencies.

~~((3))~~ (2) An agency that provides services to a pregnant woman must:

(a) Develop and implement a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs;

(b) Provide referral information to applicable resources; and

(c) Provide education on the impact of substance use during pregnancy, risks to the developing fetus, and the importance of informing medical practitioners of chemical use during pregnancy.

~~((4))~~ (3) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 246-341-0820.

~~((5) An agency that provides substance use disorder residential services to youth must:~~

~~(a) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:~~

- ~~(i) Verbal deescalation;~~
- ~~(ii) Crisis intervention;~~
- ~~(iii) Anger management;~~
- ~~(vi) Suicide assessment and intervention;~~
- ~~(v) Conflict management and problem solving skills;~~
- ~~(vii) Management of assaultive behavior;~~
- ~~(viii) Proper use of therapeutic physical intervention techniques; and~~

~~(ix) Emergency procedures.~~

~~(b) Provide group meetings to promote personal growth.~~

~~(c) Provide leisure, and other therapy or related activities.~~

~~(d) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.~~

~~(e) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:~~

~~(i) Document the individual's most recent academic placement and achievement level; and~~

~~(ii) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.~~

~~(f) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.~~

~~(g) Ensure each individual's clinical record:~~

~~(i) Contains any consent or release forms signed by the youth and their parent or legal guardian;~~

~~(ii) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible; and~~

~~(iii) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.)) (4) Inform individuals of their treatment options so they can make individualized choices for their treatment. This includes, as applicable, the initiation, continuation, or discontinuation of medications for substance use disorders.~~

~~(5) For individuals choosing to initiate or continue medications for their substance use disorder, make available on-site or facilitate off-site access to continue or initiate Federal Drug Administration (FDA)-approved medication for any substance use disorder, when clinically appropriate, as determined by a medical practitioner.~~

~~(6) Provide continuity of care that allows individuals to receive timely and appropriate follow up services upon discharge and, if applicable, allows the individual to continue medications with no missed doses.~~

~~(7) Document in the individual service record:~~

~~(a) The individual being informed of their treatment options, including the use of medications for substance use disorder;~~

~~(b) The continuation or initiation of FDA-approved medication for substance use disorder treatment that has been provided on-site or facilitated off-site, if applicable;~~

~~(c) Referrals made to behavioral health providers, including documentation that a discharge summary was provided to the receiving behavioral health provider as allowed under 42 C.F.R. Part 2; and~~

(d) Contact or attempts to follow up with the individual post-discharge, including the date of correspondence.

(8) An agency may not deny admission based solely on an individual taking FDA-approved medications, under the supervision of a medical provider, for their substance use disorder or require titration of dosages in order to be admitted or remain in the program.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1108, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1108, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-1118 Residential and inpatient mental health ((inpatient)) services—((General)) Service standards. (1) ((Mental health inpatient services include the following types of behavioral health services certified by the department:

- ~~(a) Evaluation and treatment services;~~
- ~~(b) Intensive behavioral health treatment services;~~
- ~~(c) Child long-term inpatient program (CLIP);~~
- ~~(d) Crisis stabilization units;~~
- ~~(e) Triage services; and~~
- ~~(f) Competency evaluation and restoration services.~~

~~(2))~~ An agency providing residential and inpatient mental health ((inpatient)) services must develop and implement an individualized annual training plan for agency staff members, to include at least:

(a) Least restrictive alternative options available in the community and how to access them;

(b) Methods of ((individual care)) providing individualized treatment; and

(c) ((Deescalation)) De-escalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures.

((3)) (2) If contract staff are providing direct services, the facility must ensure compliance with the training requirements outlined in subsection ((2)) (1) of this section.

((4)) (3) A behavioral health agency providing mental health inpatient services must:

(a) Document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(i) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(ii) Examination and medical evaluation within ((twenty-four)) 24 hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(iii) Consideration of less restrictive alternative treatment at the time of admission; and

(iv) The admission diagnosis and what information the determination was based upon.

(b) ~~((Ensure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150.~~

~~(e-))~~ Ensure examination and evaluation of a minor by a children's mental health specialist occurs within ~~((twenty-four))~~ 24 hours of admission.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1118, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-1118, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1118, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1124 ~~((Mental health)) Residential and inpatient mental health services—Rights related to antipsychotic medication.~~

All individuals have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The provider must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including all of the following requirements:

(1) The clinical record must document all of the following:

(a) An attempt to obtain informed consent.

(b) The individual was asked if they wish to decline treatment during the ~~((twenty-four))~~ 24-hour period prior to any court proceeding wherein the individual has the right to attend and is related to their continued treatment. The answer must be in writing and signed when possible. In the case of a child under the age of ~~((eighteen))~~ 18, the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must be able to explain to the court the probable effects of the medication.

(c) The reasons why any antipsychotic medication is administered over the individual's objection or lack of consent.

(2) The psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority may administer antipsychotic medications over an individual's objections or lack of consent only when:

(a) An emergency exists, provided there is a review of this decision by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority within ~~((twenty-four))~~ 24 hours. An emergency exists if all of the following are true:

(i) The individual presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of anti-psychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, the individual's condition constitutes an emergency requiring that treatment be instituted before obtaining an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority.

(b) There is an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, for treatment up to ~~((thirty))~~ 30 days.

(c) For continued treatment beyond ~~((thirty))~~ 30 days through the hearing on any ~~((one hundred eighty-day))~~ 180-day petition filed under RCW 71.05.217, provided the facility medical director or director's medical designee reviews the decision to medicate an individual. Thereafter, antipsychotic medication may be administered involuntarily only upon order of the court. The review must occur at least every ~~((sixty))~~ 60 days.

(3) The examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must sign all ~~((one hundred eighty-day))~~ 180-day petitions for antipsychotic medications filed under the authority of RCW 71.05.217.

(4) Individuals committed for ~~((one hundred eighty))~~ 180 days who refuse or lack the capacity to consent to antipsychotic medications have the right to a court hearing under RCW 71.05.217 prior to the involuntary administration of antipsychotic medications.

(5) In an emergency, antipsychotic medications may be administered prior to the court hearing provided that an examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority files a petition for an antipsychotic medication order the next judicial day.

(6) All involuntary medication orders must be consistent with the provisions of RCW 71.05.217, whether ordered by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority or the court.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1124, filed 4/16/19, effective 5/17/19.]

**CERTIFICATION AND SERVICE STANDARDS FOR INVOLUNTARY BEHAVIORAL HEALTH
RESIDENTIAL OR INPATIENT SERVICES**

NEW SECTION

WAC 246-341-1131 Involuntary behavioral health residential and inpatient services—Certification standards. (1) Agencies certified for involuntary behavioral health residential and inpatient services provide behavioral health intervention, assessment and treatment services in a residential treatment facility or hospitals to individuals subject to a civil commitment or court-order under chapter 71.05 or 71.34 RCW or deemed not guilty by reason of insanity (NGRI) under chapter 10.77 RCW. Involuntary residential and inpatient services under this certification include the following services:

- (a) In accordance with the service standards in WAC 246-341-1133:
 - (i) Adult involuntary evaluation and treatment; and
 - (ii) Youth involuntary evaluation and treatment;
- (b) In accordance with the service standards in WAC 246-341-1135:
 - (i) Adult secure withdrawal management; and
 - (ii) Youth secure withdrawal management;
- (c) NGRI behavioral health treatment.

(2) An agency providing involuntary behavioral health services must:

- (a) Follow the applicable statutory requirements in chapter 10.77, 71.05, or 71.34 RCW;
- (b) Ensure that services are provided in a secure environment. "Secure" means having:
 - (i) All doors and windows leading to the outside locked at all times;
 - (ii) Visual monitoring, in a method appropriate to the individual;
 - (iii) A space to separate persons who are violent or may become violent from others when necessary to maintain safety of the individual and others;
 - (iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and
 - (v) Adequate numbers of staff present at all times that are trained in facility security measures;
- (c) Provide services, including admissions, seven days a week, 24 hours a day;
- (d) Ensure that a mental health professional, substance use disorder professional, if appropriate, and physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) are available 24 hours a day, seven days a week for consultation and communication with the staff that provide direct care of individuals.

(3) An agency providing services under chapter 71.05 or 71.34 RCW must:

- (a) Ensure at least daily contact between each involuntary individual and a mental health professional, substance use disorder pro-

fessional, or person with a co-occurring disorder specialist enhancement as appropriate, for the purpose of evaluation as to:

- (i) The need for further treatment;
- (ii) Whether there is a change in involuntary status; or
- (iii) Possible discharge;

(b) For an individual who has been delivered to the facility by a peace officer for evaluation, the individual service record must contain:

- (i) A statement of the circumstances under which the individual was brought to the unit;
- (ii) The admission date and time;
- (iii) Determination of whether to refer to a designated crisis responder (DCR) to initiate civil commitment proceedings;
- (iv) If evaluated by a DCR, documentation that the evaluation was performed within the required time period, the results of the evaluation, and the disposition of the person;

(c) Upon discharge of the individual the agency shall provide notification to the DCR office responsible for the initial commitment, which may be a federally recognized Indian tribe or other Indian health care provider if the DCR is appointed by the health care authority, and the DCR office that serves the county in which the individual is expected to reside.

(4) Agencies certified for involuntary behavioral health residential and inpatient services must also follow the certification standards for residential and inpatient behavioral health services in WAC 246-341-1105.

(5) An agency certified for involuntary behavioral health residential and inpatient services may choose to provide services to individual on a less restrictive alternative order in accordance with the requirements in WAC 246-341-0805.

[]

NEW SECTION

WAC 246-341-1133 Evaluation and treatment services—Service standards. (1) Evaluation and treatment services are provided for individuals who are held for 120-hour detention or on 14-day, 90-day, or 180-day civil commitment orders according to chapters 71.05 and 71.34 RCW. An agency providing evaluation and treatment services may choose to serve individuals who are held for 120-hour detention, or on short-term commitment orders (14-day), long-term commitment orders (90-day and 180-day), or all three. Agencies providing evaluation and treatment services may also provide services for individuals who are not detained or committed.

(2) An agency providing evaluation and treatment services for youth must be a contracted child long-term inpatient treatment facility (CLIP), except as specified in subsection (4) of this section. The CLIP facility must develop a written plan for assuring that services provided are appropriate to the developmental needs of children, including all of the following:

(a) If there is not a child psychiatrist on the staff, there must be a child psychiatrist available for consultation.

(b) There must be a psychologist with documented evidence of skill and experience in working with children available either on the clinical staff or by consultation, responsible for planning and reviewing psychological services and for developing a written set of guidelines for psychological services.

(c) There must be a registered nurse, with training and experience in working with psychiatrically impaired children, on staff as a full-time or part-time employee who must be responsible for all nursing functions.

(d) There must be a social worker with experience in working with children on staff as a full-time or part-time employee who must be responsible for social work functions and the integration of these functions into the individual treatment plan.

(e) There must be an educational/vocational assessment of each resident with appropriate educational/vocational programs developed and implemented or assured on the basis of that assessment.

(f) There must be an occupational therapist licensed under chapter 18.59 RCW available, who has experience in working with psychiatrically impaired children, responsible for occupational therapy functions and the integration of these functions into treatment.

(g) There must be a registered recreational therapist under chapter 18.230 RCW available, who has had experience in working with psychiatrically impaired children, responsible for the recreational therapy functions and the integration of these functions into treatment.

(h) Disciplinary policies and practices must be stated in writing and all of the following must be true:

(i) Discipline must be fair, reasonable, consistent, and related to the behavior of the resident. Discipline, when needed, must be consistent with the individual treatment plan.

(ii) Abusive, cruel, hazardous, frightening, or humiliating disciplinary practices must not be used. Seclusion and restraints must not be used as punitive measures. Corporal punishment must not be used.

(iii) Disciplinary measures must be documented in the individual service record.

(i) Residents must be protected from assault, abuse, and neglect. Suspected or alleged incidents of nonaccidental injury, sexual abuse, assault, cruelty, or neglect to a child must be reported to a law enforcement agency or to the department of children, youth, and families and comply with chapter 26.44 RCW.

(j) Orientation material must be made available to any facility personnel, clinical staff, or consultants informing practitioners of their reporting responsibilities and requirements. Appropriate local police department phone numbers must be available to personnel and staff.

(k) When suspected or alleged abuse is reported, the individual service record must reflect the fact that an oral or written report has been made to the child protective services of the department of children, youth, and families, or to a law enforcement agency within the timelines identified in chapter 26.44 RCW. This note must include the date and time that the report was made, the agency to which it was made, and the signature of the person making the report. Contents of the report need not be included in the individual service record.

(3) Agencies that provide child long-term inpatient treatment services are exempt from the requirement in WAC 246-341-1131 to admit individuals needing treatment seven days a week, 24 hours a day.

(4) An agency providing short-term involuntary services to youth, which are not contracted as a CLIP facility, may provide treatment for a child on a 180-day inpatient involuntary commitment order only until the child is discharged from the order to the community, or until a bed is available for that child in a CLIP facility.

(5) An agency providing evaluation and treatment services must follow the service standards for inpatient and residential mental health services in WAC 246-341-1105.

[]

NEW SECTION

WAC 246-341-1135 Secure withdrawal management and stabilization services—Service standards. Secure withdrawal management and stabilization services are provided to an involuntary individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with chapters 71.05 and 71.34 RCW.

(1) An agency providing secure withdrawal management and stabilization services must develop and implement policies and procedures to assure that a substance use disorder professional and licensed physician, physician assistant, or advanced registered nurse practitioner are available 24 hours a day, seven days a week for consultation and communication with the staff that provide direct care to individuals.

(2) An agency providing secure withdrawal management and stabilization services must document that each individual has received necessary screenings, assessments, examinations, or evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening reviewed by a nurse, as defined in chapter 18.79 RCW, or medical practitioner prior to admission that includes current level of intoxication, available medical history, and known medical risks; and

(b) An examination and evaluation in accordance with RCW 71.05.210 within 24 hours of admission to the facility.

(3) For individuals admitted to the secure withdrawal management and stabilization facility, the individual service record must contain:

(a) A statement of the circumstances under which the individual was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a DCR to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a DCR within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition; and

(f) Review of the admission diagnosis and what information the determination was based upon.

(4) An agency certified to provide secure withdrawal management and stabilization services must ensure the treatment plan includes all of the following:

(a) A protocol for safe and effective withdrawal management, including medications as appropriate;

(b) Discharge assistance provided by substance use disorder professionals or persons with a co-occurring disorder specialist enhancement, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

(5) An agency providing secure withdrawal management must meet the certification standards for withdrawal management in WAC 246-341-1100.

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CERTIFICATION STANDARDS FOR INTENSIVE BEHAVIORAL HEALTH TREATMENT

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

WAC 246-341-1137 ((Behavioral health inpatient services—)) Intensive behavioral health treatment services—Certification standards.

(1) Intensive behavioral health treatment services are intended to assist individuals in transitioning to lower levels of care, including individuals on a less restrictive alternative order. These services are provided for individuals with behavioral health conditions whose impairment or behaviors do not meet or no longer meet criteria for involuntary inpatient commitment under chapter 71.05 RCW, but whose care needs cannot be met in other community-based settings due to one or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Intrusive behaviors that put residents or staff at risk;

(c) Complex medication needs, which include psychotropic medications;

(d) A history or likelihood of unsuccessful placements in other community facilities or settings such as:

(i) Assisted living facilities licensed under chapters 18.20 RCW and 388-78A WAC;

(ii) Adult family homes licensed under chapters 70.128 RCW and 388-76 WAC;

(iii) Permanent supportive housing provided in accordance with chapter 388-106 WAC;

(iv) Supported living certified under chapter 388-101 WAC; or

(v) Residential treatment facilities licensed under chapters 71.12 RCW and 246-337 WAC providing a lower level of services.

(e) A history of frequent or protracted mental health hospitalizations; or

(f) A history of offenses against a person or felony offenses that cause physical damage to property.

(2) An agency providing intensive behavioral health treatment services must ensure services are provided:

(a) In a residential treatment facility licensed under chapters 71.12 RCW and 246-337 WAC;

(b) By a multidisciplinary team including clinicians, community supports, and those responsible for discharge planning; and

(c) With ~~((twenty-four))~~ 24 hour observation of individuals by at least two staff who are awake and on duty.

(3) The agency must meet the behavioral health residential and inpatient intervention, assessment and treatment services certification standards in WAC 246-341-1105 and the residential and inpatient mental health service standards in WAC 246-341-1118.

(4) The agency may:

(a) Only admit individuals at least ~~((eighteen))~~ 18 years of age whose primary care need is treatment for a mental health disorder that does not include a diagnosis of dementia or an organic brain disorder, but may include individuals who have a secondary diagnosis of intellectual or developmental disabilities;

(b) Only admit individuals who are capable of performing activities of daily living without direct assistance from agency staff; and

(c) Not admit individuals with a diagnosis of dementia or an organic brain disorder who can more appropriately be served in an enhanced services facility licensed under chapters 70.97 RCW and 388-107 WAC or other long-term care facility as defined in RCW 70.129.010.

~~((4))~~ (5) The agency must follow WAC 246-341-0805 regarding less restrictive alternative services.

~~((5))~~ (6) In addition to the applicable training requirements in this chapter, the agency must train all direct care staff on how to provide services and appropriate care to individuals with intellectual or developmental disabilities as described in Title 71A RCW, including:

(a) An overview of intellectual and developmental disabilities including how to differentiate intellectual or developmental disabilities from mental illness;

(b) Effective communication including methods of verbal and non-verbal communication when supporting individuals with intellectual or developmental disabilities; and

(c) How to identify behaviors in individuals that constitutes "normal stress" and behaviors that constitute a behavioral health crisis.

~~((6))~~ (7) The agency must develop and implement policies and procedures that explain how the agency will have sufficient numbers of appropriately trained, qualified, or credentialed staff available to safely provide all of the following services in accordance with an individual's care plan and needs:

(a) Planned activities for psychosocial rehabilitation services, including:

(i) Skills training in activities of daily living; skills training may include teaching and prompting or cueing individuals to perform activities, but does not include directly assisting individuals in performing the activities;

(ii) Social interaction;

(iii) Behavioral management, including self-management and understanding of recovery;

(iv) Impulse control;

(v) Training and assistance for self-management of medications;

and

(vi) Community integration skills.

(b) Service coordination provided by a mental health professional;

(c) Psychiatric services, including:

(i) Psychiatric nursing, on-site, (~~(twenty-four)~~) 24 hours per day, seven days per week;

(ii) Timely access to a psychiatrist, psychiatric advanced registered nurse practitioner, or physician's assistant who is licensed under Title 18 RCW operating within their scope of practice who by law can prescribe drugs in Washington state; and

(iii) A mental health professional on site at least eight hours per day and accessible (~~(twenty-four)~~) 24 hours per day, seven days per week.

(d) Access to intellectual and developmental disability services provided by a disability mental health specialist as described in WAC 182-538D-0200 or a person credentialed to provide applied behavioral analysis; and

(e) Peer support services provided by certified peer counselors.

(~~(7)~~) (8) The agency must provide access to or referral to substance use disorder services, and other specialized services, as needed.

(~~(8)~~) (9) The agency must provide a system or systems within the building that give staff awareness of the movements of individuals within the facility. If a door control system is used, it shall not prevent a resident from leaving the licensed space on their own accord, except temporary delays as allowed by (a) of this subsection. Such systems include:

(a) Limited egress systems consistent with state building code, such as delayed egress;

(b) Appropriate staffing levels to address safety and security; and

(c) Policies and procedures that:

(i) Are consistent with the assessment of the individual's care needs and plan; and

(ii) Do not limit the rights of a voluntary individual.

(~~(9)~~) (10) The agency must have a memorandum of understanding with the local crisis system, including the closest agency providing evaluation and treatment services and designated crisis responders to ensure timely response to and assessment of individuals who need a higher level of care.

(~~(10)~~) (11) The agency must develop and implement policies and procedures regarding discharge and transfer that:

(a) Allows each individual to stay in the facility and not discharge the individual to another facility type or other level of care unless another placement has been secured, and:

(i) The individual completed their care objectives and no longer needs this level of care;

(ii) The individual has medical care needs that the agency cannot provide or needs direct assistance with activities of daily living;

(iii) The individual needs a higher level of behavioral health care, such as evaluation and treatment services, due to a change in behavioral health status or because the individual's conditional release or less restrictive alternative order is revoked; or

(iv) The individual is convicted of any gross misdemeanor or felony while being a resident in the facility where the conviction was based on conduct that caused significant harm to another individual residing in the agency or staff member and there is a likelihood the

individual continues to endanger the safety and health of residents or staff. For the purposes of this subsection, conviction includes all instances in which plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence have been deferred or suspended.

(b) Allows individuals who are discharged in accordance with (a)(ii) or (iii) of this subsection to be accepted back into the facility if and when it is medically, clinically, legally, and contractually appropriate;

(c) Allows each individual to stay in the facility and not transfer to another agency providing intensive behavioral health treatment services unless the individual requests to receive services in a different agency certified to provide intensive behavioral health treatment services;

(d) Follows all transfer and discharge documentation requirements in WAC 246-341-0640 and also documents the specific time and date of discharge or transfer. Additionally, the agency must give the following information to the individual, the individual's representative, and family or guardian, as appropriate, before discharge or transfer:

(i) The name, address, and telephone number of the applicable ombuds;

(ii) For individuals with disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(iii) The mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(e) Includes transportation coordination that informs all parties involved in the coordination of care.

~~((11))~~ (12) The agency must protect and promote the rights of each individual and assist the individual to exercise their rights as an individual, as a citizen or resident of the United States and the state of Washington. To do this, the agency must:

(a) Train staff on resident rights and how to assist individuals in exercising their rights;

(b) Protect each individual's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the agency;

(c) Post names, addresses, and telephone numbers of the state review and certification agency, the state licensure office, the relevant ombuds programs, and the protection and advocacy systems;

(d) Provide reasonable access to an individual by the individual's representative or an entity or individual that provides health, social, legal, or other services to the individual, subject to the individual's right to deny or withdraw consent at any time;

(e) Allow representatives of appropriate ombuds to examine a resident's ~~((clinical))~~ individual service records with the permission of the individual or the individual's legal representative, and consistent with state and federal law;

(f) Not require or request individuals to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of individual's rights;

(g) Fully disclose to individuals the agency's policy on accepting medicaid as a payment source; and

(h) Inform the individual both orally and in writing in a language that the individual understands of their applicable rights in accordance with this chapter. The notification must be made upon admission and the agency must document the information was provided.

~~((12))~~ (13) In addition to all other applicable rights, an individual receiving certified intensive behavioral health treatment services has the right to:

(a) Be free of interference, coercion, discrimination, and reprisal from the agency in exercising their rights;

(b) Choose a representative who may exercise the individual's rights to the extent provided by law;

(c) Manage their own financial affairs;

(d) Personal privacy and confidentiality, including the following considerations:

(i) Personal privacy applies to accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(ii) The individual may approve or refuse the release of personal and ~~(clinical)~~ individual service records to an individual outside the agency unless otherwise provided by law.

(iii) Privacy in communications, including the right to:

(A) Send and promptly receive mail that is unopened;

(B) Have access to stationery, postage, and writing implements; and

(C) Have reasonable access to the use of a telephone where calls can be made without being overheard.

(e) Prompt resolution of voiced grievances including those with respect to treatment that has been furnished as well as that which has not been furnished and the behavior of other residents;

(f) File a report with the department for any reason;

(g) Examine the results of the most recent review or inspection of the agency conducted by federal or state reviewers or inspectors and plans of correction in effect with respect to the agency;

(h) Receive information from client advocates, and be afforded the opportunity to contact these advocates;

(i) Access the following without interference:

(i) Any representative of the state;

(ii) The individual's medical provider;

(iii) Ombuds;

(iv) The agencies responsible for the protection and advocacy system for individuals with disabilities, developmental disabilities, and individuals with mental illness created under federal law; and

(v) Subject to reasonable restrictions to protect the rights of others and to the individual's right to deny or withdraw consent at any time, immediate family or other relatives of the individual and others who are visiting with the consent of the resident.

(j) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents;

(k) Secure storage, upon request, for small items of personal property;

(l) Be notified regarding transfer or discharge;

(m) Be free from restraint and involuntary seclusion;

(n) Be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

(o) Choose activities, schedules, and health care consistent with the individual's interests, assessments, and plans of care;

(p) Interact with members of the community both inside and outside the agency;

(q) Make choices about aspects of their life in the agency that are significant to the individual;

(r) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(s) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct their own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the individual;

(t) Participate in social, religious, and community activities that do not interfere with the rights of other individuals in the agency;

(u) Reside and receive services in the agency with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other individuals would be endangered; and

(v) Organize and participate in participant groups.

~~((13))~~ (14) The individual and their representative have the right to:

(a) Access all records pertaining to the individual including ~~((clinical))~~ individual service records according to requirements in WAC 246-341-0650; and

(b) Be notified, along with interested family members, when there is:

(i) An accident involving the individual which requires or has the potential for requiring medical intervention;

(ii) A significant change in the individual's physical, mental, or psychosocial status; and

(iii) A change in room or roommate assignment.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1137, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-1137, filed 3/17/20, effective 5/1/20.]

CERTIFICATION STANDARDS FOR CRISIS STABILIZATION UNIT AND TRIAGE SERVICES

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

WAC 246-341-1140 (~~(Mental health inpatient services)~~) Crisis stabilization unit and triage—Certification standards. An agency certified to provide crisis stabilization unit or triage services must meet all of the following criteria:

(1) A triage facility must be licensed as a residential treatment facility under chapter 71.12 RCW.

(2) If a crisis stabilization unit or triage facility is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:

- (a) Out of sight and sound of the general population at all times;
- (b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and
- (c) Has a secured entrance and exit between the unit and the rest of the facility.

(3) Ensure that a mental health professional is on-site at least eight hours per day, seven days a week, and accessible (~~(twenty-four)~~) 24 hours per day, seven days per week.

(4) Ensure a mental health professional assesses an individual within three hours of the individual's arrival at the facility.

(5) For persons admitted to the crisis stabilization unit or triage facility on a voluntary basis, the (~~clinical~~) individual service record must meet the (~~clinical~~) individual service record requirements in WAC 246-341-0640.

(6) An agency certified to provide crisis stabilization unit or triage services must meet the service standards for residential and inpatient mental health services in WAC 246-341-1105 and the applicable standards in WAC 246-341-1131 if providing involuntary crisis stabilization unit or triage services.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1140, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1140, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR COMPETENCY RESTORATION SERVICES

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1154 (~~(Mental health inpatient services)~~) Competency evaluation and restoration. A behavioral health agency may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department certifies the services.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the inpatient services requirements in WAC (~~(246-341-1118 through 246-341-1132)~~) 246-341-1105 and applicable requirements in WAC 246-341-1131, an agency providing com-

petency evaluation and restoration services must be licensed by the department as:

(a) A residential treatment facility consistent with chapter 246-337 WAC;

(b) A hospital consistent with chapter 246-320 WAC;

(c) A private psychiatric hospital consistent with chapter 246-322 WAC; or

(d) An inpatient evaluation and treatment facility as provided in WAC ((~~246-341-1134~~)) 246-341-1133 and consistent with chapter 246-337 WAC.

(2) The administrative policies and procedures must include:

(a) Designation of a psychiatrist as the professional person in charge of clinical services at the agency;

(b) Procedures to assure the protection of individual participant rights in WAC 246-341-1156; and

(c) Procedures to assure that seclusion and restraint are used only to the extent necessary to ensure the safety of the individual see WAC 246-341-1158.

(3) The ((~~clinical~~)) individual service record must include all of the following:

(a) A copy of the court order and charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to competency or criminal insanity provided by the state and a copy of any evaluation reports must be included.

(b) A copy of the discovery materials, including, at a minimum, a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(d) All diagnostic and therapeutic services prescribed by the attending clinical staff members.

(e) Specific targets and strategies for restoring competency to include periodic assessments of gains on these targets.

(f) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C);

(ii) A nurse, if the person in (f)(i) of this subsection is not an ARNP; and

(iii) A mental health professional.

(g) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

(h) All assessments and justification for the use of seclusion or restraint.

(4) The initial assessment must include:

(a) The individual's:

(i) Identifying information;

(ii) Specific barriers to competence;

(iii) Medical provider's name or medical providers' names;

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use.

(b) The identification of any risk of harm to self and others, including suicide and homicide; and

(c) Treatment recommendations or recommendations for additional program-specific assessment.

(5) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments and document in the client's record the date provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within ~~((twenty-four))~~ 24 hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation using the most recent competency evaluation, if an evaluation has already been conducted.

(6) If a state hospital transfers an individual to an agency for competency restoration treatment, the agency must review the individual's completed admission assessment from the state hospital to assure it meets the requirements of subsection (3) of this section for initial assessments. The agency must update the assessment as needed. If the state hospital has not completed or has only partially completed an assessment for the individual, the agency must complete the assessment according to the requirements in subsections (2) and (3) of this section.

(7) The agency must ensure the individual service plan is completed within seven days of admission and is updated every ~~((ninety))~~ 90 days.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1154, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1156 ~~((Mental health inpatient services))~~ Competency evaluation and restoration—Rights. (1) An agency providing competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum all of the following. You have the right to:

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Reasonable accommodation in case of sensory or physical disability, limited ability to communicate, limited English proficiency, or cultural differences;

(d) Respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality rules and laws;

(h) Review your ~~((clinical))~~ individual service record in the presence of the administrator or the administrator's designee and the opportunity to request amendments or corrections;

(i) Upon request, receive a copy of the agency's internal procedures for addressing reported concerns that may amount to a complaint or grievance; and

(j) Submit a report to the department when you believe the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Posted in public areas;

(c) Available in alternative formats for an individual who is visually impaired;

(d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and

(e) Available to any individual upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, the protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as either a medicare or medicaid provider, or both, must ensure an individual seeking or participating in competency evaluation or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights at time of admission in a manner that is understandable to the individual or legally responsible person.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1156, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1158 (~~(Mental health inpatient services)~~) Competency evaluation and restoration—Seclusion and restraint. (1) An individual receiving either competency evaluation or restoration treatment services, or both has the right to be free from seclusion and restraint, including chemical restraint except as otherwise provided in this section or otherwise provided by law. The agency must do all of the following:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual and in accordance with WAC 246-322-180 or 246-337-110, whichever is applicable.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's ~~((clinical))~~ individual service record.

(c) Ensure staff members notify and receive authorization by a physician, physician assistant (PA) or advanced registered nurse practitioner (ARNP) within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member observes the individual at least every 15 minutes and the observation is recorded in the individual's ~~((clinical))~~ individual service record.

(f) If the use of seclusion or restraint exceeds ~~((twenty-four))~~ 24 hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be continued. This procedure must be repeated for each ~~((twenty-four))~~ 24 hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of either seclusion or restraint, or both, are documented in the individual's ~~((clinical))~~ individual service record.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1158, filed 4/16/19, effective 5/17/19.]

CERTIFICATION STANDARDS FOR PROBLEM GAMBLING AND GAMBLING DISORDER SERVICES

NEW SECTION

WAC 246-341-1200 Problem gambling and gambling disorder services—Certification standards. (1) Each agency licensed by the department to provide problem gambling and gambling disorder services that includes diagnostic screening and assessment, and individual, group, couples, and family counseling and case management must ensure the following requirements are met:

(a) Meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650;

(b) Be a problem gambling certified agency with the department;

(c) Maintain a list of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services; and

(d) Maintain a written procedure for the response to medical and psychiatric emergencies.

(2) An agency certified to provide problem gambling and gambling disorder services must ensure:

(a) All problem gambling and gambling disorder treatment services are provided by:

(i) An individual credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW and is a certified Washington state, national, or international gambling counselor; or

(ii) An individual credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified gambling counselor, and in training to become a certified gambling counselor.

(b) Before providing problem gambling and gambling disorder treatment services, an individual in training to become a certified gambling counselor must have a minimum of:

(i) At least 1,500 hours of professionally supervised postlicensure, postcertification, or postregistration experience providing mental health or substance use disorder treatment services; and

(ii) Thirty hours of unduplicated gambling specific training, including the basic training. One of the following state, national, or international organizations must approve the requirements of certification training:

(A) The Washington state gambling counselor certification committee is an independent body comprised of certified gambling counselors and advisory members as deemed appropriate by the committee and is responsible for determining the training and continuing education requirements for gambling counselor certification and gambling counselor supervision and any additional requirements not otherwise specified here;

(B) National or international gambling counselor certification board; or

(C) The health care authority problem gambling program.

(c) An individual who meets subsection (3) of this section must complete training within two years of acceptance to the certification program to become a certified gambling counselor.

(d) All staff members in training to become a certified gambling counselor must receive clinical supervision. The clinical supervisor must:

(i) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(ii) Complete training requirements on problem gambling and gambling disorder specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The health care authority problem gambling program.

(3) An agency that provides only problem gambling-related services, including diagnostic screening, brief intervention, case management, referral to certified problem gambling agencies, and educational sessions, but does not provide problem gambling assessment and treatment, is not required to be certified for problem gambling services.

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CERTIFICATION STANDARDS FOR APPLIED BEHAVIOR ANALYSIS MENTAL HEALTH SERVICES

NEW SECTION

WAC 246-341-1300 Applied behavior analysis mental health services—Certification standards. Applied behavior analysis (ABA) services assist individuals and their families using the practice of behavior analysis as defined in RCW 18.380.010.

(1) An agency providing ABA services must:

- (a) Conduct an assessment that determines functional relations between behavior and environmental factors;
- (b) Develop an ABA treatment plan;
- (c) Maintain an individual's individual service record that contains documentation of the following:
 - (i) The name of the agency or other sources through which the individual was referred, if applicable;
 - (ii) An assessment;
 - (iii) A copy of the ABA treatment plan, including progress notes;
 - (iv) Any referral made to a more intensive level of care when appropriate;
 - (v) Consent to include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual;
 - (vi) A brief summary of each service encounter, including the date, time, and duration of the encounter;
 - (vii) Name(s) of participant(s), including the name of the individual who provided the service;
 - (viii) Any information or copies of documents shared by or with a behavioral health agency or credentialed behavioral health professional; and
 - (ix) Discharge information as follows:
 - (A) A discharge statement if the individual left without notice;
 - or
 - (B) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including the date of discharge and continuing care plan.
- (2) ABA agencies that bill Medicaid must also follow the requirements administered by the health care authority as described in chapter 182-531A WAC.
- (3) The ABA treatment plan must:
 - (a) Be developed and maintained by a licensed behavior analyst (LBA) (see subsection (5) of this section);

(b) Identify the services to be delivered by the LBA, licensed assistant behavior analyst (LABA) and the certified behavior technician (CBT), if the agency employs a LABA or CBT (see subsection (5) of this section);

(c) Be comprehensive and document treatment being provided by other health care professionals; and

(d) Document how all treatment will be coordinated, as applicable, with other members of the health care team.

(4) An agency certified to provide ABA services must employ a licensed behavior analyst (LBA) that meets the professional requirements in chapter 246-805 WAC.

(5) All staff providing ABA services must be credentialed and supervised according to chapter 18.830 RCW and chapter 246-805 WAC.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-341-0702	Outpatient services—Individual mental health treatment services.
WAC 246-341-0704	Outpatient services—Brief mental health intervention treatment services.
WAC 246-341-0706	Outpatient services—Group mental health therapy services.
WAC 246-341-0708	Outpatient services—Family therapy mental health services.
WAC 246-341-0710	Outpatient services—Rehabilitative case management mental health services.
WAC 246-341-0712	Outpatient services—Psychiatric medication management services.
WAC 246-341-0714	Outpatient services—Day support mental health services.
WAC 246-341-0718	Recovery support services—Recovery support—General.
WAC 246-341-0724	Outpatient services—Recovery support—Peer support behavioral health services.
WAC 246-341-0728	Outpatient services—Recovery support—Applied behavior analysis mental health services.
WAC 246-341-0738	Outpatient services—Level one outpatient substance use disorder services.
WAC 246-341-0742	Outpatient services—Substance use disorder assessment only services.

- WAC 246-341-0744 Outpatient services—Information and assistance services—Substance use disorder services—General.
- WAC 246-341-0748 Outpatient services—Substance use disorder information and assistance—Information and crisis services.
- WAC 246-341-0750 Outpatient services—Substance use disorder information and assistance—Emergency service patrol.
- WAC 246-341-0754 Outpatient services—Problem gambling and gambling disorder services.
- WAC 246-341-0800 Involuntary and court-ordered—Noncompliance reporting for outpatient court-ordered substance use disorder treatment.
- WAC 246-341-0810 Involuntary and court-ordered—Designated crisis responder (DCR) services.
- WAC 246-341-0900 Crisis mental health services—General.
- WAC 246-341-0905 Crisis mental health services—Telephone support services.
- WAC 246-341-0910 Crisis mental health services—Outreach services.
- WAC 246-341-0915 Crisis mental health services—Stabilization services.
- WAC 246-341-1050 General requirements for mental health and substance use disorder inpatient and residential services.
- WAC 246-341-1060 General requirements for mental health and substance use disorder inpatient and residential services providing services under chapter 71.05 or 71.34 RCW.
- WAC 246-341-1070 Inpatient and residential substance use disorder services—General.
- WAC 246-341-1104 Secure withdrawal management and stabilization services.
- WAC 246-341-1110 Residential substance use disorder treatment services—Intensive inpatient services.
- WAC 246-341-1112 Residential substance use disorder treatment services—Low intensity (recovery house) residential treatment services.
- WAC 246-341-1114 Residential substance use disorder treatment services—Long-term treatment services.
- WAC 246-341-1134 Mental health inpatient services—Evaluation and treatment services.

WAC 246-341-1138

Mental health inpatient services—Child
long-term inpatient program (CLIP).

WSR 22-17-141

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed August 23, 2022, 2:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-011.

Title of Rule and Other Identifying Information: Chapter 246-12 WAC, Administrative procedures and requirements for credentialed health care providers. The department of health (department) is proposing model rules establishing minimum standards for health equity continuing education (CE) for health professions credentialed under RCW 18.130.040 with a CE requirement.

Hearing Location(s): On September 29, 2022, at 11:00 a.m. In response to the coronavirus disease 2019 (COVID-19), the department will not provide a physical location for this hearing. This promotes social distancing and helps provide for the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_e-fWeIDpSaiddsBcc5JlYg. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 6, 2022.

Submit Written Comments to: Contact Ashley Bell, P.O. Box 47843, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, by September 29, 2022.

Assistance for Persons with Disabilities: Contact Ashley Bell, phone 360-236-2961, TTY 711, email healthequityimplementation@doh.wa.gov, by September 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 5229 (chapter 276, Laws of 2021), codified as RCW 43.70.613, directs the department to establish model rules creating minimum standards for health equity CE training programs. The proposed rules create four new sections in chapter 246-12 WAC to implement RCW 43.70.613: Purpose, definitions, minimum health equity CE hours, and health equity CE training content. The proposed rules require completion of two hours of health equity CE every four years for all health professionals credentialed under RCW 18.130.040 with a CE requirement. The proposed rules also require that the two CE hours include implicit bias training to identify strategies to reduce bias during assessment and diagnosis. Rule-making authorities for each profession may create standards that exceed the minimum standards in the model rules.

Reasons Supporting Proposal: RCW 43.70.613 (3)(b) requires the department to establish model rules with minimum standards for health equity CE programs by January 1, 2023. RCW 43.70.613 (3)(b) directs the department to consult with patients and communities with lived experiences of health inequities or racism in the health care system and boards and commissions when developing the proposed rules. The department held four listening sessions that invited individuals with lived experiences of health inequities or racism in the health care system to share their experiences, which the department used to develop rule language. The department also held four rules workshops where the proposed rule language was developed with the public, boards, and commissions. RCW 43.70.613 (3)(c) requires the minimum standards to include instruction on skills to address structural factors, such as bias, racism, and poverty that manifest as health inequities. The proposed

rule requires that implicit bias training be included in the two CE hours health professionals must complete.

Statutory Authority for Adoption: RCW 18.130.040, 43.70.613.

Statute Being Implemented: ESSB 5229 (chapter 276, Laws of 2021).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ashley Bell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2961.

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 Ashley Bell, P.O. Box 47843, Olympia, WA 98504, phone 360-236-2961, TTY 711, email healthequityimplementation@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of how the above exemption applies to the proposed rule: The exemption applies to all portions of the rule proposal.

Scope of exemption for rule proposal:

Is fully exempt.

August 23, 2022
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3964.2

PART 15

MINIMUM STANDARDS FOR HEALTH EQUITY CONTINUING EDUCATION TRAININGS FOR HEALTH CARE PROFESSIONALS

NEW SECTION

WAC 246-12-800 Purpose. WAC 246-12-810 through 246-12-830 contain model rules establishing minimum standards for health equity continuing education trainings for health care professionals credentialed under RCW 18.130.040 with a continuing education requirement. The rule-making authority for each health profession credentialed under RCW 18.130.040 with a continuing education requirement may set standards that exceed the minimum standards in this chapter.

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NEW SECTION

WAC 246-12-810 Definitions. The definitions in this section and RCW 43.70.613 apply throughout WAC 246-12-800 through 246-12-830 unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of health.

(2) "Health care professional" means an individual credentialed or holding a retired active credential in one of the health professions listed in RCW 18.130.040 with a continuing education requirement.

(3) "Health equity" means all people have the same opportunities and equal access in order to attain their full health potential regardless of the color of their skin, ancestry, ethnicity, level of education, gender identity, sexual orientation, age, religion, socioeconomic status, the job they have, the neighborhood they live in, or their ability status.

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NEW SECTION

WAC 246-12-820 Health equity continuing education training minimum hours. Health care professionals must complete a minimum of two hours in health equity continuing education training every four years, unless the relevant rule-making authority specifies a higher number of hours in rule.

[]

NEW SECTION

WAC 246-12-830 Health equity continuing education training content. An education program providing health equity continuing education training must:

(1) Include implicit bias training to identify strategies to reduce bias during assessment and diagnosis and may include, but is not limited to, at least one of the topics included in RCW 43.70.613

(3) (c).

(2) Have trainers with demonstrated knowledge and experience related to health equity. Research referenced in the training must be based on current empirical research and known best practices.

(3) Have courses that assess the health care professional's ability to apply health equity concepts into practice in accordance with profession specific rules, which may include, but are not limited to:

(a) An assessment at the end of an in-person or virtual continuing education training to determine knowledge gained during that training; or

(b) A document provided at the end of an in-person or virtual continuing education training that attests attendance at the training.

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WSR 22-17-147

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed August 23, 2022, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-026.

Title of Rule and Other Identifying Information: Chapter 51-52 WAC, Adoption and amendment of the 2021 International Mechanical Code and International Fuel Gas Code.

Hearing Location(s): On September 30, 2022, at 10:00 a.m., at 129 North 2nd Street, Yakima, WA 98901; or on October 14, 2022, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person, or via Zoom or conference call. The Zoom link and phone are provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: November 4, 2022.

Submit Written Comments to: State Building Code Council (SBCC), P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by October 14, 2022.

Assistance for Persons with Disabilities: Annette Haworth, phone 360-407-9255, email sbcc@des.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adopts the 2021 edition of the International Mechanical Code (IMC) and International Fuel Gas Code, published by the International Code Council (ICC), with state amendments to incorporate proposed changes as adopted by the Washington state building code council. The rules will provide increased clarity and life safety measures for building construction and use in Washington state.

	Proposed Section and Title	Type of Change	Description
1.	51-52-003 International Mechanical Code	Update reference	The adopted code edition is changed from the 2018 International Mechanical Code to the 2021 International Mechanical Code.
2.	51-52-008 Implementation	Effective date	Sets July 1, 2023, as the effective date for the 2021 IMC.
3.	101.2 Scope	Update reference	Updates the adopted code references for NFPA 58 (2020) and NFPA 54 (2021).
4.	113.4 Failure to comply	Editorial	The term "authority having jurisdiction" was changed to "code official" in an effort to remove any ambiguity.
5.	202 "Balanced whole house ventilation"	Code change/clarification (21-GP2-076)	The phrase "dwelling or sleeping" was added to the first sentence for clarity. The second sentence was moved to Section 403.4.6.3 since it is more in the nature of a code requirement than part of a definition.
6.	202 "Not balanced whole house ventilation"	Code change/clarification (21-GP2-076)	A new definition was added to help clarify the whole house ventilation requirements and rate adjustment in Table 403.4.3 and when and where balanced ventilation is required.
7.	202 "Distributed whole house ventilation"	Code change/clarification (21-GP2-076)	This definition was revised to separate adjacent rooms from adjoining spaces and help clarify requirements for whole house ventilation.
8.	202 "Not distributed whole house ventilation"	Code change/clarification (21-GP2-076)	A new definition was added to help clarify the whole house ventilation requirements and rate adjustment in Table 403.4.3 and when and where balanced ventilation is required.

	Proposed Section and Title	Type of Change	Description
9.	202 "Enclosed kitchen"	Code change (21-GP2-063)	This definition was added to coordinate with the proposal requiring additional kitchen hood ventilation and helps clarify the difference between an open kitchen and enclosed kitchen.
10.	202 "Interior adjacent room"	Code change/clarification (21-GP2-076)	A new definition was added to help clarify the whole house ventilation requirements and when and where balanced ventilation is required.
11.	202 "Interior adjoining room"	Code change/clarification (21-GP2-076)	A new definition was added to help clarify the whole house ventilation requirements and when and where balanced ventilation is required.
12.	306.6 Appliances above ceilings	Code change/clarification (21-GP2-087)	This change removes the requirement for appliances above ceilings to have ready access. While the section required ready access, it also specified that the ready access was to a removal panel or tile, contrary to the definition of ready access. This clarifies that a removable panel is allowed. The sizing was changed, going from nominal dimensions to actual opening dimensions.
13.	401.4 Intake opening location	Code change/2021 IMC change (21-GP2-077, 21-GP2-085)	Item 2 of this section was modified to allow residential small system air intakes less than 25 feet above a parking lot, to help alleviate the need to provide "snorkel" type intakes for multi-family building units. The language previously found in the exception as a state amendment was moved into the main body of Item 3 for the 2021 IMC. This was modified to align the IMC requirements for combination terminations with ASHRAE 62.2 requirements.
14.	401.7 Testing and balancing	Editorial	The term "building official" was changed to "code official."
15.	403.2.1 Recirculation of air	2021 IMC change	Changes to the model code language were integrated into the existing state amendment. The changes are to portions of the section that were not a part of the existing state amendment.
16.	Table 403.3.1.1 Required outdoor ventilation air	2021 IMC change, editorial	Previously, the filed rule contained only those sections of the table that were amended by the state. The proposed rule now contains the entire table rather than the six categories amended by the state. Also included is a 2021 IMC change to footnote M for consistency with ASHRAE 62.1. No changes were made to the existing state amendments to the table.
17.	403.4 Group R whole house mechanical ventilation system	Code change (21-GP2-009)	An exception was added that allows ASHRAE 62.2 to be used as an alternate compliance path for low-rise residential.
18.	403.4.1 System design	Editorial	Edited for consistency with code language format.
19.	403.4.4.1 Whole house ventilation in Group R-2 occupancies	Code change/clarification (21-GP2-010, 21-GP2-076)	Language was added that clarifies when heat/energy recovery ventilators are required in multifamily residential buildings. It was previously unclear as to whether an HRV/ERV was required by this section. Exceptions were added to clarify ventilation requirements in adjoining/adjacent spaces.
20.	403.4.4.2 Whole house ventilation for other than Group R-2 occupancies	Code change/clarification (21-GP2-076)	The same exceptions were added to this section to clarify how adjoining/adjacent spaces are to be ventilated.
21.	403.4.6.1 Exhaust fans	Code change (21-GP2-063)	Changes were made to separate kitchen exhaust requirements from other local exhaust to coordinate with the changes for kitchen range hood exhaust.

	Proposed Section and Title	Type of Change	Description
22.	403.4.6.3 Balanced whole house ventilation system	Code change/editorial (21-GP2-063)	The text that was a duplicate of the removed language in the balanced whole house ventilation definition was modified for clarity.
23.	403.4.7 Local exhaust	Code change/editorial (21-GP2-063)	Timer controls were added to the list of allowable fan controls.
24.	Table 403.4.7 Minimum exhaust rates	Code change (21-GP2-063)	The exhaust rate for kitchens was divided into Open and Enclosed kitchens and a reference added to the new Section 403.4.7.3 for kitchen range hood exhaust requirements.
25.	403.4.7.2 Local exhaust fans	Code change (21-GP2-063)	The phrase "or equivalent" was added to the testing standards to include ASTM capture efficiency testing for kitchen hoods, AHAM hood testing and HIV 911 listings. The exception for downdraft hoods was removed as the intent is for all hoods to be able to capture and remove pollutants from cooking. Items 4 and 5 also set maximum sound ratings for kitchen ventilation.
26.	403.4.7.3 Local intermittent kitchen exhaust system/Table 403.4.7.3	Code change (21-GP2-063)	This new section and table sets minimum airflow rates or capture efficiencies for kitchen range hoods based on the type of kitchen appliance installed. The intent is to reduce the exposure to detrimental health impacts from the pollutants produced by cooking, including nitrogen dioxide which can increase the risk of asthma.
27.	403.4.7.3.1 Field verification and diagnostic testing for local intermittent kitchen exhaust system	Code change (21-GP2-063)	This new section requires verification for either the capture efficiency or airflow rate as specified in Table 403.4.7.3
28.	501.3.1 Location of exhaust outlets	2021 IMC change code change/clarification (21-GP2-019)	The 2021 IMC added language to Item 3 allowing combination exhaust termination fittings. This was previously addressed in the state amendment to Section 401.2. Additionally, Item 6 was added to provide guidance on the requirements for transformer vault exhaust rather than lumping it in with parking garage exhaust, but there are specific requirements in the NEC for transformer exhaust.
29.	501.4 Pressure equalization	Code change/editorial (21-GP2-063)	The phrase "domestic range" is replaced with "kitchen" in the exception to coordinate with the new kitchen exhaust requirements.
30.	504.11 Common exhaust systems for clothes dryers	Editorial	Renumbering/section reference update only to coordinate with IMC changes.
31.	505.3 Domestic exhaust ducts	Code change (21-GP2-063)	The section title was updated for consistency with the language in the IMC. Exception 1 was revised to allow continuous exhaust systems (where allowed by Table 403.4.7.3) with a MERV 3 grease filter to not terminate to the outdoors.
32.	506.3.9.1 Grease duct horizontal cleanout	2021 IMC change	The 2021 IMC added Item 7 with separation requirements for horizontal discharge fans.
33.	515.1 General (Waste or linen chute venting)	Editorial	The language edited for consistency with the model code style and the exception language is simplified for clarity.
34.	601.2 Air movement in egress elements	2021 IMC change	The language in Exception 4 was clarified and a reference to ASHRAE 170 for health care facilities was added.
35.	603.5.1 Gypsum ducts	2021 IMC change	The second sentence was revised for clarity and consistency with defined terms.

	Proposed Section and Title	Type of Change	Description
36.	605 Air filters	Code change (21-GP2-098, 21-GP2-086)	The council sent forward two options for requirements for air filters. The first requires MERV 13 filters in most occupancies for filtering particulates and contaminants from outdoor air. The second option retains the current requirement for MERV 6 filters but requires that air handlers have the ability to install a MERV 13 filter if needed due to air quality and have sufficient fan capacity to provide the required air volume with a MERV 13 filter. Both of these methods were intended to address indoor air quality during periods of poor air quality, but Option 1 also addresses indoor air quality by filtering and preventing the spread of any indoor contaminants such as viruses.
37.	607.5.2 Fire barriers	Code change/clarification (21-GP2-075)	This section is amended to allow flexible connections when air-handling equipment is located outdoors (in Exception 3.1) and ducts that connect to a diffuser, grille or register within the same room (Exception 3.2).
38.	607.5.3 Fire partitions	Code change (21-GP2-075)	Exception 4 is amended to allow flexible connections in similar instances as for fire barriers, above.
39.	915.3 Installation of emergency and legally required power systems	Code change (21-GP2-074)	This is a new section that brings in language to reference NFPA standards for standby power systems required by the building code.
40.	915.4 Installation of option standby power systems	Code change (21-GP2-074)	This new section brings in reference standards for standby power that is not required under the building code.
41.	1101.2 Factory-built equipment and appliances	2021 IMC change	This section previously included a state amendment to reference UL 60335-2-40 for low global warming potential refrigerants. This amendment is no longer necessary as the base model code language now contains the same reference standard.
42.	1101.6 General (Refrigeration systems)	2021 IMC change	This section was removed from the 2021 IMC and the requirements moved into Section 1101.1.1 and 1101.1.2. The previous state amendment added ASHRAE 15, which is now referenced in 1101.1.1 of the model code, so the state amendment is no longer necessary.
43.	1105.6.3 Ventilation rate	2021 IMC change	The 2021 IMC removed the sentence that was modified by the state and now the model code just references the IAR standard for ammonia refrigeration. The state amendment is no longer necessary.
44.	1209.5 Insulation and thermal break	2021 IMC change editorial	The model code changed the title of this section to be more descriptive of the requirements in the section, and terminology was updated for clarity and consistency.
45.	1305.7 Vent piping	Code change/clarification	This section was amended for clarity and consistency with other code and standards separation requirements.
46.	1402.8.1.2 Rooftop mounted solar thermal collectors and systems	2021 IMC change	The existing state amendment to this section was included in the model code base language for the 2021 IMC, so the amendment is no longer necessary.

	Proposed Section and Title	Type of Change	Description
47.	Chapter 15 Referenced standards	Code changes/2021 IMC change (21-GP2-063, 21-GP2-009, 21-GP2-074)	The referenced standards section was updated to include new standards introduced by code change proposals. AHAM HRH-2, ASTM E3087, and HVI 911 were added to support the changes to the kitchen ventilation requirements. ASHRAE 62.2 was updated to the most recent version and is referenced by both the kitchen ventilation proposal and the alternate compliance proposal for low rise ventilation. Two NFPA standards are included as referenced by the standby power proposal. Some standards that were previously included through state amendment are now referenced by the model code and the amendments are no longer necessary. Other standards added by amendment are updated to the most recent version.
48.	IFGC Section 101 General (WAC 51-52-21101)	Updated references	Updates the adopted code references for NFPA 58 (2020) and NFPA 54 (2021).
49.	IFGC Section 116 Failure to comply (WAC 51-52-21116)	Editorial	The term "authority having jurisdiction" was changed to "code official" in an effort to remove any ambiguity.
50.	IFGC Table 409.1.1 Natural gas valve standards (WAC 51-52-21409)	Code change (21-GP2-001)	The table is amended to add ASME B16.38 for natural gas systems with piping 2-1/2 to 4 inches in diameter to allow for a flanged valve option.
51.	IFGC Chapter 8 Referenced Standards (WAC 51-52-21800)	Code change	The standard referenced in Proposal 001 for larger diameter gas piping is added to the referenced standards.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: RCW 19.27.031, 19.27.074.

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

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9278; Enforcement: Local building departments.

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 Stoyan Bumbalov, P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9277, email sbcc@des.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or in-

corporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: In addition to the proposed changes, the rule includes adoption by reference of the 2021 IMC, a model code published by ICC. Those portions of the 2021 IMC that are not amended by this proposed rule will be adopted as written. The full text of the 2021 IMC may be viewed here: <https://codes.iccsafe.org/content/IMC2021P3>.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 51-52-003 adopts by reference the 2021 edition of IMC. WAC 51-52-0101 adopts by reference the 2021 International Fuel Gas Code, the 2020 Edition of NFPA 58 (Liquefied Petroleum Gas Code) and the 2021 Edition of NFPA 54 (National Fuel Gas Code).

The proposed rule does impose more-than-minor costs on businesses. There are costs imposed by the proposed rules, but the costs do not fall disproportionately on small businesses. These rules will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rules do not affect employment, reporting or recordkeeping.

Small Business Economic Impact Statement (SBEIS)

Description: SBCC is filing a proposed rule to adopt the updated 2018 edition of the IMC (chapter 51-52 WAC). Since 1985, SBCC has been responsible for updating to new editions of the building code per RCW 19.27.074. The IMC are updated every three years by ICC. The code development process conducted by the model code organization is open to all interest groups within the design and construction industry and from governmental organizations. See www.iccsafe.org for more information about the model code development process.

The administrative compliance requirements are under the authority of the local government. RCW 19.27.050. Compliance activities including permit issuance, plan review and approval, and inspections occur at the local level. Requirements for construction document submittal and other reporting requirements are determined by the local jurisdiction and are consistent with previously established policies. The proposed amendments to chapter 51-52 WAC include specific technical requirements for building construction to be consistent with national standards.

Professional Services: Washington has had a statewide building code in effect since 1974. The local enforcement authority having jurisdiction administers the codes through the building and/or fire departments. Administrative procedures for state building code compliance are established and will not be changed by the adoption of the update to the current building codes. Small businesses will employ the same types of professional services for the design and construction of buildings and systems to comply with the state building code.

The proposed rule updates the state building code and does not require additional equipment, supplies, labor or other services. Services needed to comply with the building code are existing within the construction industry as required by the local authority having jurisdiction.

Costs of Compliance for Businesses: The cost of compliance incurred by Washington businesses includes training and educational materi-

als. The 2021 international mechanical model code costs \$90 + tax, shipping and handling. These publications are also available online at <https://codes.iccsafe.org/codes>. ICC chapters and local stakeholder groups offer training for continuing education credits at various times throughout the year. Prices vary depending on topic and intensity.

The mechanical code technical advisory group (TAG) determined there is a cost for compliance on businesses for the following proposed state amendments.

1. Sections 403.4.7 New Table 403.4.7.3 (21-GP2-063): This new section and table sets minimum airflow rates or capture efficiencies for kitchen range hoods in residential dwellings based on the type of kitchen appliance installed. The intent is to reduce the exposure to detrimental health impacts from the pollutants produced by cooking, including nitrogen dioxide, which can increase the risk of asthma. This proposal is solely based on health concerns from poorly ventilated gas appliances. A \$200 to up to \$1000 (if the make-up air requirement is triggered) incremental cost is estimated. There is no additional operation cost.

2. Section 605 Option 1 (21-GP2-098): This change is intended to improve indoor air quality, by filtering out exterior pollutants, such as wildfire smoke, and interior sources such as airborne infectious particles. The change requires improved filters on various air handlers and ventilation systems, up to MERV 13. The anticipated incremental cost is about \$5.00 per filter. If replaced every three months, that would be an annual cost of \$20 per air handler.

3. Section 605 Option 2 (21-GP2-086): This is similar to the previous proposal but is focused solely on exterior pollutants and the ability for building inhabitants to respond to events with an increase in outdoor air pollution. This proposal requires that the air handler be capable of housing a MERV 13 filter and provide the required fan capacity. This also carries the same costs as the previous proposal, but the incremental cost may not be incurred every time the filter is changed, so the annual cost could be less than the estimated \$20 per air handler.

Loss of Sales or Revenue: The proposed rules make the state code for building construction consistent with national standards. Businesses with new products or updated test or design standards are recognized in the updated building code.

The update will result in some cost outlay for some small businesses for specific building projects, for a transition period. Other small businesses would see an increase in revenue. The amendments to the building codes affect over 25,000 small businesses in the state, where construction activity occurs. The primary intent of the amendments is to improve the safety features in buildings and provide consistency and fairness across the state, for a predictable business environment. The amendments should result in enhanced safety and value in buildings.

Cost of Compliance for Small Businesses: Determine whether the proposed rule will have a disproportionate cost impact on small businesses, compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses.

The majority of businesses affected by the updates to the building codes are small businesses, over 95 percent of those listed in the construction and related industries have under 50 employees. The costs per employee are comparable between the largest businesses and the ma-

majority of small businesses. The cost to comply with the updated codes is not a disproportionate impact on small businesses. Where the council found the cost of compliance for small businesses to be disproportionate, the proposed rules mitigate the cost. The proposed rules include a definition of small business and provide exceptions for compliance with the updated rule.

Reducing the Costs of the Rule on Small Businesses: SBCC conducted a detailed review process, including participation at the national code development hearings, to document significant economic impacts of the proposed code amendments.

Small Businesses Involved in the Development of the Rule: For IMC, SBCC conducted eight open public meetings of the building code TAG, available via telephone conference bridge and over the internet, and allowed comment on every item on every agenda. For IMC TAG, SBCC appointed 11 representatives of all segments of the business and construction community to serve on the TAGs.

List of Industries: Below is a list of industries required to comply with the mechanical code:

NAICS Code	NAICS Code Definition	Number in Washington state	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Avg Annual Payroll	0.3% of Avg Annual Revenue
236116	New multifamily housing construction (except for-sale builders)	45	\$54,622k	---	\$1,213,822	---	\$12,138	---
236118	Residential remodelers	2777	\$318,180k	\$1,536,217k	\$114,577	\$553,193	\$1,146	\$1,660
236210	Industrial building construction	53	\$99,790k	---	---	---	---	---
236220	Commercial and institutional building construction	862	\$772,473k	\$6,925,925k	\$896,140	\$8,034,716	\$8,961	\$24,104
238130	Framing contractors	417	\$79,196k	\$279,226k	\$189,918	\$669,607	\$1,899	\$2,009
238140	Masonry contractors	293	\$74,067k	\$215,274k	\$252,788	\$734,724	\$2,528	\$2,204
238150	Glass and glazing contractors	141	\$67,626k	\$237,985k	\$479,617	\$1,687,837	\$4,796	\$5,064
238160	Roofing contractors	537	\$179,942k	\$660,911k	\$335,088	\$1,230,747	\$3,351	\$3,692
238190	Other foundation, structure, and building exterior contractors	113	\$37,585k	\$123,771k	\$332,611	\$1,095,319	\$3,326	\$3,286
238210	Electrical contractors and other wiring installation contractors	1847	\$940,854k	\$3,026,762k	\$509,396	\$1,638,745	\$5,094	\$4,916
238220	Plumbing, heating, and air-conditioning contractors	1664	\$959,976k	\$3,169,548k	\$576,909	\$1,904,776	\$5,769	\$5,714
238290	Other building equipment contractors	81	\$117,696k	---	\$1,453,037	---	\$14,530	---
238310	Drywall and insulation contractors	653	\$282,929k	\$723,945k	\$433,276	\$1,108,644	\$4,333	\$3,325

NAICS Code	NAICS Code Definition	Number in Washington state	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Avg Annual Payroll	0.3% of Avg Annual Revenue
238990	All other specialty trade contractors	547	\$182,710k	\$573,308k	\$334,022	\$1,048,095	\$3,340	\$3,144
321213	Engineered wood member (except truss) manufacturing	11	\$14,216k	\$79,051k	\$1,292,364	\$7,186,455	\$12,924	\$21,559
332322	Sheet metal work manufacturing	122	\$122,956k	\$573,443k	\$1,007,836	\$4,700,352	\$10,078	\$14,101
423720	Plumbing and heating equipment and supplies (hydronics) merchant wholesalers	168	\$82,225k	\$897,748k	\$489,435	\$5,343,738	\$4,894	\$16,031
541310	Architectural services	635	\$326,798k	\$921,033k	\$514,643	\$1,450,446	\$5,146	\$4,351
541330	Engineering services	1599	\$1,758,825k	\$3,946,553k	\$1,099,953	\$2,468,138	\$11,000	\$7,404
541350	Building inspection services	154	\$9,724k	\$28,297k	\$63,143	\$183,747	\$631	\$551

Note: Data is blank in some fields to protect data source.

Data Source: Economic census of the United States.

Estimate of the Number of Jobs That Will Be Created or Lost: The adoption of the latest code edition is not expected to significantly impact the number of jobs in the construction industry. These rules are likely to be job neutral overall, i.e., they will not result in any job gains or losses. The scheduled effective date of the new edition is July 1, 2023. Building permits issued prior to that date will be vested under the 2018 building code. Permits issued for projects under the 2021 code edition will generally start with the 2024 construction season.

A copy of the statement may be obtained by contacting Stoyan Bum-balov, P.O. Box 41449, Olympia, WA 90504-1449, phone 360-407-9277, email sbcc@des.wa.gov.

August 23, 2022
Tony Doan
Council Chair

OTS-3989.2

Chapter 51-52 WAC
STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2018)) 2021 EDI-
TION OF THE INTERNATIONAL MECHANICAL CODE
Formerly chapter 51-42 WAC

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-003 International Mechanical Code. The ((2018)) 2021 edition of the *International Mechanical Code* published by the International Code Conference is hereby adopted by reference with the exceptions noted in this chapter of the Washington Administrative Code (WAC).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-003, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-003, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-003, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-003, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-003, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-104, § 51-52-003, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 21-11-066, filed 5/14/21, effective 6/14/21)

WAC 51-52-008 Implementation. The International Mechanical Code adopted by chapter 51-52 WAC shall become effective in all counties and cities of this state on ((February 1, 2021)) July 1, 2023.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-11-066, § 51-52-008, filed 5/14/21, effective 6/14/21; WSR 20-03-041, § 51-52-008, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-008, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-008, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-008, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-104, § 51-52-008, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0101 Section 101—General.

101.2 Scope. This code shall regulate the design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings. This code shall also regulate those mechanical systems, system components, equipment and appliances specifically addressed herein. The installation of fuel gas distribution piping and equipment, fuel gas-fired appliances and fuel

gas-fired appliance venting systems shall be regulated by the *International Fuel Gas Code*. References in this code to Group R shall include Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC.

EXCEPTIONS: 1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the *International Residential Code*.
2. The standards for liquefied petroleum gas installations shall be the ((2017)) 2020 Edition of NFPA 58 (Liquefied Petroleum Gas Code) and the ((2018)) 2021 Edition of ANSI Z223.1/NFPA 54 (National Fuel Gas Code).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0101, filed 1/8/20, effective 7/1/20. Statutory Authority: RCW 19.27.031, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 17-17-159, § 51-52-0101, filed 8/23/17, effective 10/1/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-01-148, § 51-52-0101, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0101, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0101, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0101, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-104, § 51-52-0101, filed 12/17/03, effective 7/1/04.]

NEW SECTION

WAC 51-52-0113 Section 113—Stop work order.

113.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to fines established by the code official.

[]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0202 Section 202—General definitions.

BALANCED WHOLE HOUSE VENTILATION. Any combination of concurrently operating residential dwelling or sleeping unit mechanical exhaust and mechanical supply whereby the total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. ((Intermittent dryer exhaust, intermittent range hood exhaust, and intermittent toilet room exhaust airflow rates above the residential dwelling or sleeping unit minimum ventilation rate are exempt from the balanced airflow calculation.))

NOT BALANCED WHOLE HOUSE VENTILATION. A whole house ventilation system serving a dwelling or sleeping unit that is not considered balanced in accordance with the definition in this code for *balanced whole house ventilation system*. Only other than Group R-2 dwelling and sleeping units

are allowed in accordance with Section 403.4.4.1 to have *not balanced whole house ventilation systems*.

DISTRIBUTED WHOLE HOUSE VENTILATION. A whole house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space, (living room, den, office, *interior adjacent room*, interior adjoining spaces or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

NOT DISTRIBUTED WHOLE HOUSE VENTILATION. A whole house ventilation system shall be considered not distributed when either the supply system or the exhaust system is not distributed. Supply systems are not distributed when a habitable space is supplied with outdoor air to ventilate an *interior adjacent room* or an *interior adjoining space*. Exhaust systems are not distributed when all bathrooms and kitchens are not exhausted by the whole house ventilation system. If either the supply system or the exhaust system is not distributed, then the ventilation quality adjustment system coefficient adjustment is required in accordance with Section C403.4.3.

ENCLOSED KITCHEN. A kitchen whose permanent openings to interior adjacent spaces do not exceed a total of 60 square feet (6 m²).

INTERIOR ADJACENT ROOM. An enclosed room without exterior windows or openings to the outdoors located within a dwelling or sleeping unit that does not have interior unobstructed openings required for an *interior adjoining space*.

INTERIOR ADJOINING SPACE. A room or space without openings to the outdoors that is naturally ventilated from another habitable space by unobstructed fixed openings size in accordance with Section 402.3.

LOCAL EXHAUST. An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

PERMANENT CONSTRUCTION. Construction that, if removed, would disturb the structural integrity of the building or the fire-resistance rating of a building assembly.

RELIEF AIR. Exhausted return air from a system that provides ventilation for human usage.

REPLACEMENT AIR. Outdoor air that is used to replace air removed from a building through an exhaust system. Replacement air may be derived from one or more of the following: Makeup air, supply air, transfer air, and infiltration. However, the ultimate source of all replacement air is outdoor air. When replacement air exceeds exhaust, the result is exfiltration.

WHOLE HOUSE VENTILATION SYSTEM. A mechanical ventilation system, including fans, controls, and ducts, which replaces, by direct means, air from the habitable rooms with *outdoor air*.

VENTILATION ZONE. Any indoor area that requires ventilation and comprises one or more spaces with the same occupancy category (see Table 403.3.1.1), occupant density, zone air distribution effectiveness (see Section 403.3.1.1.1.2), and design zone primary airflow per unit area.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0202, filed 1/8/20, effective 7/1/20; WSR 16-01-148, §

51-52-0202, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0202, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0202, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0202, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-104, § 51-52-0202, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0306 Section 306—Access and service space.

306.5 Equipment and appliances on roofs or elevated structures. Where equipment requiring access or appliances are located on an elevated structure or the roof of a building such that personnel will have to climb higher than 16 feet (4877 mm) above grade to access such equipment or appliances, an interior or exterior means of access shall be provided. Such access shall not require climbing over obstructions greater than 30 inches (762 mm) in height or walking on roofs having a slope greater than 4 units vertical in 12 units horizontal (33 percent slope). Such access shall not require the use of portable ladders. Where access involves climbing over parapet walls, the height shall be measured to the top of the parapet wall.

Permanent ladders installed to provide the required access shall comply with the following minimum design criteria:

1. The side railing shall extend above the parapet or roof edge not less than 42 inches (1067 mm).
2. Ladders shall have rung spacing not to exceed 12 inches (305 mm) on center. The uppermost rung shall be a maximum of 24 inches below the upper edge of the roof hatch, roof or parapet, as applicable.
3. Ladders shall have a toe spacing not less than 7 inches (178 mm) deep.
4. There shall be a minimum of 18 inches (457 mm) between rails.
5. Rungs shall have a minimum 0.75-inch (19 mm) diameter and be capable of withstanding a 300-pound (136.1 kg) load.
6. Ladders over 30 feet (9144 mm) in height shall be provided with offset sections and landings capable of withstanding 100 pounds (488.2 kg/m²) per square foot. Landing dimensions shall be not less than 18 inches and not less than the width of the ladder served. A guardrail shall be provided on all open sides of the landing.
7. Climbing clearances. The distance from the centerline of the rungs to the nearest permanent object on the climbing side of the ladder shall be a minimum of 30 inches measured perpendicular to the rungs. This distance shall be maintained from the point of ladder access to the bottom of the roof hatch. A minimum clear width of 15 inches shall be provided on both sides of the ladder measured from the midpoint of and parallel with the rungs except where cages or wells are installed.
8. Landing required. The ladder shall be provided with a clear and unobstructed bottom landing area having a minimum dimension of 30 inches by 30 inches centered in front of the ladder.

9. Ladders shall be protected against corrosion by approved means.

10. Access to ladders shall be provided at all times.

Catwalks installed to provide the required access shall be not less than 24 inches (610 mm) wide and shall have railings as required for service platforms.

EXCEPTION: This section shall not apply to Group R-3 occupancies.

306.6 Appliances above ceilings. Appliances that are located above ~~((the))~~ ceilings shall have ~~((ready))~~ access for inspection, service and repair without removing *permanent construction*. Appliances that are located above a ceiling shall be provided with access to ~~((panel or removable ceiling tile with minimum nominal dimensions of 24 inches by 24 inches (609 mm x 609 mm)))~~ the working space(s) by an opening not smaller than 22 inches by 22 inches (559 mm by 559 mm). All enclosure doors or hinged panels shall be capable of opening a minimum of 90 degrees.

The appliance is not required to be removable or replaceable through the ~~((access panel or removable ceiling tile))~~ enclosure door, hinged panel, removable lay-in ceiling tile, or other removable covers. The appliance may be removed or replaced by removing the ceiling or wall assemblies adjacent to the appliance as long as they are not *permanent construction*.

EXCEPTIONS: 1. This section shall not apply to replacement appliances installed in existing compartments and alcoves where the working space clearances are in accordance with the ~~((equipment or))~~ appliance manufacturer's installation instructions.
2. A smaller ~~((access panel or removable ceiling tile))~~ enclosure door, hinged panel, removable lay-in ceiling tile, or other removable covers shall be permitted when allowed by the ~~((equipment or))~~ appliance manufacturer's installation instructions and electrical access is not required.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0306, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-0306, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0306, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0306, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0401 Section 401—General.

401.2 Ventilation required. Every occupied space other than enclosed parking garages and buildings used for repair of automobiles shall be ventilated in accordance with Section 401.2.1, 401.2.2 or 401.2.3. Enclosed parking garages and buildings used for repair of automobiles shall be ventilated by mechanical means in accordance with Sections 403 and 404.

401.2.1 Group R occupancies. Ventilation in Group R occupancies shall be provided in accordance with Section 403.4.

401.2.2 Ambulatory care facilities and Group I-2 occupancies. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407.

401.2.3 All other occupancies. Ventilation in all other occupancies shall be provided by natural means in accordance with Section 402 or by mechanical means in accordance with Sections 403.1 to 403.7.

401.3 When required. Group R occupancies shall be vented continuously or intermittently in accordance with Section 403.4. Ventilation in all other occupancies shall be provided during the periods that the room or space is occupied.

401.4 Intake opening location. Air intake openings shall comply with all of the following:

1. Intake openings shall be located not less than 10 feet (3048 mm) from lot lines or buildings on the same lot. Lot lines shall not be defined as a separation from a street or public way.

2. Mechanical and gravity outdoor air intake openings shall be located not less than 10 feet (3048 mm) horizontally from any hazardous or noxious contaminant source, such as vents, streets, alleys, parking lots, and loading docks, except as specified in Item 3 or Section 501.3.1. Outdoor air intake openings shall be permitted to be located less than 10 feet (3048 mm) horizontally from streets, alleys, parking garage entries, parking lots, and loading docks provided that the openings are located not less than 25 feet (7620 mm) vertically above such locations. Where openings front on a street or public way, the distance shall be measured from the closest edge of the street or public way.

EXCEPTIONS:

1. Intake air openings providing less than 500 cfm of outdoor air to Group R occupancies are permitted to be located less than 10 feet (3048 mm) horizontally from parking lots provided that the openings are not less than 15 feet (4572 mm) vertically above the parking lot.

2. Intake air openings providing less than 500 cfm of outdoor air to Group R occupancies are permitted to be located less than 10 feet (3048 mm) horizontally from parking lots provided that the openings are not less than 15 feet (4572 mm) vertically above the clear height for vehicles in the parking garage.

3. Intake openings shall be located not less than 3 feet (914 mm) below contaminant sources where such sources are located within 10 feet (3048 mm) of the opening. Separation is not required between intake air openings, operable openings, and living space exhaust air openings of an individual dwelling unit or sleeping unit where an approved factory-built intake/exhaust combination termination fitting is used to separate the air streams in accordance with the manufacturer's instructions. For these combined terminations, the exhaust air concentration within the intake airflow shall not exceed 10 percent as established by the manufacturer, in accordance with ASHRAE 62.2 Section 6.8, Exception 4.

((EXCEPTION: Separation is not required between intake air openings and living space environmental air exhaust air openings of an individual dwelling unit or sleeping unit where a factory-built intake/exhaust combination termination fitting is used to separate the air streams in accordance with the manufacturer's instructions. A minimum of 3 feet (914 mm) separation shall be maintained between other environmental air exhaust outlets and other dwelling or sleeping unit factory-built intake/exhaust combination termination fittings.))

4. Intake openings on structures in flood hazard areas shall be at or above the elevation required by Section 1612 of the *International Building Code* for utilities and attendant equipment.

EXCEPTION: Enclosed parking garage and repair garage ventilation air intakes are permitted to be located less than 10 feet horizontally from or 25 feet vertically above a street, alley, parking lot, and loading dock.

401.7 Testing and balancing. At the discretion of the building official, flow testing may be required to verify that the mechanical system(s) satisfies the requirements of this chapter. Flow testing may be performed using flow hood measuring at the intake or exhaust points of the system, in-line pitot tube, or pitot-traverse type measurement systems in the duct, short term tracer gas measurements, or other means approved by the ((building)) code official.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0401, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-0401, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0401, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0401, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-015, § 51-52-0401, filed 12/2/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-09-009, filed 4/8/22, effective 5/9/22)

WAC 51-52-0403 Section 403—Mechanical ventilation.

403.1 Ventilation system. Mechanical ventilation shall be provided by a method of supply air and return or *exhaust air*. The amount of supply air shall be approximately equal to the amount of return and *exhaust air*. The system shall not be prohibited from producing negative or positive pressure. The system to convey ventilation air shall be designed and installed in accordance with Chapter 6.

403.2 Outdoor air required. The minimum *outdoor airflow rate* shall be determined in accordance with Section 403.3.

EXCEPTIONS:

1. Where the registered design professional demonstrates that an engineered ventilation system design will prevent the maximum concentration of contaminants from exceeding that obtainable by the rate of *outdoor air* ventilation determined in accordance with Section 403.3, the minimum required rate of *outdoor air* shall be reduced in accordance with such engineered system design.
2. Alternate systems designed in accordance with ASHRAE Standard 62.1 Section 6.2, Ventilation Rate Procedure, shall be permitted.

403.2.1 Recirculation of air. The air required by Section 403.3 shall not be recirculated. Air in excess of that required by Section 403.3 shall not be prohibited from being recirculated as a component of supply air to building spaces, except that:

1. Ventilation air shall not be recirculated from one dwelling to another or to dissimilar occupancies.

2. Supply air to a swimming pool and associated deck areas shall not be recirculated unless such air is dehumidified to maintain the relative humidity of the area at 60 percent or less. Air from this area shall not be recirculated to other spaces where 10 percent or more of the resulting supply airstream consists of air recirculated from these spaces. The design and installation of dehumidification systems shall comply with ANSI/ACCA 10 Manual SPS.

3. Where mechanical exhaust is required by Note b in Table 403.3.1.1, recirculation of air from such spaces shall be prohibited. All air supplied to such spaces shall be exhausted, including any air in excess of that required by Table 403.3.1.1.

4. Where mechanical exhaust is required by Note g in Table 403.3.1.1, mechanical exhaust is required and recirculation from such spaces is prohibited where more than 10 percent of the resulting supply airstream consists of air recirculated from these spaces. (~~Return air from such spaces shall only be permitted to be recirculated when returned to an energy recovery ventilation system complying with Section 514.~~) Recirculation of air that is contained completely within such spaces shall not be prohibited.

403.3 Outdoor air and local exhaust airflow rates. Group R occupancies shall be provided with outdoor air and local exhaust in accordance with Section 403.4. All other buildings intended to be occupied shall be provided with outdoor air and local exhaust in accordance with Section 403.3.1.

403.3.1.1 Outdoor airflow rate. Ventilation systems shall be designed to have the capacity to supply the minimum outdoor airflow rate determined in accordance with this section. In each occupiable space, the ventilation system shall be designed to deliver the required rate of outdoor airflow to the breathing zone. Outdoor air shall be supplied directly to each occupiable space from an air handling unit through a fully ducted path or ducted to within 12 inches of the return air opening of a fan-powered terminal unit used to transfer the outdoor air to the occupiable space. The occupant load utilized for design of the ventilation system shall not be less than the number determined from the estimated maximum occupant load rate indicated in Table 403.3.1.1. Ventilation rates for occupancies not represented in Table 403.3.1.1 shall be those for a listed occupancy classification that is most similar in terms of occupant density, activities and building construction; or shall be determined by an approved engineering analysis. The ventilation system, including transfer fan-powered terminal units shall be designed to supply the required rate of ventilation air continuously during the period the building is occupied, except as otherwise stated in other provisions of the code.

With the exception of smoking lounges, the ventilation rates in Table 403.3.1.1 are based on the absence of smoking in occupiable spaces. Where smoking is anticipated in a space other than a smoking lounge, the ventilation system serving the space shall be designed to provide ventilation over and above that required by Table 403.3.1.1 in accordance with accepted engineering practice.

EXCEPTION: Where occupancy density is known and documented in the plans, the outside air rate may be based on the design occupant density. Under no circumstance shall the occupancies used result in outside air less than one-half that resulting from application of Table 403.3.1.1 estimated maximum occupancy rates.

Table 403.3.1.1

REQUIRED OUTDOOR VENTILATION AIR

~~((The following categories in Table 403.3.1.1 have been modified. The remainder remain as printed in the 2018 International Mechanical Code))~~

Occupancy Classification	Occupant Density #/1000 ft ^{2a}	People Outdoor Airflow Rate in Breathing Zone <i>R_p</i> cfm/Person	Area Outdoor Airflow Rate in Breathing Zone <i>R_a</i> cfm/ft ^{2a}	Exhaust Airflow Rate cfm/ft ^{2a}
Correctional facilities				
Booking/waiting	50	7.5	0.06	=
Cells				
Without plumbing fixtures	25	5	0.12	=
With plumbing fixtures ^g	25	5	0.12	1.0
Day room	30	5	0.06	=
Dining halls	=	=	=	=
(see "Food and beverage service")	=	=	=	=
Guard stations	15	5	0.06	=
Dry cleaners, laundries				
Coin-operated dry cleaner	20	15	=	=
Coin-operated laundries	20	7.5	0.12	=
Commercial dry cleaner	30	30	=	=

Occupancy Classification	Occupant Density #/1000 ft ^{2a}	People Outdoor Airflow Rate in Breathing Zone R_p cfm/Person	Area Outdoor Airflow Rate in Breathing Zone R_a cfm/ft ^{2a}	Exhaust Airflow Rate cfm/ft ^{2a}
Commercial laundry	10	5	0.12	=
Storage, pick up	30	7.5	0.12	=
Education				
Art classroom ^g	20	10	0.18	0.7
Auditoriums	150	5	0.06	=
Classrooms (ages 5 through 8)	25	10	0.12	=
Classrooms (age 9 plus)	35	10	0.12	=
Computer lab	25	10	0.12	=
Corridors (see "Public spaces")	=	=	=	=
Day care (through age 4)	25	10	0.18	=
Lecture classroom	65	7.5	0.06	=
Lecture hall (fixed seats)	150	7.5	0.06	=
Locker/dressing rooms ^g	=	=	=	0.25
Media center	25	10	0.12	=
Multiuse assembly	100	7.5	0.06	=
Music/theater/dance	35	10	0.06	=
Science laboratories ^g	25	10	0.18	1.0
Smoking lounges ^b	70	60	=	=
Sports locker rooms ^g	=	=	=	0.5
Wood/metal shops ^g	20	10	0.18	0.5
Food and beverage service				
Bars, cocktail lounges	100	7.5	0.18	=
Cafeteria, fast food	100	7.5	0.18	=
Dining rooms	70	7.5	0.18	=
Kitchens (cooking) ^b	20	7.5	0.12	0.7
Hotels, motels, resorts, and dormitories				
Bathrooms/toilets—private ^g	=	=	=	25/50 ^f
Bedroom/living room	10	5	0.06	=
Conference/meeting	50	5	0.06	=
Dormitory sleeping area	20	5	0.06	=
Gambling casinos	120	7.5	0.18	=
Lobbies/prefunction	30	7.5	0.06	=
Multipurpose assembly	120	50	0.06	=
Offices				
Conference rooms	50	5	0.06	=
Kitchenettes ^k	25	5	0.06	0.30
Office spaces	5	5	0.06	=
Reception areas	30	5	0.06	=
Telephone/data entry	60	5	0.06	=
Main entry lobbies	10	5	0.06	=
Private dwellings, single and multiple				
Garages, common for multiple units ^b	=	=	=	0.75
Kitchens ^b				See Table 403.4.7
Living areas ^c		See Table 403.4.2	=	=
Toilet rooms and bathrooms ^g	=	=		See Table 403.4.7
Public spaces				
Corridors serving other than Group R occupancies	=	=	0.06	=
Corridors serving Group R dwelling or sleeping units with whole house exhaust system	=	=	0.12	=

Occupancy Classification	Occupant Density #/1000 ft ^{2a}	People Outdoor Airflow Rate in Breathing Zone R_p cfm/Person	Area Outdoor Airflow Rate in Breathing Zone R_a cfm/ft ^{2a}	Exhaust Airflow Rate cfm/ft ^{2a}
Corridors serving Group R dwelling or sleeping units with other than whole house exhaust system	—	—	0.06	—
Courtrooms	70	5	0.06	—
Elevator car	—	—	—	1
Elevator lobbies in parking garage	—	—	1.0	—
Legislative chambers	50	5	0.06	—
Libraries	10	5	0.12	—
Museums (children's)	40	7.5	0.12	—
Museums/galleries	40	7.5	0.06	—
Places of religious worship	120	5	0.06	—
Shower room (per showerhead) ^g	—	—	—	50/20 ^f
Smoking lounges ^b	70	60	—	—
Toilet rooms—Public ^g	—	—	—	50/70 ^e
<u>Retail stores, sales floors, and showroom floors</u>				
<u>Dressing rooms</u>	—	—	—	0.25
<u>Mall common areas</u>	40	7.5	0.06	—
<u>Sales</u>	15	7.5	0.12	—
<u>Shipping and receiving</u>	2	10	0.12	—
<u>Smoking lounges^b</u>	70	60	—	—
<u>Storage rooms</u>	—	—	0.12	—
<u>Warehouses (see "Storage")</u>	—	10	0.06	—
<u>Specialty shops</u>				
<u>Automotive motor fuel-dispensing stations^b</u>	—	—	—	1.5
<u>Barber</u>	25	7.5	0.06	0.5
<u>Beauty salons^b</u>	25	20	0.12	0.6
<u>Embalming rooms^b</u>	—	—	—	2.0
<u>Nail salons^{b,h}</u>	25	20	0.12	0.6
<u>Pet shops (animal areas)^b</u>	10	7.5	0.18	0.9
<u>Supermarkets</u>	8	7.5	0.06	—
<u>Sports and amusement</u>				
Disco/dance floors	100	20	0.06	—
Bowling alleys (seating areas)	40	10	0.12	—
Game arcades	20	7.5	0.18	—
Ice arenas, without combustion engines ⁱ	—	—	0.30	0.5
Gym, stadium, arena (play area) ^j	—	—	0.30	—
Spectator areas	150	7.5	0.06	—
Swimming pools (pool and deck area)	—	—	0.48	—
Health club/aerobics room	40	20	0.06	—
Health club/weight room	10	20	0.06	—
<u>Storage</u>				
Janitor closets, trash rooms, recycling rooms	—	—	—	1.0
Repair garages, enclosed parking garage ^{b, d}	—	—	—	0.75
Storage rooms, chemical	—	—	—	1.5
Warehouses	—	—	0.06	—
<u>Theaters</u>				
<u>Auditoriums (see "Education")</u>	—	—	—	—
<u>Lobbies</u>	150	5	0.06	—
<u>Stages, studios</u>	70	10	0.06	—
<u>Ticket booths</u>	60	5	0.06	—

Occupancy Classification	Occupant Density #/1000 ft ^{2a}	People Outdoor Airflow Rate in Breathing Zone R _p cfm/Person	Area Outdoor Airflow Rate in Breathing Zone R _a cfm/ft ^{2a}	Exhaust Airflow Rate cfm/ft ^{2a}
Transportation				
Platforms	100	7.5	0.06	—
Transportation waiting	100	7.5	0.06	—
Workrooms				
Bank vaults/safe deposit	5	5	0.06	—
Darkrooms	—	—	—	1.0
Copy, printing rooms	4	5	0.06	0.5
Freezer and refrigerated spaces (<50°F)	0	10	0	0
Meat processing ^c	10	15	—	—
Pharmacy (prep. area)	10	5	0.18	—
Photo studios	10	5	0.12	—
Computer (without printing)	4	5	0.06	—

For SI: 1 cubic foot per minute = 0.0004719 m³/s, 1 ton = 908 kg, 1 cubic foot per minutes per square foot = 0.00508 m³/(s•m²), °C = [(°F) -32]/1.8, 1 square foot = 0.0929 m².

- a. Based upon *net occupiable floor area*.
- b. Mechanical exhaust required and the recirculation of air from such spaces is prohibited. Recirculation of air that is contained completely within such spaces shall not be prohibited (see Section 403.2.1, Item 3).
- c. Spaces unheated or maintained below 50°F are not covered by these requirements unless the occupancy is continuous.
- d. Ventilation systems in enclosed parking garages shall comply with Section 404.
- e. Rates are per water closet or urinal. The higher rate shall be provided where the exhaust system is designed to operate intermittently. The lower rate shall be permitted only where the exhaust system is designed to operate continuously while occupied.
- f. Rates are per room unless otherwise indicated. The higher rate shall be provided where the exhaust system is designed to operate intermittently. The lower rate shall be permitted only where the exhaust system is designed to operate continuously while occupied.
- g. Mechanical exhaust is required and recirculation from such spaces is prohibited (~~except that recirculation shall be permitted where the resulting supply airstream consists of not more than 10 percent air recirculated from these spaces. Return air from such spaces only be permitted to be recirculated when returned to an energy recovery ventilation system complying with Section 514~~). For occupancies other than science laboratories, where there is a wheel-type energy recovery ventilation (ERV) unit in the exhaust system design, the volume of air leaked from the exhaust airstream into the outdoor airstream within the ERV shall be less than 10 percent of the outdoor air volume. Recirculation of air that is contained completely within such spaces shall not be prohibited (see Section 403.2.1, Items 2 and 4).
- h. For nail salons, each manicure and pedicure station shall be provided with a *source capture system* capable of exhausting not less than 50 cfm per station. Exhaust inlets shall be located in accordance with Section 502.20. Where one or more required source capture systems operate continuously during occupancy, the exhaust rate from such systems shall be permitted to be applied to the exhaust flow rate required by Table 403.3.1.1 for the nail salon.
- i. Reserved.
- j. When combustion equipment is intended to be used on the playing surface, additional dilution ventilation and/or source control shall be provided.
- k. Kitchenettes require exhaust when they contain a domestic cooking appliance range or oven that is installed in accordance with Table ((507.2.1)) 507.1.2. Kitchenettes that only contain a microwave cooking appliance are not required to have exhaust. A kitchenette may not contain commercial cooking appliances that require Type I or Type II exhaust as these occupancies are required to be exhausted to the kitchen category in Table 403.3.1.1.

403.3.1.1.2.3 Multiple zone recirculating systems. For ventilation systems wherein one or more air handlers supply a mixture of outdoor air and recirculated air to more than one ventilation zone, the outdoor air intake flow (V_{ot}) shall be determined in accordance with Sections 403.3.1.1.2.3.1 through 403.3.1.1.2.3.4.

403.3.1.1.2.3.1 Uncorrected outdoor air intake. The uncorrected outdoor air intake flow (V_{ot}) shall be determined in accordance with Equation 4-5.

$$V_{ou} = D \sum_{all\ zones} (R_p \times P_z) + \sum_{all\ zones} (R_a \times A_z) \quad \text{(Equation 4-5)}$$

403.3.1.1.2.3.1.1 Occupant diversity. The occupant diversity ratio (D) shall be determined in accordance with Equation 4-6 to account for variations in population within the ventilation zones served by the system.

$$D = P_s / \sum_{all\ zones} P_z \quad \text{(Equation 4-6)}$$

where:

P_s = System population: The total population in the area served by the system.

EXCEPTION: Alternative methods to account for occupant diversity shall be permitted, provided the resulting V_{ou} value is no less than that determined using Equation 4-5.

403.3.1.1.2.3.1.2 Design system population. Design system population (P_s) shall equal the largest (peak) number of people expected to occupy all ventilation zones served by the ventilation system during use.

Note: Design system population is always equal to or less than the sum of design zone population for all zones in the area served by the system because all zones may or may not be simultaneously occupied at design population.

403.3.1.1.2.3.2 System ventilation efficiency. The system ventilation efficiency (E_v) shall be determined in accordance with Section 403.3.1.1.2.3.3 for the Simplified Procedure or Appendix A of ASHRAE 62.1 for the Alternative Procedure.

Note: These procedures also establish zone minimum primary airflow rates for VAV systems.

403.3.1.1.2.3.3 Simplified procedure.

403.3.1.1.2.3.3.1 System ventilation efficiency. System ventilation efficiency (E_v) shall be determined in accordance with Equation 4-6a or 4-6b.

$$E_v = 0.88 \times D + 0.22 \text{ for } D < 0.60 \text{ (Equation 4-6a)}$$

$$E_v = 0.75 \text{ for } D \geq 0.60 \text{ (Equation 4-6b)}$$

403.3.1.1.2.3.3.2 Zone minimum primary airflow. For each zone, the minimum primary airflow (V_{pz-min}) shall be determined in accordance with Equation 4-7.

$$V_{pz-min} = V_{oz} \times 1.5 \text{ (Equation 4-7)}$$

403.3.1.1.2.3.4 Outdoor air intake. The design outdoor air intake flow (V_{ot}) shall be determined in accordance with Equation 4-8.

$$V_{ot} = V_{ou}/E_v \text{ (Equation 4-8)}$$

403.3.2 Group R-2, R-3 and R-4 occupancies. This section is not adopted. See Section 403.4.

403.3.2.1 Outdoor air for dwelling units. This section is not adopted.

403.3.2.2 Outdoor air for other spaces. This section is not adopted.

403.3.2.3 Local exhaust. This section is not adopted.

403.4 Group R whole house mechanical ventilation system. Each dwelling unit or sleeping unit shall be equipped with a whole house mechanical ventilation system that complies with Sections 403.4.1 through 403.4.6. Each dwelling unit or sleeping unit shall be equipped with local exhaust complying with Section 403.4.7. All occupied spaces, including public corridors, other than the Group R dwelling units and/or sleeping units, that support these Group R occupancies shall meet the ventilation requirement of natural ventilation requirements of Section 402 or the mechanical ventilation requirements of Sections 403.1 through 403.3.

EXCEPTION: Alternate balanced whole house ventilation systems and local exhaust systems subject to the Washington State Energy Code, Residential Provisions serving Group R dwelling units designed and commissioned in accordance with ASHRAE Standard 62.2 are permitted.

403.4.1 System design. The whole house ventilation system shall consist of one or more supply fans, one or more exhaust fans, or an

ERV/HRV with integral fans; and the associated ducts and controls. Local exhaust fans shall be permitted to serve as part of the whole house ventilation system when provided with the proper controls in accordance with Section 403.4.5. The systems shall be designed and installed to supply and exhaust the minimum outdoor airflow rates ((per)) in accordance with Section 403.4.2 as corrected by the balanced and/or distributed whole house ventilation system coefficients in accordance with Section 403.4.3 where applicable.

Table 403.4.2
WHOLE HOUSE MECHANICAL VENTILATION AIRFLOW RATE
(CONTINUOUSLY OPERATING SYSTEMS)

Floor Area (ft ²)	Bedrooms ¹				
	1	2	3	4	>5
<500	30	30	35	45	50
500 - 1000	30	35	40	50	55
1001 - 1500	30	40	45	55	60
1501 - 2000	35	45	50	60	65
2001 - 2500	40	50	55	65	70
2501 - 3000	45	55	60	70	75
3001 - 3500	50	60	65	75	80
3501 - 4000	55	65	70	80	85
4001 - 4500	60	70	75	85	90
4501 - 5000	65	75	80	90	95

¹ Minimum airflow (Q_r) is set at not less than 30 cfm for each dwelling units.

403.4.2 Whole house mechanical ventilation rates. The sleeping unit whole house mechanical ventilation minimum outdoor airflow rate shall be determined in accordance with the breathing zone ventilation rates minimum outdoor airflow rate shall be determined in accordance with the breathing zone ventilation rates requirements of Section 403.3.1.1.1.2 using Equation 4-2. The dwelling unit whole house mechanical ventilation minimum outdoor airflow rate shall be determined in accordance with Equation 4-10 or Table 403.4.2.

$$Q_r = 0.01 * A_{\text{floor}} + 7.5 * (N_{\text{br}} + 1) \text{ (Equation 4-10)}$$

where:

Q_r = Ventilation airflow rate, cubic feet per minute (cfm) but not less than 30 cfm for each dwelling unit.

A_{floor} = Conditioned floor area, square feet (ft²)

N_{br} = Number of bedrooms, not less than one.

Table 403.4.3
SYSTEM COEFFICIENT (C_{system})

System Type	Distributed	Not Distributed
Balanced	1.0	1.25
Not Balanced	1.25	1.5

403.4.3 Ventilation quality adjustment. The minimum whole house ventilation rate from Section 403.4.2 shall be adjusted by the system coefficient in Table 403.4.3 based on the system type not meeting the definition of a *balanced whole house ventilation system* and/or not meeting the definition of a *distributed whole house ventilation system*.

$$Q_v = Q_r * C_{\text{system}} \text{ (Equation 4-11)}$$

where:

Q_v = Quality-adjusted ventilation airflow rate in cubic feet per minute (cfm)

Q_r = Ventilation airflow rate, cubic feet per minute (cfm) from Equation 4-10 or Table 403.4.1

C_{system} = System coefficient from Table 403.4.3

403.4.4 Whole house ventilation residential occupancies. Residential dwelling and sleeping unit whole house ventilation systems shall meet the requirements of Sections 403.4.4.1 or 403.4.4.2 depending on the occupancy of the residential unit.

403.4.4.1 Whole house ventilation in Group R-2 occupancies. Residential dwelling and sleeping units in Group R-2 occupancies system shall include supply and exhaust fans and be a *balanced whole house ventilation system* in accordance with Section 403.4.6.3. The system shall include a heat or energy recovery ventilator with a sensible heat recovery effectiveness as prescribed in Section C403.3.6 or when selected as an option of R406 of the Washington State Energy Code. The whole house ventilation system shall operate continuously at the minimum ventilation rate determined in accordance with Section 403.4. The whole house supply fan shall provide ducted outdoor ventilation air to each habitable space within the residential unit.

EXCEPTIONS:

1. Interior adjoining spaces that are ventilated from another habitable space are not required to have outdoor air ducted directly to the adjoining space. These systems are considered *not distributed whole house ventilation systems* and shall use the "not distributed" quality adjustment system coefficient in accordance with Section 403.4.3.
2. Interior adjacent rooms that are ventilated from another habitable space are not required to have outdoor air ducted directly to the interior adjacent room. These systems are considered *not distributed whole house ventilation systems* and shall use the "not distributed" quality adjustment system coefficient in accordance with Section 403.4.3. The interior adjacent room shall be provided with a transfer fan with a minimum airflow rate of 30 cfm or with relief air inlet with a minimum airflow of 20 cfm that is connected to the exhaust/relief air inlet of an ERV/HRV whole house ventilation system. Transfer fans that ventilate *interior adjacent rooms* shall meet the same rating in Section 403.3.6 and shall have whole house ventilation controls in accordance with Section 403.4.5.

403.4.4.2 Whole house ventilation for other than Group R-2 occupancies. Residential dwelling and sleeping units in other than Group R-2 occupancies, including I-1 condition 2 occupancies, shall have a whole house mechanical ventilation system with supply and exhaust fans in accordance with Section 403.4.6.1, 403.4.6.2, 403.4.6.3, or 403.4.6.4. The whole house ventilation system shall operate continuously at the minimum ventilation rate determined in accordance with Section 403.4.2 unless configured with intermittent off controls in accordance with Section 403.4.6.5. The whole house supply fan shall provide ducted outdoor ventilation air to each habitable space within the residential unit.

EXCEPTIONS:

1. Interior adjoining spaces that are ventilated from another habitable space are not required to have outdoor air ducted directly to the adjoining space. These systems are considered *not distributed whole house ventilation systems* and shall use the "not distributed" quality adjustment system coefficient in accordance with Section 403.4.3.
2. Interior adjacent rooms that are ventilated from another habitable space are not required to have outdoor air ducted directly to the interior adjacent room. These systems are considered *not distributed whole house ventilation systems* and shall use the "not distributed" quality adjustment system coefficient in accordance with Section 403.4.3. The interior adjacent room shall be provided with a transfer fan with a minimum airflow rate of 30 cfm or with relief air inlet with a minimum airflow of 20 cfm that is connected to the exhaust/relief air inlet of an ERV/HRV whole house ventilation system. Transfer fans that ventilate *interior adjacent rooms* shall meet the same rating in Section 403.4.6 and shall have whole house ventilation controls in accordance with Section 403.4.5.

403.4.5 Whole house ventilation controls.

1. The whole house ventilation system shall be controlled with manual switches, timers or other means that provide for automatic operation of the ventilation system that are readily accessible by the occupant;

2. Whole house mechanical ventilation system shall be provided with controls that enable manual override off of the system by the oc-

cupant during periods of poor outdoor air quality. Controls shall include permanent text or a symbol indicating their function. Recommended control permanent labeling to include text similar to the following: "Leave on unless outdoor air quality is very poor." Manual controls shall be provided with ready access for the occupant.

EXCEPTION: Central whole house mechanical systems with supply air and/or exhaust that serve more than one dwelling or sleep units are not required to have manual override off controls accessible to the occupant.

3. Whole house ventilation systems shall be configured to operate continuously except where intermittent off controls are provided in accordance with Section 403.4.6.5 and allowed by Section 403.4.4.2.

403.4.6 Whole house ventilation system component requirements. Whole house ventilation supply and exhaust fans specified in this section shall have a minimum efficacy as prescribed in the *Washington State Energy Code*. The fans shall be rated for sound at a maximum of 1.0 sone at design airflow and static pressure conditions. Design and installation of the system or equipment shall be carried out in accordance with manufacturer's installation instructions.

EXCEPTIONS: 1. Central supply or exhaust fans serving multiple residential units do not need to comply with the maximum fan sone requirements.
2. Interior joining spaces provided with a 30 cfm transfer fan or a 25 square foot permanent opening do not require supply ventilation air directly to the space. Transfer fans shall meet the sone rating above and have whole house ventilation controls in accordance with Section 403.4.5.

403.4.6.1 Exhaust fans. Exhaust fans required shall be ducted directly to the outside in accordance with Section 501.3. Exhaust air outlets shall be designed to limit the pressure difference to the outside to limiting the outlet free area maximum velocity to 500 feet per minute and equipped with backdraft dampers or motorized dampers in accordance with *Washington State Energy Code*. Exhaust fans shall be tested and rated in accordance with HVI 915, HVI 916, and HVI 920. Exhaust fans required in this section may be used to provide local ventilation. Exhaust fans servicing spaces other than kitchens that are designed for intermittent exhaust (~~(airflow rates higher than the continuous exhaust airflow)~~) rates in Table ~~((403.4.2))~~ 403.4.7 shall be provided with occupancy sensors ~~((\varnothing))~~, humidity sensors, timer controls, or pollutant sensor controls to automatically override the fan to the high speed airflow rate. The exhaust fans shall be tested and the testing results shall be submitted and posted in accordance with Section 403.4.6.7.

EXCEPTIONS: 1. Central exhaust fans serving multiple residential units do not need to comply with the HVI testing requirements.
2. Inlet free area maximum velocity may exceed 500 feet per minute when a factory-built combined exhaust/intake termination fitting is used.

403.4.6.2 Supply fans. Supply fans used in meeting the requirements of this section shall supply outdoor air from intake openings in accordance with Sections 401.4 and 401.5. Intake air openings shall be designed to limit the pressure difference to the outside to limiting the inlet free area maximum velocity to 500 feet per minute and when designed for intermittent off operation shall be equipped with motorized dampers in accordance with the *Washington State Energy Code*. Supply fans shall be tested and rated in accordance with HVI 915, HVI 916, and HVI 920. Where outdoor air is provided to each habitable dwelling unit or sleeping unit by supply fan systems the outdoor air shall be filtered. The filter shall be provided with access for regular maintenance and replacement. The filter shall have a Minimum Efficiency Rating Value (MERV) of at least 8.

EXCEPTION: Central supply fans serving multiple residential units do not need to comply with the HVI testing requirements.

403.4.6.3 Balanced whole house ventilation system. A balanced whole house ventilation system shall include both supply and exhaust fans. The supply and exhaust fans shall have airflow that is within 10 percent of each other. The tested and balanced total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. The flow rate test results shall be submitted and posted in accordance with Section 403.4.6.7. The exhaust fan shall meet the requirements of Section 403.4.6.1. The supply fan shall meet the requirements of Section 403.4.6.2. For Group R-2 dwelling and sleeping units, the system is required to have balanced whole house ventilation but is not required to have distributed whole house ventilation where the not distributed system coefficient from Table 403.4.3 is utilized to correct the whole house mechanical ventilation rate. The system shall be ~~((design))~~ designed and balanced to meet the pressure equalization requirements of Section 501.4. ~~((Intermittent dryer exhaust, intermittent range hood exhaust, and intermittent toilet room exhaust airflow rates above the residential dwelling or sleeping unit minimum ventilation rate))~~ Local exhaust systems that are not a component of the whole-house mechanical ventilation system are exempt from the balanced airflow calculation.

403.4.6.4 Furnace integrated supply. Systems using space condition heating and/or cooling air handler fans for outdoor air supply air distribution are not permitted.

EXCEPTION: Air handler fans shall be permitted that have multi-speed or variable speed supply airflow control capability with a low speed operation not greater than 25 percent of the rated supply air flow capacity during ventilation only operation. Outdoor air intake openings must meet the provisions of Sections 401.4 and 401.5 and must include a motorized damper that is activated by the whole house ventilation system controller. Intake air openings shall be designed to limit the pressure difference to the outside to limiting the inlet free area maximum velocity to 500 ft per min. The motorized damper must be controlled to maintain the outdoor airflow intake airflow within 10 percent of the whole house mechanical exhaust airflow rate. The supply air handler shall provide supply air to each habitable space in the residential unit. The whole house ventilation system shall include exhaust fans in accordance with Section 403.4.6.1 to meet the pressure equalization requirements of Section 501.4. The flow rate for the outdoor air intake must be tested and verified at the minimum ventilation fan speed and the maximum heating or cooling fan speed. The results of the test shall be submitted and posted in accordance with Section 403.4.6.7.

403.4.6.5 Intermittent off operation. Whole house mechanical ventilation systems shall be provided with advanced controls that are configured to operate the system with intermittent off operation and shall operate for a least two hours in each four-hour segment. The whole house ventilation airflow rate determined in accordance with Section 403.4.2 as corrected by Section 403.4.3 shall be multiplied by the factor determined in accordance with Table 403.4.6.5.

Table 403.4.6.5
 INTERMITTENT WHOLE HOUSE MECHANICAL VENTILATION RATE
 FACTORS^{a, b}

Run-time Percentage in Each 4-hour Segment	50%	66%	75%	100%
Factor ^a	2	1.5	1.3	1.0

^a For ventilation system run-time values between those given, the factors are permitted to be determined by interpolation.

^b Extrapolation beyond the table is prohibited.

403.4.6.6 Testing. Whole house mechanical ventilation systems shall be tested, balanced and verified to provide a flow rate not less than the minimum required by Sections 403.4.2 and 403.4.3. Testing shall be performed according to the ventilation equipment manufacturer's in-

structions, or by using a flow hood, flow grid, or other airflow measuring device at the mechanical ventilation fan's inlet terminals, outlet terminals or grilles or in the connected ventilation ducts. Where required by the building official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the building official and shall be posted in the residential unit in accordance with Section 403.4.6.7.

403.4.6.7 Certificate. A permanent certificate shall be completed by the mechanical contractor, test and balance contractor or other approved party and posted on a wall in the space where the furnace is located, a utility room, or an approved location inside the building. When located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall list the flow rate determined from the delivered airflow of the whole house mechanical ventilation system as installed and the type of mechanical whole house ventilation system used to comply with Section 403.4.3.

403.4.7 Local exhaust. Bathrooms, toilet rooms and kitchens shall include a local exhaust system. Such local exhaust systems shall have the capacity to exhaust the minimum airflow rate in accordance with Table 403.4.7 and Table 403.3.1.1, including notes. Fans required by this section shall be provided with controls that enable manual override or automatic occupancy sensor, humidity sensor, timer controls, or pollutant sensor controls. An "on/off" switch shall meet this requirement for manual controls. Manual fan controls shall be provided with ready access in the room served by the fan.

Table 403.4.7
MINIMUM EXHAUST RATES

Area to be exhausted	Exhaust Rate	
	Intermittent	Continuous
((Kitchens	100 cfm	30 cfm))
<u>Open kitchens</u>	<u>In accordance with Section 403.4.7.3</u>	<u>Not permitted</u>
<u>Enclosed kitchens</u>	<u>In accordance with Section 403.4.7.3</u>	<u>5 ACH based on kitchen volume</u>
Bathrooms - Toilet rooms	50 cfm	20 cfm

403.4.7.1 Whole house exhaust controls. If the local exhaust fan is included in a whole house ventilation system in accordance with Section 403.4.6, the exhaust fan shall be controlled to operate as specified in Section 403.4.5.

403.4.7.2 Local exhaust fans. Exhaust fans shall meet the following criteria.

1. Exhaust fans shall be tested and rated in accordance with HVI 915, HVI 916, and HVI 920 or equivalent.

((EXCEPTION: ~~Where a range hood or down draft exhaust fan is used for local exhaust for a kitchen, the device is not required to be rated per these standards.))~~

2. Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table 403.4.7. The airflows required refer to the delivered airflow of the

system as installed and tested using a flow hood, flow grid, or other airflow measurement device. Local exhaust systems shall be tested (~~(balanced)~~) and verified to provide a flow rate not less than the minimum required by this section.

3. Design and installation of the system or equipment shall be carried out in accordance with manufacturers' installation instructions.

4. (~~(Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table 403.4.3.)~~) Intermittent local exhaust system serving kitchens shall be rated for sound at a maximum of 3 sones at one or more airflow settings not less than 100 cfm at a static pressure not less than that determined at working speed as specified in HVI 916 Section 7.2.

5. Continuous local exhaust system serving kitchens shall be rated for sound at a maximum of 1 sone at one or more airflow settings not less than 100 cfm at a static pressure not less than that determined at working speed as specified in HVI 916 Section 7.2.

EXCEPTIONS:

1. The installed airflow is not required to be field-verified where an exhaust airflow rating at a pressure of 0.25 in. w.g. may be used, provided the duct sizing meets the prescriptive requirements of Table 403.4.7.2.
2. (~~(Where a range hood or down draft exhaust fan is used to satisfy the local ventilation requirements for kitchens, the range hood or down draft exhaust shall not be less than 100 cfm at 0.10 in. w.g.)~~) Remote mounted fans need not meet sound requirements. To be considered for this exception, a remote mounted fan shall be mounted outside the kitchen, and there shall be at least 4 feet (1 m) of ductwork between the fan and the intake grille.

Table 403.4.7.2

PRESCRIPTIVE EXHAUST DUCT SIZING

Fan Tested cfm at 0.25 inches w.g.	Minimum Flex Diameter	Maximum Length in Feet	Minimum Smooth Diameter	Maximum Length in Feet	Maximum Elbows ^a
50	4 inches	25	4 inches	70	3
50	5 inches	90	5 inches	100	3
50	6 inches	No Limit	6 inches	No Limit	3
80	4 inches ^b	NA	4 inches	20	3
80	5 inches	15	5 inches	100	3
80	6 inches	90	6 inches	No Limit	3
100	5 inches ^b	NA	5 inches	50	3
100	6 inches	45	6 inches	No Limit	3
125	6 inches	15	6 inches	No Limit	3
125	7 inches	70	7 inches	No Limit	3

- a. For each additional elbow, subtract 10 feet from length.
- b. Flex ducts of this diameter are not permitted with fans of this size.

403.4.7.3 Local intermittent kitchen exhaust system. Kitchen range hoods for domestic cooking appliances shall meet or exceed either the minimum airflow or the minimum capture efficiency in accordance with Table 403.4.7.3. Capture efficiency ratings shall be determined in accordance with ASTM E3087.

EXCEPTION: Other intermittent kitchen exhaust fans, including downdraft, shall meet or exceed 300 cfm airflow.

Table 403.4.7.3

Kitchen Range Hood Airflow Rates (CFM) and ASTM E3087 Capture Efficiency (CE) Ratings According to Kitchen Range Fuel Type

<u>Hood Over Electric Range</u>	<u>Hood Over Combustion Range</u>
<u>65 percent CE or 160 cfm</u>	<u>80 percent CE or 250 cfm</u>

403.4.7.3.1 Field verification and diagnostic testing for local intermittent kitchen exhaust system. The local exhaust system for kitchens shall be installed to comply with local mechanical exhaust requirements specified in 403.4.7.3 and shall be field verified in accordance with the procedures below to confirm the model is rated by HVI or AHAM to comply with the following requirements:

1. Local intermittent exhaust system for kitchens shall be tested and verified to provide a minimum airflow rate or capture efficiency required by Section 403.4.7.3. Testing shall include verification of the maximum sound rating as specified in Section 403.4.7.2. Testing for the intermittent kitchen exhaust systems shall occur with the whole house ventilation system operating and with all dwelling unit or sleeping unit entry doors closed. Testing for exhaust systems that require mechanical makeup air in accordance with Section 505.4 shall include verifying that the mechanical makeup air opening is open. Testing for exhaust systems that require mechanical makeup air in accordance with Section 505.4 shall include verifying that the mechanical makeup air system is controlled to automatically start. Testing for exhaust systems that do not require mechanical makeup air in accordance with Section 505.4 and that are exempt from pressurize equalization per Section 501.4 shall be tested with operable openings manually opened unless design exhaust airflow can be achieved with all operable openings closed. Where required by the building official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the building official.

EXCEPTION: The installed airflow is not required to be field-verified where an exhaust airflow rating at a pressure of 0.25 in. w.g. is used, provided the duct sizing meets the prescriptive requirements of Table 403.4.7.2.

2. The verification shall utilize certified rating data from HVI Publication 911 or another directory of certified product performance ratings approved by the code official for determining compliance. The verification procedure shall consist of visual inspection of the local intermittent kitchen exhaust system to verify and record the following information:

2.1. The manufacturer name and model number.

2.2. The model is listed in the HVI directory.

2.3. The rated airflow value listed in the HVI directory.

2.4. The sound rating value listed in the HVI directory.

2.5. If the value for the rated airflow given in the directory is greater than or equal to the airflow requirements specified in Section 403.4.7.3 and if the value for the sound rating given in the directory is less than or equal to the sound rating requirements specified in 403.4.7.2, then the local intermittent kitchen exhaust system complies, otherwise the local intermittent kitchen exhaust system does not comply.

[Statutory Authority: RCW 19.27.031, 19.27.074, and chapter 19.27 RCW. WSR 22-09-009, § 51-52-0403, filed 4/8/22, effective 5/9/22. Statutory Authority: RCW 19.27.035 and 19.27.074. WSR 21-05-020, § 51-52-0403, filed 2/8/21, effective 3/11/21. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0403, filed 1/8/20, effective 7/1/20; WSR 17-10-075, § 51-52-0403, filed 5/3/17, effective 6/3/17; WSR 16-01-148, § 51-52-0403, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0403, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031, 19.27.035, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 12-07-020, § 51-52-0403, filed 3/12/12, ef-

fective 4/12/12. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0403, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0403, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-015, § 51-52-0403, filed 12/2/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0501 Section 501—General.

501.3.1 Location of exhaust outlets. The termination point of exhaust outlets and ducts discharging to the outdoors shall be located with the following minimum distances:

1. **For ducts conveying explosive or flammable vapors, fumes or dusts:** 30 feet (9144 mm) from the property line; 10 feet (3048 mm) from operable openings into the building; 6 feet (1829 mm) from exterior walls and roofs; 30 feet (9144 mm) from combustible walls and operable openings into the building which are in the direction of the exhaust discharge; 10 feet (3048 mm) above adjoining grade.

2. **For other product-conveying outlets:** 10 feet (3048 mm) from property lines; 3 feet (914 mm) from exterior walls and roofs; 10 feet (3048 mm) from operable openings into the building; 10 feet (3048 mm) above adjoining grade.

3. **For environmental air exhaust other than enclosed parking garage and transformer vault exhaust:** 3 feet (914 mm) from property lines, 3 feet (914 mm) from operable openings into buildings for all occupancies other than Group U, and 10 feet (3048 mm) from mechanical air intakes. Such exhaust shall not be considered hazardous or noxious. Separation is not required between intake air openings and living space exhaust air openings of an individual dwelling unit or sleeping unit where an approved factory-built intake/exhaust combination termination fitting is used to separate the air streams in accordance with the manufacturer's instructions.

EXCEPTIONS:

1. The separation between an air intake and exhaust outlet on a single listed package HVAC unit.
2. Exhaust from environmental air systems other than garages may be discharged into an open parking garage.
3. Except for Group I occupancies, where ventilation system design circumstances require building HVAC air to be relieved, such as during economizer operation, such air may be relieved into an open or enclosed parking garage within the same building.

4. Exhaust outlets serving structures in flood hazard areas shall be installed at or above the elevation required by Section 1613 of the *International Building Code* for utilities and attendant equipment.

5. For enclosed parking garage exhaust system outlets and transformer vault exhaust system outlets: 10 feet (3048 mm) from property lines which separate one lot from another; 10 feet (3048 mm) from operable openings into buildings; 3 feet (914 mm) horizontally from, 10 feet above, or 10 feet below adjoining finished ((sidewalk)) walkways.

6. For transformer vault exhaust system outlets, in addition to the requirements of NFPA 70 Section 450.45: Ten feet (3048 mm) from property lines which separate one lot from another; 10 feet (3048 mm) from operable openings into buildings; 10 feet (3048 mm) above walkways.

7. For elevator machinery rooms in enclosed or open parking garages: Exhaust outlets may discharge air directly into the parking garage.

~~((7.))~~ 8. For specific systems see the following sections:

~~((7.1.))~~ 8.1. Clothes dryer exhaust, Section 504.4.

~~((7.2.))~~ 8.2. Kitchen hoods and other kitchen exhaust equipment, Sections 506.3.13, 506.4 and 506.5.

~~((7.3.))~~ 8.3. Dust stock and refuse conveying systems, Section 511.2.

~~((7.4.))~~ 8.4. Subslab soil exhaust systems, Section 512.4.

~~((7.5.))~~ 8.5. Smoke control systems, Section 513.10.3.

~~((7.6.))~~ 8.6. Refrigerant discharge, Section 1105.7.

~~((7.7.))~~ 8.7. Machinery room discharge, Section 1105.6.1.

501.4 Pressure equalization. Mechanical exhaust systems shall be sized to remove the quantity of air required by this chapter to be exhausted. The system shall operate when air is required to be exhausted. Where mechanical exhaust is required in a room or space, such space shall be maintained with a neutral or negative pressure. If a greater quantity of air is supplied by a mechanical ventilating supply system than is removed by a mechanical exhaust for a room, adequate means shall be provided for the natural or mechanical exhaust of the excess air supplied. If only a mechanical exhaust system is installed for a room or if a greater quantity of air is removed by a mechanical exhaust system than is supplied by a mechanical ventilating supply system for a room, adequate makeup air consisting of supply air, transfer air or outdoor air shall be provided to satisfy the deficiency. The calculated building infiltration rate shall not be used to satisfy the requirements of this section.

EXCEPTION: Intermittent ~~((domestic-range))~~ kitchen exhaust, intermittent domestic dryer exhaust, and intermittent local exhaust systems in R-3 occupancies and dwelling units in R-2 occupancies are excluded from the pressure equalization requirement unless required by Section 504 or Section 505.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0501, filed 1/8/20, effective 7/1/20. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0501, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0501, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0501, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-015, § 51-52-0501, filed 12/2/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-01-148, filed 12/21/15, effective 7/1/16)

WAC 51-52-0504 Section 504—Clothes dryer exhaust.

504.4 Exhaust installation. Dryer exhaust ducts for clothes dryers shall terminate on the outside of the building and shall be equipped with a backdraft damper located where the duct terminates. Dryer exhaust ducts may terminate at exterior wall louvers with openings spaced not less than 1/2-inch in any direction.

Screens shall not be installed at the duct termination. Ducts shall not be connected or installed with sheet metal screws or other fasteners that will obstruct the exhaust flow. Clothes dryer exhaust ducts shall not be connected to a vent connector, vent or chimney.

Clothes dryer exhaust ducts shall not extend into or through ducts or plenums.

Domestic dryer exhaust ducts may terminate at a common location where each duct has an independent back-draft damper.

((504.10)) 504.11 Common exhaust systems for clothes dryers located in multistory structures. Where a common multistory duct system is designed and installed to convey exhaust from multiple clothes dryers, the construction of the system shall be in accordance with all of the following:

1. The shaft in which the duct is installed shall be constructed and fire-resistance rated as required by the *International Building Code*.
2. Dampers shall be prohibited in the exhaust duct. Penetrations of the shaft and ductwork shall be protected in accordance with Section 607.5.5, Exception 2.
3. Rigid metal ductwork shall be installed within the shaft to convey the exhaust. The ductwork shall be constructed of sheet steel having a minimum thickness of 0.0187 inch (0.4712 mm) (No. 26 gage) and in accordance with *SMACNA Duct Construction Standards*.
4. The ductwork within the shaft shall be designed and installed without offsets.
5. The exhaust fan motor design shall be in accordance with Section 503.2.
6. The exhaust fan motor shall be located outside of the airstream.
7. The exhaust fan shall run continuously, and shall be connected to a standby power source.
8. Exhaust fan operation shall be monitored in an *approved* location and shall initiate an audible or visual signal when the fan is not in operation.
9. Makeup air shall be provided for the exhaust system to maintain the minimum flow for the exhaust fan when the dryers are not operating. Additionally, makeup air shall be provided when required by Section ((504.5)) 504.7.
10. A cleanout opening shall be located at the base of the shaft to provide access to the duct to allow for cleaning and inspection. The finished opening shall be not less than 12 inches by 12 inches (305 mm by 305 mm).
11. Screens shall not be installed at the termination.
12. The common multistory duct system shall serve only clothes dryers and shall be independent of other exhaust systems.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-01-148, § 51-52-0504, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0504, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0504, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0504, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 16-01-148, filed 12/21/15, effective 7/1/16)

WAC 51-52-0505 Section 505—Domestic ((kitchen)) cooking exhaust equipment.

~~((505.1))~~ **505.3 Domestic ((systems)) exhaust ducts.** ~~((Where domestic range hoods and domestic appliances equipped with downdraft exhaust are provided, such hoods and appliances))~~ Ducts serving domestic cooking exhaust equipment shall discharge to the outdoors through sheet metal ducts constructed of galvanized steel, stainless steel, aluminum or copper. Such ducts shall have smooth inner walls, shall be ~~((air tight))~~ airtight, shall be equipped with a backdraft damper and shall be independent of all other exhaust systems.

Domestic kitchen exhaust ducts may terminate with other domestic dryer exhaust and residential local exhaust ducts at a common location where each duct has an independent back-draft damper.

Listed and labeled exhaust booster fans shall be permitted when installed in accordance with the manufacturer's installation instructions.

- EXCEPTIONS:
1. In other than Group I-1 and I-2, where installed in accordance with the manufacturer's installation instructions and where ((mechanical ventilation is otherwise provided in accordance with Chapter 4)) continuous local exhaust is provided in an enclosed kitchen in accordance with Table 403.4.7, listed and labeled ductless range hoods shall not be required to discharge to the outdoors. The local exhaust from the residential dwelling or sleeping unit kitchen area may be combined with other exhaust ductwork where the exhaust register/grille in the kitchen is a minimum of 6 feet (1.8 M) from the domestic range cooktop. The exhaust register/grille shall be provided with a minimum MERV 3 filter or mesh filter (washable) for trapping grease.
 2. Ducts for domestic kitchen cooking appliances equipped with downdraft exhaust systems shall be permitted to be constructed of Schedule 40 PVC pipe and fittings provided that the installation complies with all of the following:
 - 2.1. The duct shall be installed under a concrete slab poured on grade.
 - 2.2. The underfloor trench in which the duct is installed shall be completely backfilled with sand or gravel.
 - 2.3. The PVC duct shall extend not more than 1 inch (25 mm) above the indoor concrete floor surface.
 - 2.4. The PVC duct shall extend not more than 1 inch (25 mm) above grade outside of the building.
 - 2.5. The PVC ducts shall be solvent cemented.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-01-148, § 51-52-0505, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0505, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0505, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0506 Section 506—Commercial kitchen hood ventilation system ducts and exhaust equipment.

506.3.2.4 Vibration isolation. A vibration isolation connector for connecting a duct to a fan shall consist of noncombustible packing in a metal sleeve joint of approved design or shall be a coated-fabric flexible duct connector rated for continuous duty at temperature of not less than 1500°F (816°C). Vibration isolation connectors shall be installed only at the connection of a duct to a fan inlet or outlet.

506.3.9 Grease duct cleanout location, spacing and installation.

506.3.9.1 Grease duct horizontal cleanout. Cleanouts located on horizontal sections of ducts shall:

1. Be spaced not more than 20 feet (6096 mm) apart.

2. Be located not more than 10 feet (3048 mm) from changes in direction that are greater than 45 degrees (0.79 rad).
3. Be located on the bottom only where other locations are not available and shall be provided with internal damming of the opening such that grease will flow past the opening without pooling. Bottom cleanouts and openings shall be approved for the application and installed liquid-tight.
4. Not be closer than 1 inch (25.4 mm) from the edges of the duct.
5. Have dimensions of not less than 12 inches by 12 inches (305 mm by 305 mm). Where such dimensions preclude installation, the openings shall be not less than 12 inches (305 mm) on one side and shall be large enough to provide access for cleaning and maintenance.
6. Shall be located at grease reservoirs.
7. Be located within 3 feet (914 mm) of horizontal discharge fans.

506.3.9.2 Grease duct vertical cleanouts. Where ducts pass vertically through floors, cleanouts shall be provided. A minimum of one cleanout shall be provided on each floor. Cleanout openings shall be not less than 1 1/2 inches (38 mm) from all outside edges of the duct or welded seams.

506.3.11 Grease duct enclosures. A commercial kitchen grease duct serving a Type I hood that penetrates a ceiling, wall, floor or any concealed spaces shall be enclosed from the point of penetration to the outlet terminal. In-line exhaust fans not located outdoors shall be enclosed as required for grease ducts. A duct shall penetrate exterior walls only at locations where unprotected openings are permitted by the *International Building Code*. The duct enclosure shall serve a single grease duct and shall not contain other ducts, piping or wiring systems. Duct enclosures shall be a shaft enclosure in accordance with Section 506.3.11.1, a field-applied enclosure assembly in accordance with Section 506.3.11.2 or a factory-built enclosure assembly in accordance with Section 506.3.11.3. Duct enclosures shall have a fire-resistance rating of not less than that of the assembly penetrated. The duct enclosure need not exceed 2 hours but shall not be less than 1 hour. Fire dampers and smoke dampers shall not be installed in grease ducts.

EXCEPTION: A duct enclosure shall not be required for a grease duct that penetrates only a nonfire-resistance-rated roof/ceiling assembly.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0506, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-0506, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0506, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0506, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0506, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0515 Section 515—Waste or linen chute venting.

515.1 General. Waste or linen chutes shall be gravity vented (~~(per)~~) in accordance with NFPA 82.

EXCEPTION: Waste or linen chutes may be mechanically ventilated by an exhaust fan(~~(-The exhaust fan)~~) in accordance with Section 713.13.7 of the International Building Code (Section 713.13.7).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0515, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-0515, filed 12/21/15, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 22-09-009, filed 4/8/22, effective 5/9/22)

WAC 51-52-0601 Section 601—General.

601.2 Air movement in egress elements. Corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.

EXCEPTIONS:

1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted provided that each such corridor is directly supplied with *outdoor air* at a rate greater than the rate of makeup air taken from the corridor.
2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
3. Where located within tenant spaces of one thousand square feet (93 m²) or less in area, utilization of corridors for conveying return air is permitted.
4. ~~((Incidental air movement from pressurized rooms within health care facilities, provided that the corridor is not the primary source of supply or return to the room.))~~ Transfer air movement required to maintain pressurization difference within health care facilities in accordance with ASHRAE 170.
5. Where such air is part of an engineered smoke control system.
6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units and sleeping units subject to the following:
 - 6.1 The air supplied to the corridor is one hundred percent outside air; and
 - 6.2 The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and
 - 6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors installed in accordance with Section 606.2.4; or
 - 6.4 For high-rise buildings, the supply fan will automatically shut off upon activation of the smoke detectors required by *International Fire Code* Section 907.2.12.1 or upon receipt of another approved fire alarm signal. The supply fan is not required to be automatically shut off when used as part of an approved building stairwell or elevator hoistway pressurization system. Corridor smoke detectors shall be installed in accordance with Section 606.2.5.

[Statutory Authority: RCW 19.27.031, 19.27.074, and chapter 19.27 RCW. WSR 22-09-009, § 51-52-0601, filed 4/8/22, effective 5/9/22. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0601, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-0601, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0601, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0601, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0601, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-104, § 51-52-0601, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 10-03-099, filed 1/20/10, effective 7/1/10)

WAC 51-52-0603 Section 603—Duct construction and installation.

603.5.1 Gypsum ducts. The use of gypsum boards to form air shafts (ducts) shall be limited to return air systems where the air temperatures do not exceed 125°F (52°C) and the gypsum board surface tempera-

ture is maintained above the airstream dew-point temperature. Supply air ducts formed by gypsum boards shall not be incorporated in air-handling systems utilizing ~~direct evaporative~~ (~~coolers~~) cooling systems.

EXCEPTION: In other than Group I-2 occupancies, gypsum boards may be used for ducts that are only used for stairwell or elevator pressurization supply air. The gypsum duct shall not attach directly to the equipment.

[Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0603, filed 1/20/10, effective 7/1/10.]

OPTION 1

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0605 Section 605—Air filters.

605.1 General. (~~(Heating and air conditioning)~~) Air handlers and ventilation systems shall be provided with approved air filters in accordance with Section 605.4. Filters shall be installed such that all return air, recirculated air, outdoor air and makeup air is filtered upstream from any heat exchanger or coil. Filters shall be installed in an approved convenient location. Liquid adhesive coatings used on filters shall have a flash point not lower than 325°F (163°C).

EXCEPTIONS: 1. Cooling coils that are designed, controlled and operated to provide sensible cooling only do not require filtration at the terminal device.
2. Ambient air that enters the building through intentional openings for natural ventilation or by infiltration is not required to be filtered.
3. Recirculated air serving systems without wetted cooling coils or with unducted heater (hydronic coils, fossil fuel heating elements or electric resistance heating elements) do not require filtration at the terminal device.

605.4 Particulate matter removal. Particulate matter filters or air cleaners (~~(having)~~) shall have a minimum efficiency reporting value (MERV) of not less than (~~(6 for ducted air handlers and not less than 4 for ductless mini-split systems shall be provided upstream of all cooling coils or other devices with wetted surfaces through which air is supplied to an occupiable space.)~~) the following:

1. MERV 13 for ducted air handlers and ventilation systems serving occupiable spaces in Groups A, B, E, M, R and I occupancies.
2. MERV 8 for ducted air handlers and ventilation systems serving occupiable spaces in Groups F, H, S, and U occupancies.
3. MERV 4 for unducted air handlers and fan coil units.

EXCEPTIONS: 1. Ducted air handlers and ventilation systems 500 cfm or less shall have a filter not less than MERV 8.
2. Recirculated air at fan powered variable air volume terminal units with hydronic heating coils or electric resistance heating elements shall have a filter not less than MERV 8.
3. Exhaust or relief air upstream of a heat exchanger or coil shall have a filter not less than MERV 6.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0605, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-0605, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0605, filed 2/1/13, effective 7/1/13.]

OPTION 2

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-0605 Section 605—Air filters.

605.1 General. Heating and air-conditioning systems shall be provided with *approved* air filters. Filters shall be installed such that all return air, outdoor air and makeup air is filtered upstream from any heat exchanger or coil. Filters shall be installed in an approved convenient location. Liquid adhesive coatings used on filters shall have a flash point not lower than 325°F (163°C).

EXCEPTION: Cooling coils that are designed, controlled and operated to provide sensible cooling only do not require filtration at the terminal device.

605.4 Particulate matter removal. Particulate matter filters or air cleaners having a minimum efficiency reporting value (MERV) of not less than 6 for ducted air handlers and not less than 4 for ductless mini-split systems shall be provided upstream of all cooling coils or other devices with wetted surfaces through which air is supplied to an occupiable space.

605.5 Smoke filtration capability. Air handlers and energy recovery ventilators serving occupiable spaces each with individual capacity greater than 500 cfm shall provide fan capacity and a filter box capable of housing a filter with a minimum efficiency reporting value (MERV) of not less than 13.

EXCEPTION: Air handlers that process 100 percent recirculated air with no outdoor air are not required to comply with this section.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0605, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-0605, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0605, filed 2/1/13, effective 7/1/13.]

NEW SECTION**WAC 51-52-0607 Section 607—Ducts and transfer openings.**

607.5.2 Fire barriers. Ducts and air transfer openings that penetrate fire barriers shall be protected with *listed* fire dampers installed in accordance with their listing. Ducts and air transfer openings shall not penetrate enclosures for interior exit stairways and ramps and exit passageways except as permitted by Sections 1023.5 and 1024.6, respectively, of the *International Building Code*.

EXCEPTION: Fire dampers are not required at penetrations of fire barriers where any of the following apply:
1. Penetrations are tested in accordance with ASTM E119 or UL 263 as part of the fire-resistance-rated assembly.
2. Ducts are used as part of an *approved* smoke control system in accordance with Section 513 and where the fire damper would interfere with the operation of the smoke control system.

3. Such walls are penetrated by fully ducted HVAC systems, have a required fire-resistance rating of 1 hour or less, are in areas of other than Group H and are in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 of the *International Building Code*. For the purposes of this exception, a fully ducted HVAC system shall be a duct system for the structure's HVAC system. Such a duct system shall be constructed of sheet steel not less than 26 gage (0.0217 inch (0.55 mm)) thickness and shall be continuous from the air-handling *appliance* or *equipment* to the air outlet and inlet terminals. Flexible air connectors shall be permitted in a fully ducted system, limited to the following installations:
- 3.1. Nonmetallic flexible connections that connect a duct to an air handling unit or *equipment* located within a mechanical room or located outdoors in accordance with Section 603.9.
 - 3.2. Nonmetallic flexible air connectors in accordance with Section 603.6.2 that connect an overhead metal duct to a diffuser, grille, or register where the metal duct and diffuser, grille, or register are located within the same room.

607.5.3 Fire partitions. Ducts and air transfer openings that penetrate fire partitions shall be protected with listed fire dampers installed in accordance with their listing.

EXCEPTION:

In *occupancies* other than Group H, fire dampers are not required where any of the following apply:

1. Corridor walls in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 of the *International Building Code* and the duct is protected as a through penetration in accordance with Section 714 of the *International Building Code*.
2. The partitions are tenant partitions in covered and open mall buildings where the walls are not required by provisions elsewhere in the *International Building Code* to extend to the underside of the floor or roof sheathing, slab, or deck above.
3. The duct system is constructed of *approved* materials in accordance with Section 603 and the duct penetrating the wall complies with all of the following requirements:
 - 3.1. The duct shall not exceed 100 square inches (0.06 m²).
 - 3.2. The duct shall be constructed of steel not less than 0.0217 inch (0.55 mm) in thickness.
 - 3.3. The duct shall not have openings that communicate the corridor with adjacent spaces or rooms.
 - 3.4. The duct shall be installed above a ceiling.
 - 3.5. The duct shall not terminate at a wall register in the fire-resistance-rated wall.
 - 3.6. A minimum 12-inch-long (305 mm) by 0.060-inch-thick (1.52 mm) steel sleeve shall be centered in each duct opening. The sleeve shall be secured to both sides of the wall and all four sides of the sleeve with minimum 1.5-inch by 1.5-inch by 0.060-inch (38 mm by 38 mm by 1.52 mm) steel retaining angles. The retaining angles shall be secured to the sleeve and the wall with No. 10 (M5) screws. The annular space between the steel sleeve and the wall opening shall be filled with rock (mineral) wool batting on all sides.
4. Such walls are penetrated by fully ducted HVAC systems, have a required fire-resistance rating of 1 hour or less, and are in areas of other than Group H and are in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 of the *International Building Code*. For the purposes of this exception, a fully ducted HVAC system shall be a duct system for conveying supply, return or *exhaust air* as part of the structure's HVAC system. Such a duct system shall be constructed of sheet steel not less than 26 gage (0.0217 inch (0.55 mm)) in thickness and shall be continuous from the air-handling *appliance* or *equipment* to the air outlet and inlet terminals. Flexible air connections shall be permitted in a fully ducted system, limited to the following installations:
 - 4.1. Nonmetallic flexible connections that connect a duct to an air-handling unit or equipment located within a mechanical room or located outdoors in accordance with Section 603.9.
 - 4.2. Nonmetallic flexible air connectors in accordance with Section 603.2.6 that connect an overhead metal duct to a diffuser, grille, or register where the metal duct and diffuser, grille, or register are located in the same room. Where the fully ducted HVAC system metal ductwork penetrates a corridor fire partition, the ductwork shall be continuous without openings to the corridor, to a mechanical room, or to a shaft enclosure.

[]

NEW SECTION

WAC 51-52-0915 Section 915—Engine and gas turbine-powered equipment and appliances.

915.3 Installation of emergency and legally required power systems.

Emergency power systems and legally required standby power systems required by the *International Building Code* or *International Fire Code* shall be installed in accordance with the *International Fire Code*, NFPA 70, NFPA 110, and NFPA 111.

915.3.1 Air intakes. Air intake opening locations for combustion and radiator cooling intake air shall be located on the exterior of the building in accordance with NFPA 110 and a minimum of 5 feet from the property line.

915.3.2 Air outlets. Air outlet opening locations shall comply with the following:

1. Combustion exhaust shall be located on the exterior of the building in accordance with Section 501.3.1 Item 2 for product conveying exhaust.

2. Radiator cooling outlet air shall be located on the exterior of the building in accordance with NFPA 110, a minimum of 5 feet from the property line and a minimum of 2 feet above grade.

915.4 Installation of optional standby power systems. Optional standby power systems shall be installed in accordance with the *International Fire Code*, NFPA 37, NFPA 70, and NFPA 111 as applicable.

915.4.1 Air intakes. Air intake opening locations for combustion and radiator cooling intake air shall be located on the exterior of the building in accordance with NFPA 110 and a minimum of 5 feet from the property line and may be located within an open or enclosed parking garage with sufficient exterior permanent opening area to provide the intake air.

915.4.2 Air outlets. Air outlet opening locations shall comply with the following:

1. Combustion exhaust shall be located on the exterior of the building in accordance with Section 501.3.1 Item 2 for product conveying exhaust.

2. Radiator cooling outlet air shall be located a minimum of 5 feet from the property line and may be discharged into an open or enclosed parking garage with sufficient exterior permanent opening area to relieve heat from the generator.

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AMENDATORY SECTION (Amending WSR 22-09-009, filed 4/8/22, effective 5/9/22)

WAC 51-52-1101 ((Section 1101—Refrigeration, general.)) Reserved.

~~((1101.2 Factory-built equipment and appliances. Listed and labeled self-contained, factory-built equipment and appliances shall be tested in accordance with UL 207, 412, 471, 1995, or 60335-2-40. Such equipment and appliances are deemed to meet the design, manufacture and factory test requirements of this code if installed in accordance with their listing and the manufacturer's instructions.~~

~~**1101.6 General.** Refrigeration systems shall comply with the requirements of this code and, except as modified by this code, ASHRAE 15. Ammonia refrigerating systems shall comply with this code and, except as modified by this code, ASHRAE 15, IIAR 2, IIAR 3, IIAR 4, and IIAR 25.~~

EXCEPTION: Systems utilizing A2L refrigerants complying with ASHRAE 15 are deemed to meet this code.)

[Statutory Authority: RCW 19.27.031, 19.27.074, and chapter 19.27 RCW. WSR 22-09-009, § 51-52-1101, filed 4/8/22, effective 5/9/22.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-1105 ((Section 1105—Machinery room, general requirements.)) Reserved.

~~((1105.6.3 Ventilation rate. For other than ammonia systems, the mechanical ventilation systems shall be capable of exhausting the minimum quantity of air both at normal operating and emergency conditions, as required by Sections 1105.6.3.1 and 1105.6.3.2. The minimum required emergency ventilation rate for ammonia shall be 30 air changes per hour and the room conditions shall be in accordance with IIAR2. Multiple fans or multispeed fans shall be allowed to produce the emergency ventilation rate and to obtain a reduced airflow for normal ventilation.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-1105, filed 1/8/20, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 22-09-009, filed 4/8/22, effective 5/9/22)

WAC 51-52-1200 Chapter 12—Hydronic piping.

1209.5 ((Thermal barrier)) Insulation and thermal break required. Radiant floor heating and snow melt systems shall be provided with insulation and a thermal ((barrier)) break in accordance with Sections 1209.5.1 and 1209.5.2. Concrete slab-on-grade, asphalt and paver-system type pavements shall have a minimum of R-10 insulation installed under the area to be snow melted, or R-5 insulation shall be installed under and at the slab edges of the area to be snow melted. The insulation shall be located underneath the snow and ice melt hydronic piping or cable and along all edges of the pavement where the snow and ice melt system is installed in accordance with the snow and ice melt manufacturer's instructions. Insulation R-values for slab-on-grade and suspended floor insulation shall be in accordance with the Washington State Energy Code.

1210.7.6 Expansion tanks. Shutoff valves shall be installed at connections to expansion tanks. A method of draining the expansion tank downstream of the shutoff valve shall be provided.

[Statutory Authority: RCW 19.27.031, 19.27.074, and chapter 19.27 RCW. WSR 22-09-009, § 51-52-1200, filed 4/8/22, effective 5/9/22. Statutory Authority: RCW 19.27.035 and 19.27.074. WSR 21-05-020, § 51-52-1200, filed 2/8/21, effective 3/11/21. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-1200, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-1200, filed 12/21/15, effective 7/1/16.]

NEW SECTION

WAC 51-52-1305 Section 1305—Fuel oil system installation.

1305.7 Vent piping. Liquid fuel vent pipes shall terminate outside of buildings at a point not less than 5 feet (1524 mm) from building openings and not less than 15 feet (4572 mm) from outdoor air intakes. Outer ends of vent pipes shall terminate in a weatherproof vent cap or fitting or be provided with a weatherproof hood. Vent caps shall have

a minimum free open area equal to the cross-sectional area of the vent pipe and shall not employ screens finer than No. 4 mesh. Vent pipes shall terminate sufficiently above the ground to avoid being obstructed with snow or ice. Vent pipes from tanks containing heaters shall be extended to a location where oil vapors discharging from the vent will be readily diffused. If the static head with a vent pipe filled with oil exceeds 10 pounds per square inch (psi) (69 kPa), the tank shall be designed for the maximum static head that will be imposed.

Liquid fuel vent pipes shall not be cross connected with fill pipes, lines from burners, or overflow lines from auxiliary tanks.

EXCEPTION: Liquid fuel vent pipes may terminate outside the building at a point not less than 2 feet from the fuel oil equipment combustion exhaust outlet.

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AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-1400 (~~Chapter 14—Solar thermal systems.~~) Reserved.

~~((1402.8.1.2 Rooftop-mounted solar thermal collectors and systems. The roof shall be constructed to support the loads imposed by roof-mounted solar collectors. Where mounted on or above the roof covering, the collector array, mounting systems and their attachments to the roof shall be constructed of noncombustible materials or fire-retardant-treated wood conforming to the International Building Code to the extent required for the type of roof construction of the building to which the collectors are accessory.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-1400, filed 1/8/20, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 22-09-009, filed 4/8/22, effective 5/9/22)

WAC 51-52-1500 Chapter 15—Referenced standards. The following referenced standards are added to Chapter 15.

AHAM

Association of Home Appliance Manufacturers
1111 19th St. N.W., #402
Washington D.C. 20036

HRH-2 Household Range Hoods 403.4.7.3.4

ANCE

UL/CSA/ANCE 60335-2-40—2019 Household and Similar Electrical Appliances - Safety - Part 2-40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers 1101.2

ASHRAE

~~((15-2019 Safety Standards for Refrigeration Systems. 1101.6, 1105.8, 1108.1~~

~~34-2019~~ Designation and classification of refrigerants. 202, 1102.2.1, 1103.1
~~62.2-2016~~) **62.2-2019** Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings 401.4, 403.4, 403.4.7.3.3, 403.4.11

ASTM

E3087-18: Standard Test Method for Measuring Capture Efficiency of Domestic Range Hoods 403.4.7.3.2, Table 403.4.7.3.2

CSA

UL/CSA/ANCE 60335-2-40-2019 Household and Similar Electrical Appliances - Safety - Part 2-40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers. 1101.2

HVI address:

Home Ventilating Institute
1740 Dell Range Blvd., Suite H, PMB 450
Cheyenne, WY 82009

HVI Publication 911 Certified Home Ventilating Product Directory 403.4.7.3.4

HVI ((915-2015)) 915-2020 Procedure for Loudness Testing of Residential Fan Products. 403.4.6.1, 403.4.6.2, 403.4.7.2

HVI ((916-2015)) 916-2020 Air Flow Test Procedure. 403.4.6.1, 403.4.6.2, 403.4.7.2

HVI ((920-2015)) 920-2020 Product Performance Certification Procedure Including Verification and Challenge. 403.4.6.1, 403.4.6.2, 403.4.7.2

NFPA

110-22 Standard for Emergency and Standby Power Systems 915.3, 915.3.1, 915.3.2

111-22 Standard on Stored Electrical Energy Emergency and Standby Power Systems 915.3, 915.4

UL

((864-03)) 864-2014 Control Units and Accessories for Fire Alarm Systems with revisions through ((December 2014)) October 2018. 606.2.2

UL/CSA/ANCE 60335-2-40-2019 Household and Similar Electrical Appliances - Safety - Part 2-40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers. 1101.2

[Statutory Authority: RCW 19.27.031, 19.27.074, and chapter 19.27 RCW. WSR 22-09-009, § 51-52-1500, filed 4/8/22, effective 5/9/22. Statutory Authority: RCW 19.27.035 and 19.27.074. WSR 21-05-020, § 51-52-1500, filed 2/8/21, effective 3/11/21. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-1500, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-1500, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-1500, filed 2/1/13, effective

7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-1500, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 16-01-148, filed 12/21/15, effective 7/1/16)

WAC 51-52-21101 Section 101 (IFGC)—General.

101.2 Scope. This code shall apply to the installation of fuel gas piping systems, fuel gas utilization equipment, gaseous hydrogen systems and regulated accessories in accordance with Section 101.2.1 through 101.2.5.

EXCEPTIONS: 1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the *International Residential Code*.
 2. The standards for liquefied petroleum gas installations shall be the ((2014)) 2020 Edition of NFPA 58 (Liquefied Petroleum Gas Code) and the ((2015)) 2021 Edition of ANSI Z223.1/NFPA 54 (National Fuel Gas Code).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-01-148, § 51-52-21101, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-21101, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-21101, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-21101, filed 12/19/06, effective 7/1/07.]

NEW SECTION

WAC 51-52-21116 Section 116 (IFGC)—Stop work order.

116.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to fines established by the code official.

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NEW SECTION

WAC 51-52-21409 Section 409 (IFGC)—Drips and sloped piping.

**Table 409.1.1
 Natural Gas Valve Standards**

Valve Standards	Appliance Shutoff Valve Application Up to 1/2 psig Pressure	Other Valve Applications			
		Up to 1/2 psig Pressure	Up to 2 psig Pressure	Up to 5 psig Pressure	Up to 125 psig Pressure
ANSI Z21.15/CGA 9.1	X	--	--	--	--
ASME B16.44	X	X	X ^a	X ^b	--

Valve Standards	Appliance Shutoff Valve Application Up to 1/2 psig Pressure	Other Valve Applications			
		Up to 1/2 psig Pressure	Up to 2 psig Pressure	Up to 5 psig Pressure	Up to 125 psig Pressure
ASME B16.33	X	X	X	X	X
ASME B16.38	--	X	X	X	X

For SI: 1 pound per square inch gauge = 6.895 cPsa
 a. If labeled 2G.
 b. If labeled 5G.

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NEW SECTION

WAC 51-52-21800 Chapter 8—Referenced standards. The following referenced standards are added to Chapter 8.

ASME

B16.38-2012 (R2017) : Large Metallic Valves for Gas Distribution: Manually Operated, NPS 2 1/2 (DN 65) to NPS 12 (DN 300), 125 psig (8.6 bar) Maximum. Table 409.1.1

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WSR 22-17-148
PROPOSED RULES
BUILDING CODE COUNCIL
 [Filed August 23, 2022, 4:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-05-043.

Title of Rule and Other Identifying Information: Chapter 51-51 WAC, Adoption and amendment of the 2021 International Residential Code.

Hearing Location(s): On September 30, 2022, at 10:00 a.m., at 129 North 2nd Street, Yakima, WA 98901; or on October 14, 2022, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person, or via Zoom or conference call. The Zoom link and phone are provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: November 4, 2022.

Submit Written Comments to: State Building Code Council (SBCC), 1500 Jefferson Street S.E., Olympia, WA 98504, email sbcc@des.wa.gov, by October 14, 2022.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, email sbcc@des.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adopts the 2021 edition of the International Residential Code (IRC), published by the International Code Council (ICC), with state amendments to incorporate proposed changes as adopted by SBCC. The rules will provide increased clarity and life safety measures for building construction in Washington state.

SUMMARY OF PROPOSED CHANGES
 2021 IRC Amendments to Chapter 51-51 WAC

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-51-003		Replaces 2018 with 2021.	Refers to the current model code.
WAC 51-51-008		Modifies the implementation date.	The modification changes the implementation date to July 1, 2023.
WAC 51-51-01010	R101; R101.2	1. Corrects the section number and the title. 2. Corrects references in exception 1, and adds exceptions 4, 5, and 6 to align with model code language. The existing amendment is exception 2 and the references to Appendix U instead of Section R2904.	Modifications are necessary to align with the model code language.
WAC 51-51-0102	R102.5	1. Deletes Appendix U from Exception 1. 2. Adds Appendix U to Exception 2. 3. Adds title "Tiny Homes" to Appendix Q.	Modifications are necessary to correct a conflict with WAC 51-51-003.
	R102.7.1	1. Replaces the first sentence of the existing amendment. 2. Adds new model code language.	The modifications to this existing amendment incorporate changes to the model code, and adds language part of Proposal 21-GP2-053R. Proposal 21-GP2-053R adds language to Sections R102.7.1, R202, R310.5, and new Chapter 44 Existing Buildings and Structures. (See rationale for Chapter 44 for more details.)

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-51-0106	R106	Removes the state amendment and saves WAC 51-51-0106 as reserved.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-0202	R202	<ol style="list-style-type: none"> 1. Deletes the definition for "Balanced whole house ventilation." 2. Deletes the definition for "Battery system, stationary storage." 3. Relocates the definition for "Building, existing," after the definition of "Building." 4. Adds a definition for "Enclosed kitchen." 5. Deletes the definition for "Energy storage systems (ESS)." 6. Adds a definition for "Loft." 7. Deletes the definition for "Lot." 8. Deletes the definition for "Mixed ventilation zone." 9. Deletes the definition for "Sleeping loft." 10. Deletes the definition for "Townhouse." 11. Deletes the definition for "Whole house ventilation system." 	<ol style="list-style-type: none"> 1. The definition is no longer needed. It is addressed in the model code. Two new definitions - "Balanced Ventilation" and "Balanced Ventilation System," were added to 2021 IBC; the IRC TAG recommended adoption of model code definitions. In addition, the same information is contained in Section M1505.4.1.4. 2. This definition doesn't exist in the model code; there is no need for the existing amendment. 3. The existing definition is currently out of order. 4. The term "Enclosed kitchen" is used in the proposed language in Section M1503.3 and Table M1505.4.4.1 (21-GP2-062). 5. The definition is no longer needed; it is addressed in the model code. 6. The term "Loft." is used in the proposed language in Section R333 (21-GP2-099R). It replaces the defined term "Sleeping loft." 7. The definition is no longer needed; it is addressed in the model code. 8. This definition doesn't exist in the model code; there is no need for the existing amendment. 9. See item 6 above. 10. The definition is no longer needed; it is addressed in the model code. 11. The definition is no longer needed; it is addressed in the model code.
WAC 51-51-0301	R301	Adds Section R301 to the title.	Editorial modification.
	R301.2.2.10	New section in WAC. Amends the model code language by replacing the reference to Section P2801.8 with a reference to Uniform Plumbing Code (UPC) Section 507.1.	The new amendment is necessary to provide a correct reference to UPC. The International Plumbing Code is not adopted in Washington state.
	R301.5 Table R301.5	Incorporates changes in the model code.	Incorporates changes in the model code in the table and footnotes a, c, d, h, and i. The existing amendment is footnote i, which is changed to footnote j.

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-51-0302	R302.2.1	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	R302.2.2	The existing amendment is modified to incorporate model code changes.	The existing amendment is modified to incorporate model code changes.
	R302.3.1	Adds a title and Exception 2.	The exception further clarifies when two-family dwelling shall be determined and required to have a separation wall and when it may be exempt from the separation requirements of Section R302.3. The intent has always been for only existing single-family dwelling units to be allowed to add a second dwelling unit for mother-in-law units and not have it counted towards the unit count. This new exception further clarifies this. (21-GP2-044R)
	R302.3.2	Adds a title.	The existing amendment has no title.
	R302.3.4	New section.	This proposal recognizes that there may be a program necessity for the units to be interconnected. It addresses this condition by limiting the opening to a door located within the unit demising wall. In addition, the proposal maintains unit separation continuity with the minimum 45-minute fire-rating and self-closing device. The exception recognizes the reduced hazard when automatic sprinklers are installed by reducing the opening rating to 20-minutes. Currently, IRC is silent on when there are openings (doors) between units of a duplex. Some designers have begun designing duplexes with a door in the common fire-rated wall assembly to access both dwelling units. This code addition provides direction and clarity to both the designer and reviewer when this situation comes up to maintain the minimum fire-rating of the common wall assembly. (21-GP2-042)
	R302.3.5 R302.3.5.1 Table R302.3.5	New sections.	Designers are incorporating shared accessory spaces such as a laundry facility, HVAC mechanical rooms, etc. within two-family dwellings. Currently, the code is silent on how to deal with such connected accessory spaces in two-family dwelling units. This proposal helps clarify the hazards from accessory spaces is no greater than a common garage and should therefore be treated similarly with garages.
	R302.4.1	Deletes existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-0303	R303.5	Deletes existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-0309	R309.6 R309.6.1 R309.6.2	New sections.	New requirements for EV infrastructure pursuant to E2SHB 1287. (21-GP2-091R)

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-51-03100	R310.1	Adds Exceptions 3, 3.1 and 3.2.	This proposal recognizes that privacy fences are commonly used to enclose yards and addresses the use of gates to provide egress from these enclosed yards. Gate hardware is commonly used to maintain security by restricting access into the yard while maintaining free egress for self-evacuating occupants. Securing the gate with a padlock or other locking device would require an occupant to have knowledge of the key location and have access to it during the emergency. At a minimum, this would create a delay in occupant self-evacuation and is unacceptable. This proposal also recognizes that window wells are another common object that may be located within the pathway, particularly in narrow side yards. Open window wells located in the path can create significant elevation changes that pose a hazard for self-evacuating occupants. Requiring a cover over the opening eliminates this hazard and maintains the required unobstructed path. (See detailed rationale here: 21-GP2-041R)
	R310.1.1	Deletes existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	R310.2.4	Modifies the existing amendment.	Modification incorporates changes in the model code.
	R310.5	New section is added to WAC to clarify that the model code requirements for replacement windows for emergency escape and rescue openings are not adopted.	Amended provisions are proposed for adoption in Chapter 44. (See rationale for Chapter 44)
WAC 51-51-0311	R311.4	Modifies the exception.	This is part of Proposal #21-GP2-099R pertaining to lofts. (See rationale for Section R333.)
	R311.7.11 R311.7.12	New sections.	This is part of Proposal #21-GP2-099R pertaining to lofts. (See rationale for Section R333.)
	R311.7.3	Deletes existing amendment.	The existing amendment is no longer needed; it is addressed by the model code.
WAC 51-51-0312	R312.1.1 R312.1.2	New sections.	This is part of Proposal #21-GP2-099R pertaining to lofts. (See rationale for Section R333)
WAC 51-51-0313	R313.2	Modifies the existing amendment.	Modification incorporates changes in the model code.
WAC 51-51-0314	R314.3	1. Adds Exception 6. 2. Adds exception 7 and deletes sleeping lofts from item 1.	1. Incorporates changes to the model code. 2. This is part of Proposal #21-GP2-099R pertaining to lofts. (See rationale for Section R333)
WAC 51-51-0315	R315.2		The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-0326	R326.1	Adds a new exception.	This is part of Proposal #21-GP2-099R pertaining to lofts. (See rationale for Section R333)
	R326.2 R326.3 R326.4	Deletes the existing amendments.	The existing amendments are no longer needed; all three are addressed in the model code.

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-51-0327	R327	1. Deletes the existing amendment pertaining to sleeping lofts. 2. Replaces with the requirements for swimming pools, spas and hot tubs.	1. This is part of Proposal #21-GP2-099R pertaining to lofts. (See rationale for Section R333) 2. The requirements for swimming pools, spas and hot tubs are currently in WAC 51-51-0328. The relocation is necessary to align with the model code renumbering.
WAC 51-51-0328	R328	Deletes the existing amendment pertaining to swimming pools, spas and hot tubs. Replaces with the requirements for energy storage systems.	The requirements for energy storage systems are currently in WAC 51-51-0329. The relocation is necessary to align with the model code renumbering. There are modifications to the model code language pertaining to energy storage systems; only sections not addressed in the model code are relocated to WAC 51-51-0328. The relocation of the requirements for swimming pools, spas, and hot tubs is also necessary due to the model code renumbering.
WAC 51-51-0329	R329	Removes the state amendment and saves WAC 51-51-0329 as reserved.	See the rationale for WAC 51-50-0328.
WAC 51-51-0333	R333	New section pertaining to lofts.	This proposal introduces "lofts" into the residential code, aligning the 2021 Washington state residential code with the loft amendments approved by SBCC for inclusion in the 2021 WA State Building Code (WSBC). Sleeping lofts were introduced into the 2018 WA State Residential Code (WSRC), and this proposal expands on that concept. It is also similar to a proposal submitted by WABO's Technical Code Development Committee to the 2022 Group B code development cycle for inclusion in the 2024 IRC. Similar provisions will be in an appendix in the 2024 IBC. See detailed rationale here:21-GP2-099R
WAC 51-51-0334	R334	New section.	The requirements for stationary fuel cell power systems are in Section R330. This proposal is intended to renumber Section R330 to R334, and not to modify the model code language. The renumbering provides convenience to the code users in Washington state.
WAC 51-51-0403	R403.1.1	Modifies the existing amendment by incorporating model code language.	Modifications are necessary to align the existing amendment with the changes to the model code.
	R403.1.6 R403.1.3.3.6	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-0404	R404	Removes the state amendment and saves WAC 51-51-0404 as reserved.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-0408	R408.2	Modifies the existing amendment by incorporating model code language in the last sentence of the first paragraph.	Modifications are necessary to align the existing amendment with the changes to the model code.
	R408.8	Adds new section to WAC 51-51-408, specifying that Section R408.8 is not adopted.	The model code language pertaining to under-floor ventilation is not applicable in Washington state due to more restrictive requirements in other WAC sections.

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-51-0507	R507.1	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	Table R507.3.1	Modifies the existing amendment.	Incorporates model code changes.
	R507.5	New amendment specifying Tables R507.5(1) through R507.5(4) are not adopted.	The model code tables are not applicable in Washington state. The existing amendment (Table R507.5) contains the maximum deck beam span in Washington.
	Table R507.5	Modifies the existing amendment.	Incorporates model code changes.
WAC 51-51-0608	R608	Removes the state amendment and saves WAC 51-51-0608 as reserved.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-0703	R703.2 R703.4	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-51-1503	M1503.3 M1503.5	New sections.	The new sections are part of Proposal #21-GP2-062R This proposal adds differentiated ventilation requirements of hood ranges based on fuel type to reduce personal exposure and health impacts from ranges. These requirements are based on research done by Lawrence Berkeley National Laboratory where they found that dwellings are currently not adequately ventilating their stoves, which can increase the risk of asthma for children living in these dwellings.
WAC 51-51-1505	M1505.1	New section.	The new section is part of Proposal #21-GP2-008R The proposal is an option, for those seeking higher ventilation rates to further improve IAQ in accordance with ASHRAE Standard 62.2. Higher ventilation rates can dilute and thereby reduce indoor air pollutants beyond the current IRC-WA rate options. See detailed rationale here:21-GP2-008R
	M1505.4.1.4	Modifies the last sentence of the existing amendment.	This modification is part of Proposal #21-GP2-062R See rationale for WAC 51-51-1503.
	M1505.4.3.2	Changes the reference to Section M1505.4.3(2)	Renumbering is part of Proposal #21-GP2-062R.
	M1505.4.4	Changes the reference to Table M1505.4.4.1.	Renumbering is necessary due to Proposal #21-GP2-062R.
	M1505.4.4.1	Changes the reference to Table M1505.4.4.1; adds "timer controls" to the text.	Modifications are part of Proposal #21-GP2-062R
	Table M1505.4.4.1	Modifies the existing amendment.	This modification is part of Proposal #21-GP2-062R See rationale for WAC 51-51-1503.
	M1505.4.4.2	1. Deletes the exception in Item 1. 2. In Item 2, changes the reference to Table M1505.4.4.1. 3. Modifies the language in Item 4. 4. Adds Item 5. 5. Modifies the exception in Item 5.	This modification is part of Proposal #21-GP2-062R See rationale for WAC 51-51-1503.
	Table M1505.4.4.2	Corrects the table number.	Renumbering is necessary to align with proposal 21-GP2-062R.

WAC	Section	Changes in 2021	Rationale/Discussion
	M1505.4.4.3	New section.	This new section is part of Proposal #21-GP2-062R See rationale for WAC 51-51-1503.
	Table M1505.4.4.3	New table.	This new table is part of Proposal #21-GP2-062R See rationale for WAC 51-51-1503.
	M1505.4.4.3.1	New section.	This new section is part of Proposal #21-GP2-062R See rationale for WAC 51-51-1503.
WAC 51-51-2101.7	M2107	Delete the existing amendment.	The existing amendment specifies that Section M2107 pertaining to prohibited tee applications is not adopted. The UPC TAG recommended adoption of the model code language.
WAC 51-51-2103	M2103.3	Replace the reference to Section 605.3.1 with a reference to Section 605.	This modification is suggested by the UPC TAG and it is intended to provide convenience to the code user.
WAC 51-51-2105	M2105.14	Replace the reference to Section 605.12.2 with a reference to Section 605.	This modification is suggested by the UPC TAG and it is intended to provide convenience to the code user.
WAC 51-51-4400		Adds new referenced standards.	This modification is part of Proposal #21-GP2-062R See rationale for WAC 51-51-1503.
WAC 51-51-4501	Chapter 45	Adds Chapter 45.	This modification is part of Proposal #21-GP2-053R This proposed code change takes Appendix Chapter J of the 2021 IRC and moves it into the body of the IRC code as a new Chapter 44. The Appendix Chapter was used as a base for development of the new body of the code chapter, with the new chapter further expanded to include requirements for additions and relocations. See detailed rationale here: 21-GP2-053R
WAC 51-51-4502			
WAC 51-51-4503			
WAC 51-51-4504			
WAC 51-51-4505			
WAC 51-51-4506			
WAC 51-51-60106	Appendix T	Several modifications to the existing amendment.	As suggested by the IRC TAG, the proposed deletions and modifications are intended to align the existing amendments with the model code language. Sections proposed for deletion are addressed in the model code. There is no intended change in regulatory effect.
WAC 51-51-60108	Appendix Y	New appendix.	The intent of this new optional appendix is to reduce the amount of construction and demolition waste that goes to a landfill after leaving a construction site. For jurisdictions where material management is a priority, this language helps to increase the amount of material that is salvaged for reuse – or recycled. Two forms are a part of this code change proposal (the Salvage Assessment and Waste Diversion Report) which would need to be submitted to the local building department. See detailed rationale here: 21-GP2-092R

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-51-60109	Appendix Z	New appendix.	The intent of this new optional appendix is to reduce the amount of material that is destroyed when demolishing a building. Systematically removing materials, components, and systems of an existing building through the process of deconstruction, increases the amount of construction and demolition material that can be salvaged for reuse and recycled instead of going to a landfill. See detailed rationale here: 21-GP2-093R

Note: Those not listed on the table above remain as adopted in 2018 IBC.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074, and 19.27.540.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074, and 19.27.540.

Statute Being Implemented: RCW 19.27.031, 19.27.074, and 19.27.540.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; Enforcement: Local jurisdictions.

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 Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email sbcc@des.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The proposed rule adopts by reference the 2021 IRC with new and existing amendments. Many of the existing amendments are modified to incorporate changes to the model codes or to clarify language. There are several significant changes to the model code with economic impact. However, the model code changes are exempt under RCW 19.85.025(3) and 34.05.310 (4) (c), and are not part of this report.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The proposed rule adopts by reference the 2021 IRC with new and existing amendments. Many of the existing amendments are modified to incorporate changes to the model codes or to clarify language. There are several significant changes to the model code with economic impact. However, the model code changes are exempt under RCW 19.85.025(3) and 34.05.310 (4) (c), and are not part of this report.

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

Small Business Economic Impact Statement

There are costs imposed by the proposed rule, but the costs do not fall disproportionately on small businesses. The rule will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rule does not affect employment, reporting, or recordkeeping.

Description: SBCC is filing a proposed rule to adopt the 2021 edition of the IRC (chapter 51-51 WAC). Since 1985, SBCC has been responsible to update to new editions of the building code per RCW 19.27.074. IBC is updated every three years by ICC. The code development process conducted by the model code organization is open to all interest groups within the design and construction industry and from governmental organizations. See www.iccsafe.org for more information about the model code development process. The administrative compliance requirements are under the authority of the local governments (RCW 19.27.050). Enforcement activities, including permit issuance, plan review/approval, and inspections occur at the local level. Requirements for construction documents submittal and other reporting mandates are determined by the local jurisdiction and are consistent with previously established policies. The proposed amendments to chapter 51-51 WAC include specific technical requirements for building construction to be consistent with national standards.

Professional Services: Washington has had a statewide building code in effect since 1974. The local enforcement authority having jurisdiction administers the codes through the building and/or fire departments. Administrative procedures for state building code compliance are established and will not be changed by the adoption of the 2021 building codes. Small businesses will employ the same types of professional services for the design and construction of buildings and systems to comply with the state building code. The proposed rule updates the state building code and does not require additional equipment, supplies, labor, or other services. Services needed to comply with the building code are existing within the construction industry as required by the local authority having jurisdiction.

Costs of Compliance for Businesses: The council is required to adopt and maintain the state building code, as provided in chapters 19.27, 19.27A, and 70.92 RCW, and the state legislature. The primary objective of the council is to encourage consistency in the building code throughout the state of Washington and to maintain the building code consistent with the state's interest as provided in RCW 19.27.020. An objective of statewide adoption is to minimize state amendments to the model codes. The council accepts the statewide code amendment proposal from stakeholders to amend IRC to meet the legislative goals. The statewide code adoption process is defined in chapter 51-04 WAC and the council bylaws. All proposals must be submitted in writing on the appropriate form with the indicated supporting documents.

tation. Each proponent must identify where a proposed amendment has an economic impact, and estimate the costs and savings of the proposal on construction practices, users and/or the public, the enforcement community, and operation and maintenance.

The cost of compliance incurred by Washington businesses includes training and educational materials. The new 2021 IRC, 2021 IRC significant changes, and 2021 IRC study pack cost \$215 + tax shipping and handling. The 2021 IRC is also available online at <https://shop.iccsafe.org>.

For the 2021 code adoption cycle, the council received 11 proposals. IRC technical advisory group (TAG) recommended approval of eight proposals as submitted or as modified. The council approved nine proposals to be included in the CR-102. Two proposals were identified by TAG as having a cost (increase) for compliance on businesses. However, proposal 21-GP2-091R (EV infrastructure) is driven by E2SHB 1287 and is exempt. Nevertheless, a preliminary cost-benefit analysis will be provided for this proposal. The council recommended filing the proposed rule to allow input through the public hearing process.

1. Section 302.3.4 (21-GP2-042): This proposal recognizes that there may be a program necessity for the units to be interconnected. It addresses this condition by limiting the opening to a door located within the unit demising wall. In addition, the proposal maintains unit separation continuity with the minimum 45-minute fire-rating and self-closing device. The exception recognizes the reduced hazard when automatic sprinklers are installed by reducing the opening rating to 20-minutes. Currently, IRC is silent on when there are openings (doors) between units of a duplex. Some designers have begun designing duplexes with a door in the common fire-rated wall assembly to access both dwelling units. This code addition provides direction and clarity to both the designer and reviewer when this situation comes up to maintain the minimum fire-rating of the common wall assembly.

The proponent states that the additional cost will be from the 45-minute fire-rated door that is required. Typical cost is between \$400-\$800 for a 45-minute fire-resistive door. It should also be noted that a one-hour fire-resistive wall assembly that are 4' x 8' panels will typically run \$50-\$75. The net cost of the door would therefore be in the \$300-\$700 range.

Loss of Sales or Revenue: The proposed rules make the state code for building construction consistent with national standards. Businesses with new products or updated test or design standards are recognized in the updated building code. The update will result in some cost outlay for some small businesses for specific building projects, for a transition period. Other small businesses would see an increase in revenue. The amendments to the building codes affect over 25,000 small businesses in the state, where construction activity occurs. The primary intent of the amendments is to improve the safety features in buildings and provide consistency and fairness across the state, for a predictable business environment. The amendments should result in enhanced safety and value in buildings.

Cost of Compliance for Small Businesses: Determine whether the proposed rule will have a disproportionate cost impact on small businesses, compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses. Most businesses affected by the updates to the building codes are small businesses; over 95 percent of those listed in the construction and related industries have under 50 employees. The costs per employee are comparable between the largest businesses and the ma-

majority of small businesses. The cost to comply with the updated codes is not a disproportionate impact on small businesses. Where the council found the cost of compliance for small businesses to be disproportionate, the proposed rule mitigates the cost. The proposed rules include a definition of small business and provide exceptions for compliance with the updated rule.

Reducing the Costs of the Rule on Small Businesses: SBCC conducted a detailed review process, including participation at the national code development hearings, to document significant economic impacts of the proposed code amendments.

List of Industries: Below is a list of industries required to comply with the building code:

Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
236115	New Single-Family Housing Construction (except For-Sale Builders)	\$2,508.04	\$1,919.03 2020 Dataset pulled from USBLS	\$2,508.04 2020 Dataset pulled from DOR
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$32,067.43	\$17,160.94 2020 Dataset pulled from USBLS	\$32,067.43 2020 Dataset pulled from DOR
236118	Residential Remodelers	\$1,457.74	\$1,457.74 2020 Dataset pulled from USBLS	\$901.20 2020 Dataset pulled from DOR
236210	Industrial Building Construction	\$59,169.45	\$59,169.45 2020 Dataset pulled from ESD	\$53,925.71 2020 Dataset pulled from DOR
236220	Commercial and Institutional Building Construction	\$41,552.81	\$18,126.81 2020 Dataset pulled from ESD	\$41,552.81 2020 Dataset pulled from DOR
238110	Poured Concrete Foundation and Structure Contractors	\$3,442.28	\$5,027.07 2019 Dataset pulled from CBP	\$3,442.28 2020 Dataset pulled from DOR
238120	Structural Steel and Precast Concrete Contractors	\$15,401.97	\$20,212.19 2019 Dataset pulled from CBP	\$15,401.97 2020 Dataset pulled from DOR
238130	Framing Contractors	\$2,234.30	\$3,139.71 2019 Dataset pulled from CBP	\$2,234.30 2020 Dataset pulled from DOR
238140	Masonry Contractors	\$1,900.60	\$3,582.13 2019 Dataset pulled from CBP	\$1,900.60 2020 Dataset pulled from DOR
238150	Glass and Glazing Contractors	5,255.36	\$9,574.95 2019 Dataset pulled from CBP	\$5,255.36 2020 Dataset pulled from DOR
238160	Roofing Contractors	\$3,589.99	\$5,007.86 2019 Dataset pulled from CBP	\$3,589.99 2020 Dataset pulled from DOR
238170	Siding Contractors	\$1,905.61	\$2,485.86 2019 Dataset pulled from CBP	\$1,905.61 2020 Dataset pulled from DOR
238190	Other Foundation; Structure; and Building Exterior Contractors	\$4,622.07	\$4,141.38 2019 Dataset pulled from CBP	\$4,622.07 2020 Dataset pulled from DOR

Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
238210	Electrical Contractors and Other Wiring Installation Contractors	\$5,941.60	\$9,599.33 2019 Dataset pulled from CBP	\$5,941.60 2020 Dataset pulled from DOR
238220	Plumbing; Heating; and Air-Conditioning Contractors	\$5,353.76	\$11,047.00 2019 Dataset pulled from CBP	\$5,353.76 2020 Dataset pulled from DOR
238290	Other Building Equipment Contractors	\$4,335.21	\$16,142.07 2019 Dataset pulled from CBP	\$4,335.21 2020 Dataset pulled from DOR
238310	Drywall and Insulation Contractors	\$3,725.66	\$9,461.67 2019 Dataset pulled from CBP	\$3,725.66 2020 Dataset pulled from DOR
238990	All Other Specialty Trade Contractors	\$3,585.74	\$3,677.28 2019 Dataset pulled from CBP	\$3,585.74 2020 Dataset pulled from DOR
321213	Engineered Wood Member (except Truss) Manufacturing	\$44,480.76	\$44,480.76 2020 Dataset pulled from ESD	\$41,772.84 2020 Dataset pulled from DOR
321214	Truss Manufacturing	\$28,620.35	\$23,341.04 2020 Dataset pulled from ESD	\$28,620.35 2020 Dataset pulled from DOR
321219	Reconstituted Wood Product Manufacturing	\$30,305.17	\$10,139.90 2020 Dataset pulled from USBLS	\$30,305.17 2020 Dataset pulled from DOR
321911	Wood Window and Door Manufacturing	\$45,151.12	\$18,811.08 2020 Dataset pulled from ESD	\$45,151.12 2020 Dataset pulled from DOR
321992	Prefabricated Wood Building Manufacturing	\$5,391.09	\$5,391.09 2020 Dataset pulled from ESD	\$4,888.53 2020 Dataset pulled from DOR
327310	Cement Manufacturing	\$50,878.29	\$44,741.20 2020 Dataset pulled from ESD	\$50,878.29 2020 Dataset pulled from DOR
327320	Ready-Mix Concrete Manufacturing	\$64,317.30	\$46,126.21 2020 Dataset pulled from ESD	\$64,317.30 2020 Dataset pulled from DOR
327331	Concrete Block and Brick Manufacturing	\$15,030.60	\$15,030.60 2020 Dataset pulled from ESD	\$10,431.02 2020 Dataset pulled from DOR
332312	Fabricated Structural Metal Manufacturing	\$22,220.31	\$16,337.10 2020 Dataset pulled from USBLS	\$22,220.31 2020 Dataset pulled from DOR
332321	Metal Window and Door Manufacturing	\$26,369.28	\$14,505.40 2020 Dataset pulled from ESD	\$26,369.28 2020 Dataset pulled from DOR
332322	Sheet Metal Work Manufacturing	\$23,337.23	\$23,337.23 2020 Dataset pulled from ESD	\$16,556.52 2020 Dataset pulled from DOR
335121	Residential Electric Lighting Fixture Manufacturing	\$2,011.37	\$2,011.37 2020 Dataset pulled from USBLS	\$1,502.01 2020 Dataset pulled from DOR

Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
335122	Commercial; Industrial; and Institutional Electric Lighting Fixture Manufacturing	\$6,357.34	Redacted 2020 Dataset pulled from USBLS	\$6,357.34 2020 Dataset pulled from DOR
335129	Other Lighting Equipment Manufacturing	\$6,281.32	\$6,281.32 2020 Dataset pulled from ESD	\$2,494.40 2020 Dataset pulled from DOR
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$24,486.53	\$16,589.10 2020 Dataset pulled from ESD	\$24,486.53 2020 Dataset pulled from DOR
541310	Architectural Services	\$9,221.65	\$9,221.65 2020 Dataset pulled from ESD	\$3,738.99 2020 Dataset pulled from DOR
541330	Engineering Services	\$14,801.92	\$14,801.92 2020 Dataset pulled from USBLS	\$7,177.43 2020 Dataset pulled from DOR
541350	Building Inspection Services	\$1,868.52	\$1,868.52 2020 Dataset pulled from ESD	\$475.93 2020 Dataset pulled from DOR
561621	Security Systems Services (except Locksmiths)	\$9,759.28	\$9,759.28 2020 Dataset pulled from ESD	\$6,117.04 2020 Dataset pulled from DOR

Estimate of the Number of Jobs That Will Be Created or Lost: The adoption of the latest code edition is not expected to significantly impact the number of jobs in the construction industry. These rules are likely to be job neutral overall, i.e., they will not result in any job gains or losses. The scheduled effective date of the new edition is July 1, 2021. Building permits issued prior to that date will be vested under the 2018 building code. Permits issued for projects under the 2021 code edition will generally start with the 2024 construction season.

A copy of the statement may be obtained by contacting Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email sbcc@des.wa.gov.

August 23, 2022

Tony Doan

Council Chair

OTS-4043.1

Chapter 51-51 WAC

STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2018)) 2021 EDITION OF THE INTERNATIONAL RESIDENTIAL CODE

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-003 International Residential Code. The ((2018)) 2021 edition of the *International Residential Code* as published by the International Code Council is hereby adopted by reference with the following additions, deletions, and exceptions: Provided that chapters 11 and 25 through 43 of this code are not adopted. Energy Code is regulated by chapter 51-11R WAC; Plumbing Code is regulated by chapter 51-56 WAC; Electrical Code is regulated by chapter 296-46B WAC or Electrical Code as adopted by the local jurisdiction. Appendix F, Radon Control Methods, Appendix Q, Tiny Homes, and Appendix U, Dwelling Unit Fire Sprinkler Systems, are included in adoption of the International Residential Code.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-003, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-003, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-003, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-003, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-003, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-003, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 21-11-066, filed 5/14/21, effective 6/14/21)

WAC 51-51-008 Implementation. The International Residential Code adopted by chapter 51-51 WAC shall become effective in all counties and cities of this state on ((February 1, 2021)) July 1, 2023.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-11-066, § 51-51-008, filed 5/14/21, effective 6/14/21; WSR 20-03-023, § 51-51-008, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-008, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-008, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-008, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-008, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-01010 Section R101—Scope and general requirements.

R101.2 Scope. The provisions of the *International Residential Code for One- and Two-Family Dwellings* shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and

occupancy, location, removal and demolition of detached one- and two-family dwellings, adult family homes, and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures not more than three stories above grade plane in height.

EXCEPTIONS:

1. Live/work units located in townhouses and complying with the requirements of Section ((419)) 508.5 of the *International Building Code* shall be permitted to be constructed in accordance with the *International Residential Code for One- and Two-Family Dwellings*. ((Fire suppression)) An automatic sprinkler system required by Section ((419.5)) 508.5.7 of the *International Building Code* where constructed under the *International Residential Code for One- and Two-Family Dwellings* shall conform to Appendix U.
2. Owner-occupied lodging houses with one or two guestrooms shall be permitted to be constructed in accordance with the *International Residential Code for One- and Two-Family Dwellings*.
3. Owner-occupied lodging homes with three to five guestrooms shall be permitted to be constructed in accordance with the *International Residential Code for One- and Two-Family Dwellings* where equipped with ((a)) an automatic fire sprinkler system in accordance with Appendix U.
4. A care facility with five or fewer persons receiving custodial care within a dwelling unit shall be permitted to be constructed in accordance with the *International Residential Code for One- and Two-Family Dwellings* where equipped with an automatic fire sprinkler system in accordance with Appendix U.
5. A care facility with five or fewer persons receiving medical care within a dwelling unit shall be permitted to be constructed in accordance with the *International Residential Code for One- and Two-Family Dwellings* where equipped with an automatic fire sprinkler system in accordance with Appendix U.
6. A care facility with five or fewer persons receiving care that are within a single-family dwelling shall be permitted to be constructed in accordance with the *International Residential Code for One- and Two-Family Dwellings* where equipped with an automatic fire sprinkler system in accordance with Appendix U.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-01010, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-01010, filed 1/11/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-0102 Section R102—Applicability.

R102.5 Appendices. Provisions in the appendices shall not apply unless specifically referenced in the adopting ordinance. An appendix adopted by a local jurisdiction shall not be effective unless approved by the state building code council pursuant to RCW 19.27.060 (1) (a).

EXCEPTIONS:

1. The state building code council has determined that a local ordinance providing specifications for light straw-clay or strawbale construction, or requiring a solar-ready zone or requiring fire sprinklers in accordance with Appendix R, S, ((U)) or V of this chapter may be adopted by any local government upon notification of the council.
2. Appendix F, Radon Control Methods, ((and)) Appendix Q, Tiny Homes, and Appendix U, Dwelling Unit Fire Sprinkler Systems, are included in adoption of the *International Residential Code*.

R102.7.1 Additions, alterations or repairs. Additions, alterations ((or)) , repairs ((to any structure)) , or relocations shall be permitted to conform to the requirements of the provisions of Chapter 44 or shall conform to the requirements for ((a)) new structure without requiring the existing structure to comply with the requirements of this code, unless otherwise stated. Additions, alterations ((or)) , repairs, and relocations shall not cause an existing structure to become ((unsafe or adversely affect the performance of the building)) less compliant with the provisions of this code than the existing building or structure was prior to the addition, alteration, repair, or relocation. An existing building together with its additions shall comply with the height limits of this code. Where the alteration or addition causes the use or occupancy to be changed to one not within the scope of this code, the provisions of the International Existing Building Code shall apply.

EXCEPTIONS:

1. Additions with less than 500 square feet of conditioned floor area are exempt from the requirements for Whole House Ventilation Systems, Section M1505.4.
2. Additions or alterations to existing buildings which do not require the construction of foundations, crawlspaces, slabs or basements shall not be required to meet the requirements for radon protection in Section R332.1 and Appendix F.

R102.7.2 Moved buildings. Buildings or structures moved into or within a jurisdiction shall comply with the provisions of this code, the *International Building Code* (chapter 51-50 WAC), the *International Mechanical Code* (chapter 51-52 WAC), the *International Fire Code* (chapter 51-54A WAC), the *Uniform Plumbing Code and Standards* (chapter 51-56 WAC), and the *Washington State Energy Code* (chapter 51-11R WAC) for new buildings or structures.

EXCEPTION:

Group R-3 buildings or structures are not required to comply if:

1. The original occupancy classification is not changed; and
2. The original building is not substantially remodeled or rehabilitated. For the purposes of this section a building shall be considered to be substantially remodeled when the costs of remodeling exceed 60 percent of the value of the building exclusive of the costs relating to preparation, construction, demolition or renovation of foundations.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-0102, filed 10/13/20, effective 11/13/20; WSR 16-03-025, § 51-51-0102, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0102, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0102, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0102, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-0102, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0106 ((Section 106—Construction documents.)) Re-served.

~~((R106.1 Submittal documents. Submittal documents consisting of construction documents, and other data shall be submitted in two or more sets, or in a digital format where allowed by the building official, with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.~~

EXCEPTION:

The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0106, filed 1/6/20, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 21-12-102, filed 6/2/21, effective 7/3/21)

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but

not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

~~((**BALANCED WHOLE HOUSE VENTILATION.** Balanced whole house ventilation is defined as any combination of concurrently operating residential unit mechanical exhaust and mechanical supply whereby the total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. Intermittent dryer exhaust, intermittent range hood exhaust, and intermittent toilet room exhaust airflow rates above the residential dwelling or sleeping unit minimum ventilation rate are exempt from the balanced airflow calculation.~~

~~**BATTERY SYSTEM, STATIONARY STORAGE.** This definition is not adopted.~~

~~**BUILDING, EXISTING.** A building or structure erected prior to the adoption of this code, or one that has passed a final inspection.))~~

BUILDING. Any one- or two-family dwelling or *townhouse*, or portion thereof used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure.

BUILDING, EXISTING. A building or structure erected prior to the adoption of this code, or one that has passed a final inspection.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CONDITIONED SPACE. An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

DISTRIBUTED WHOLE HOUSE VENTILATION. A whole house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space (living room, den, office, interior adjoining spaces or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.

2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use

of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4 m²).

EGRESS ROOF ACCESS WINDOW. A skylight or roof window designed and installed to satisfy the *Emergency Escape and Rescue Opening* requirements of Section R310.2.

~~((**ENERGY STORAGE SYSTEMS (ESS).** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time.))~~

ENCLOSED KITCHEN. A kitchen whose permanent openings to interior adjacent spaces do not exceed a total of 60 square feet (6 m²).

FIRE SEPARATION DISTANCE. The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior lot line; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the lot.

The distance shall be measured at a right angle from the wall.

FLOOR AREA. The area within the inside perimeter of exterior walls of the building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

LANDING PLATFORM. A landing provided as the top step of a stairway accessing a *Sleeping Loft*.

LOCAL EXHAUST. An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

~~((**LOT.** A measured portion or parcel of land considered as a unit having fixed boundaries.))~~

LOFT. A space on an intermediate level or levels between the floor and ceiling of a dwelling or sleeping unit, open on one or more sides to the room or space in which the loft is located, and in accordance with Section R326.

LOT LINE. The line which bounds a plot of ground described as a *lot* in the title to the property.

~~((**MIXED VENTILATION ZONE.** This definition is not adopted.))~~

SALT WATER COASTAL AREA. Those areas designated as salt water coastal areas by the local jurisdiction.

~~((**SLEEPING LOFT.** A sleeping space on a floor level located more than 30 inches (726 mm) above the main floor and open to the main floor on one or more sides with a ceiling height of less than 6 feet 8 inches (2032 mm).))~~

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

~~((**TOWNHOUSE.** A building that contains three or more attached *townhouse units*.))~~

TOWNHOUSE UNIT. A single-family *dwelling unit* in a *townhouse* that extends from foundation to roof and that has a yard or public way on not less than two sides that extends at least 50 percent of the length of each of these two sides.

~~((**WHOLE HOUSE VENTILATION SYSTEM.** A mechanical ventilation system, including fans, controls, and ducts, which replaces, by direct means, air from the habitable rooms with outdoor air.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-12-102, § 51-51-0202, filed 6/2/21, effective 7/3/21; WSR 20-21-041, § 51-51-0202, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-0202, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0202, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0202, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0202, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 09-04-023, § 51-51-0202, filed 1/27/09, effective 7/1/09; WSR 08-01-102, § 51-51-0202, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0202, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-0202, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0301 Section R301—Design criteria.

R301.2 Climatic and geographic design criteria. Buildings shall be constructed in accordance with the provisions of this code as limited by the provisions of this section. Additional criteria shall be established by the local jurisdiction and set forth in Table R301.2(1). The local jurisdiction shall designate the salt water coastal areas within their jurisdiction.

R301.2.2.10 Anchorage of water heaters. In Seismic Design Categories D₀, D₁ and D₂, and in townhouses in Seismic Design Category C, water heaters and thermal storage units shall be anchored against movement and overturning in accordance with Section M1307.2 or the Uniform Plumbing Code Section 507.1.

R301.5 Live load. The minimum uniformly distributed live load shall be as provided in Table R301.5.

TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)

Use	<u>((Live)) Uniform Load (psf)</u>	<u>Concentrated Load (lb)</u>
Uninhabitable attics without storage ^b	10	=
Uninhabitable attics with limited storage ^{b, g}	20	=

Use	((Live)) Uniform Load (psf)	Concentrated Load (lb)
Habitable attics and attics served with fixed stairs	30	=
Balconies (exterior) and decks ^e	60 ^{((i))j}	=
Fire escapes	40	=
Guards ((and handrails^d))	((200^h)) =	<u>200^{h,i}</u>
Guard in-fill components ^f	((50^h)) =	<u>50^h</u>
<u>Handrail^d</u>	=	<u>200^h</u>
Passenger vehicle garages ^a	50 ^a	<u>2,000^h</u>
((Rooms)) <u>Areas</u> other than sleeping ((rooms)) <u>areas</u>	40	=
Sleeping ((rooms)) <u>areas</u>	30	=
Stairs	40 ^c	<u>300^c</u>

For SI: 1 pound per square foot = 0.0479 kPa, 1 square inch = 645 mm, 1 pound = 4.45 N

- a. Elevated garage floors shall be capable of supporting the uniformly distributed live load or a 2,000 pound concentrated load applied ~~((over a 20 square inch area))~~ on an area of 4-1/2 inches by 4-1/2 inches, whichever produces the greater stresses.
- b. Uninhabitable attics without storage are those where the clear height between joists and rafters is not more than 42 inches, or where there are not two or more adjacent trusses with web configurations capable of accommodating an assumed rectangle 42 inches in height by 24 inches in width, or greater, within the plane of the trusses. This live load need not be assumed to act concurrently with any other live load requirements.
- c. Individual stair treads shall be ~~((designed for))~~ capable of supporting the uniformly distributed live load or a 300 pound concentrated load ~~((acting over))~~ applied on an area of ~~((4 square inches))~~ 2 inches by 2 inches, whichever produces the greater stresses.
- d. A single concentrated load applied in any direction at any point along the top. ~~For a guard not required to serve as a handrail, the load need not be applied to the top element of the guard in a direction parallel to such element.~~
- e. See Section R507.1 for decks attached to exterior walls.
- f. Guard in-fill components (all those except the handrail), balusters and panel fillers shall be designed to withstand a horizontally applied normal load of 50 pounds on an area equal to 1 square foot. This load need not be assumed to act concurrently with any other live load requirement.
- g. Uninhabitable attics with limited storage are those where the clear height between joists and rafters is 42 inches or greater, or where there are two or more adjacent trusses with web configurations capable of accommodating an assumed rectangle 42 inches in height by 24 inches in width, or greater, within the plane of the trusses. The live load need only be applied to those portions of the joists or truss bottom chords where all of the following conditions are met:
 - g.1. The attic area is accessed from an opening not less than 20 inches in width by 30 inches in length that is located where the clear height in the attic is not less than 30 inches.
 - g.2. The slopes of the joists or truss bottom chords are not greater than 2 inches vertical to 12 units horizontal.
 - g.3. Required insulation depth is less than the joist or truss bottom chord member depth. The remaining portions of the joists or truss bottom chords shall be designed for a uniformly distributed concurrent live load of not less than 10 pounds per square foot.
- h. Glazing used in handrail assemblies and guards shall be designed with a ~~((safety))~~ load adjustment factor of 4. The ~~((safety))~~ load adjustment factor shall be applied to each of the concentrated loads applied to the top of the rail, and to the load on the in-fill components. These loads shall be determined independent of one another, and loads are assumed not to occur with any other live load.

- i. Where the top of a guard system is not required to serve as a handrail, the single concentrated load shall be applied at any point along the top, in the vertical downward direction and in the horizontal direction away from the walking surface. Where the top of a guard is also serving as the handrail, a single concentrated load shall be applied in any direction at any point along the top. Concentrated loads shall not be applied concurrently.
- j. Where structural tables in Section R507 only specify snow loads, the values corresponding to 70 psf snow loads shall be used.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0301, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0301, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0301, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0301, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-102, § 51-51-0301, filed 12/18/07, effective 4/1/08.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0302 Section R302—Fire-resistant construction.

~~((R302.2.1 Double walls. When used, each townhouse unit shall be separated from other townhouse units by two 1-hour fire-resistance-rated wall assemblies tested in accordance with ASTM E119, UL 263 or Section 703.3 of the International Building Code.))~~

R302.2.2 Common walls. Common walls separating *townhouse units* shall be assigned a fire resistance rating in accordance with Item 1 or 2 and shall be rated for fire exposure from both sides. Common walls shall extend to and be tight against the exterior sheathing of the exterior walls, or the inside face of exterior walls without stud cavities, and the underside of the roof sheathing. The common wall shared by two *townhouse units* shall be constructed without plumbing or mechanical equipment, ducts or vents, other than water-filled fire sprinkler piping in the cavity of the common wall. ~~((The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing.))~~ Electrical installations shall be in accordance with chapter 296-46B WAC, Electrical safety standards, administration, and installation. Penetrations of the membrane of common walls for electrical outlet boxes shall be in accordance with Section R302.4.

1. Where ~~((a fire))~~ an automatic sprinkler system in accordance with Section P2904 is provided, the common wall shall be not less than a 1-hour fire-resistance-rated wall assembly tested in accordance with ASTM E119, UL 263 or Section 703.3 of the *International Building Code*.

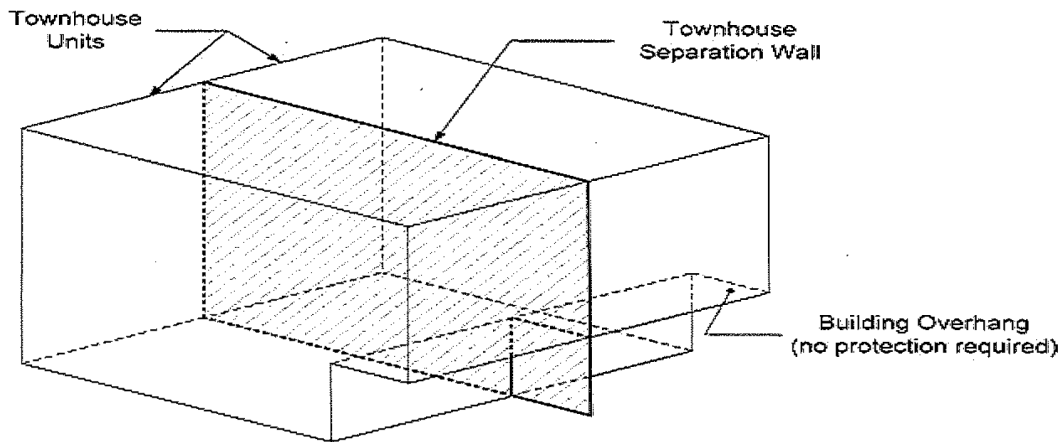
2. Where ~~((a fire))~~ an automatic sprinkler system in accordance with Section P2904 is not provided, the common wall shall be not less than a 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E119, UL 263 or Section 703.3 of the *International Building Code*.

EXCEPTION: Common walls are permitted to extend to and be tight against the interior side of the exterior walls ~~((where voids in the exterior wall at the end of the common wall are fireblocked))~~ if the cavity between the end of the common wall and the exterior sheathing is filled with a minimum of 2-inch nominal thickness wood studs.

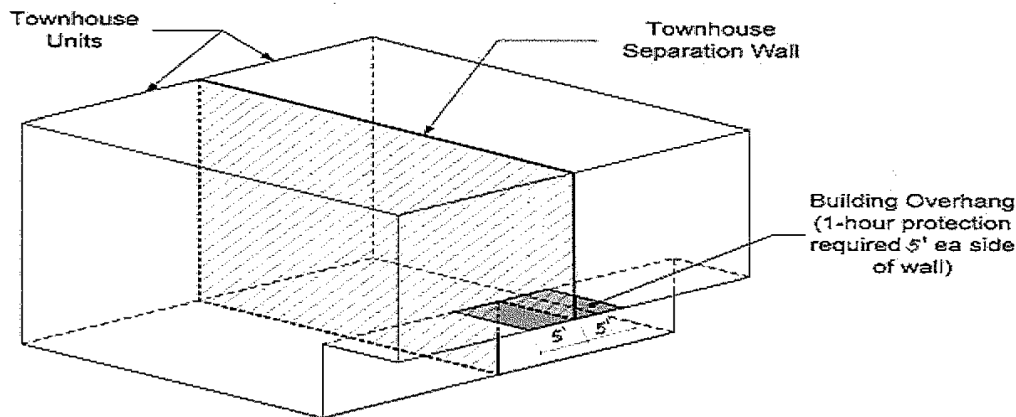
R302.2.3 Continuity. The fire-resistance-rated wall or assembly separating *townhouse units* shall be continuous from the foundation to the underside of the roof sheathing, deck or slab. The fire-resistance rating shall extend the full length of the wall or assembly, including wall extensions through and separating attached enclosed accessory structures.

Where a story extends beyond the exterior wall of a story below:

1. The fire-resistance-rated wall or assembly shall extend to the outside edge of the upper story (see Figure R302.2(1)); or
2. The underside of the exposed floor-ceiling assembly shall be protected as required for projections in Section R302 (see Figure R302.2(2)).



**FIGURE R302.2(1)
EXTENDED TOWNHOUSE SEPARATION WALL**



**FIGURE R302.2(2)
TOWNHOUSE SEPARATION OVERHANG PROTECTION**

R302.2.4 Parapets for townhouses. Parapets constructed in accordance with Section R302.2.5 shall be constructed for *townhouses* as an extension of exterior walls or common walls separating *townhouse units* in accordance with the following:

1. Where roof surfaces adjacent to the wall or walls are at the same elevation, the parapet shall extend not less than 30 inches (762 mm) above the roof surfaces.

2. Where roof surfaces adjacent to the wall or walls are at different elevations and the higher roof is not more than 30 inches (762 mm) above the lower roof, the parapet shall extend not less than 30 inches (762 mm) above the lower roof surface.

EXCEPTION: A parapet is not required in the preceding two cases where the roof covering complies with a minimum Class C rating as tested in accordance with ASTM E108 or UL 790 and the roof decking or sheathing is of noncombustible materials or fire retardant-treated wood for a distance of 4 feet (1219 mm) on each side of the wall or walls, or one layer of 5/8-inch (15.9 mm) Type X gypsum board is installed directly beneath the roof decking or sheathing, supported by not less than nominal 2-inch (51 mm) ledgers attached to the sides of the roof framing members, for a distance of not less than 4 feet (1219 mm) on each side of the wall or walls and any openings or penetrations in the roof are not within 4 feet (1219 mm) of the common walls. Fire retardant-treated wood shall meet the requirements of Sections R802.1.5 and R803.2.1.2.

3. A parapet is not required where roof surfaces adjacent to the wall or walls are at different elevations and the higher roof is more than 30 inches (762 mm) above the lower roof. The common wall construction from the lower roof to the underside of the higher roof deck shall have not less than a 1-hour fire-resistance rating. The wall shall be rated for exposure from both sides.

TABLE R302.1 (1)
EXTERIOR WALLS

No Change to the Table

- a The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.
- b The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the rake overhang where ventilation openings are not installed in the rake overhang or in walls that are common to attic areas.

TABLE R302.1 (2)
EXTERIOR WALLS - DWELLINGS WITH FIRE SPRINKLERS

No Change to the Table

- a For residential subdivisions where all dwellings are equipped throughout with an automatic sprinkler system installed in accordance with Section P2904, the fire separation distance for exterior walls not fire-resistance-rated and for fire-resistance-rated projections shall be permitted to be reduced to 0 feet, and unlimited unprotected openings and penetrations shall be permitted, where the adjoining lot provides an open setback yard that is 6 feet or more in width on the opposite side of the property line.
- b The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.
- c The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the rake overhang where ventilation openings are not installed in the rake overhang or in walls that are common to attic areas.

R302.3 Two-family dwellings. Wall and floor/ceiling assemblies separating *dwelling units* in two-family dwellings shall be constructed in accordance with Section R302.3.1 or R302.3.3. One accessory dwelling unit constructed within an existing *dwelling unit* need not be considered a separated dwelling unit in a two-family dwelling where all required smoke alarms, in the accessory dwelling unit and the primary dwelling unit, are interconnected in such a manner that the actuation of one alarm will activate all alarms in both the primary dwelling unit and the accessory dwelling unit.

R302.3.1 Separation. *Dwelling units* in two-family dwellings shall be separated from each other by wall and floor assemblies having not less than a 1-hour fire-resistance rating where tested in accordance with ASTM E119, UL 263 or Section 703.3 of the *International Building Code*.

EXCEPTIONS: 1. A fire-resistance rating of 1/2 hour shall be permitted in buildings equipped throughout with an automatic sprinkler system installed in accordance with NFPA 13D.
2. Where an accessory dwelling unit is added within an existing single-family residence to create a two-family dwelling, fire rated separation between the accessory dwelling unit and the primary dwelling unit is not required when all required smoke alarms are interconnected in such a manner that the actuation of one alarm will activate all alarms in both the primary dwelling unit and the accessory dwelling unit.

R302.3.2 Continuity. Fire-resistance-rated floor/ceiling and wall assemblies shall extend to and be tight against the exterior wall, and wall assemblies shall extend from the foundation to the underside of the roof sheathing.

EXCEPTION: Wall assemblies need not extend through attic spaces where the ceiling is protected by not less than 5/8-inch (15.9 mm) Type X gypsum board, an attic draft stop constructed as specified in Section R302.12.1 is provided above and along the wall assembly separating the dwellings and the structural framing supporting the ceiling is protected by not less than 1/2-inch (12.7 mm) gypsum board or equivalent.

R302.3.3 Supporting construction. Where floor/ceiling assemblies are required to be fire-resistance rated by Section R302.3, the supporting construction of such assemblies shall have an equal or greater fire-resistance rating.

~~(R302.4.1 Through penetrations. Through penetrations of fire-resistance-rated wall or floor assemblies shall comply with Section R302.4.1.1 or R302.4.1.2.~~

EXCEPTION: Where the penetrating items are steel, ferrous or copper pipes, tubes or conduits, or fire sprinkler piping, the annular space shall be protected as follows:
 1. In concrete or masonry wall or floor assemblies, concrete, grout or mortar shall be permitted where installed to the full thickness of the wall or floor assembly or the thickness required to maintain the fire-resistance rating, provided that both of the following are complied with:
 1.1. The nominal diameter of the penetrating item is not more than 6 inches (152 mm).
 1.2. The area of the opening through the wall does not exceed 144 square inches (92900 mm²).
 2. The material used to fill the annular space shall prevent the passage of flame and hot gases sufficient to ignite cotton waste where subjected to ASTM E119 or UL 263 time temperature fire conditions under a positive pressure differential of not less than 0.01 inch of water (3 Pa) at the location of the penetration for the time period equivalent to the fire-resistance rating of the construction penetrated.)

R302.3.4. Openings protection between two-family dwellings. Openings in the common fire-resistance-rated wall assembly located between units of a two-family dwelling shall be equipped with not less than a 45-minute fire-rated door assembly equipped with a self-closing or automatic-closing device.

EXCEPTION: A 20-minute fire-rated door assembly is permitted in buildings equipped throughout with an automatic sprinkler system installed in accordance with Section P2904 or I3D.

R302.3.5 Shared accessory rooms or areas. Shared accessory rooms shall be separated by Table R302.3.5. Openings in a shared accessory room shall comply with Section R302.3.5.1. Attachment of gypsum board shall comply with Table R702.3.5. Shared accessory rooms or spaces shall not include habitable space.

R302.3.5.1 Opening protection. Openings from a shared accessory room or area directly into a room used for sleeping purposes shall not be permitted. Other openings between the shared common accessory room or area shall be equipped with solid wood doors not less than 1 3/8 inches in thickness, solid or honeycomb core steel doors not less than 1 3/8 inches thick, or 20-minute fire-rated doors, equipped with a self-closing or automatic-closing device.

**TABLE R302.3.5
 DWELLING-SHARED ACCESSORY ROOM SEPARATION**

<u>SEPARATION</u>	<u>MATERIAL</u>
<u>From the dwelling units and attics.</u>	<u>Not less than 1/2-inch gypsum board or equivalent applied to the accessory room side wall.</u>
<u>From habitable rooms above or below the shared accessory room.</u>	<u>Not less than 5/8-inch Type X gypsum board or equivalent.</u>

SEPARATION	MATERIAL
<u>Structures supporting floor/ceiling and wall assemblies used for separation required by this section.</u>	Not less than 1/2-inch gypsum board or equivalent.
<u>Shared accessory rooms located less than 3 feet from a dwelling unit on the same lot.</u>	Not less than 1/2-inch gypsum board or equivalent applied to the interior side of exterior walls that are within this area.

R302.13 Fire protection of floors. Floor assemblies that are not required elsewhere in this code to be fire-resistance rated, shall be provided with a 1/2-inch (12.7 mm) gypsum wallboard membrane, 5/8-inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member. Penetrations or openings for ducts, vents, electrical outlets, lighting, devices, luminaires, wires, speakers, drainage, piping and similar openings or penetrations shall be permitted.

- EXCEPTIONS:
1. Floor assemblies located directly over a space protected by an automatic sprinkler system in accordance with Appendix U, NFPA 13D, or other approved equivalent sprinkler system.
 2. Floor assemblies located directly over a crawl space not intended for storage or fuel-fired appliances.
 3. Portions of floor assemblies shall be permitted to be unprotected when complying with the following:
 - 3.1. The aggregate area of the unprotected portions shall not exceed 80 square feet per story.
 - 3.2. Fire blocking in accordance with Section R302.11.1 is installed along the perimeter of the unprotected portion to separate the unprotected portion from the remainder of the floor assembly.
 4. Wood floor assemblies using dimensional lumber or *structural composite lumber* with a cross sectional area equal to or greater than 2-inch by 10-inch nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0302, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0302, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-088, § 51-51-0302, filed 12/1/14, effective 5/1/15. Statutory Authority: Chapters 19.27A and 34.05 RCW. WSR 13-23-084, § 51-51-0302, filed 11/19/13, effective 4/1/14. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0302, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0302, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 09-04-023, § 51-51-0302, filed 1/27/09, effective 7/1/09; WSR 08-01-102, § 51-51-0302, filed 12/18/07, effective 4/1/08.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0303 Section R303—Light, ventilation and heating.

R303.1 Natural light. All habitable rooms shall have an aggregate glazing area of not less than 8 percent of the floor area of such rooms.

EXCEPTION: The glazed areas need not be installed in rooms where artificial light is provided capable of producing an average illumination of 6 footcandles (65 lux) over the area of the room at a height of 30 inches (762 mm) above the floor level.

R303.2 Adjoining rooms. For the purpose of determining light requirements, any room shall be considered as a portion of an adjoining room when at least one-half of the area of the common wall is open and unobstructed and provides an opening of not less than one-tenth of the

floor area of the interior room but not less than 25 square feet (2.3 m²).

EXCEPTION: Openings required for light shall be permitted to open into a sunroom with thermal isolation or a patio cover, provided there is an openable area between the adjoining room and the sunroom or a patio cover of not less than one-tenth of the floor area of the interior room but not less than 20 square feet (2 m²).

R303.3 Bathrooms. This section is not adopted.

R303.4 Minimum ventilation performance. Dwelling units shall be equipped with local exhaust and whole house ventilation systems designed and installed as specified in Section M1507.

EXCEPTION: Additions with less than 500 square feet of conditioned floor area are exempt from the requirements in this Code for Whole House Ventilation Systems.

~~((R303.5 Opening location. Outdoor intake and exhaust openings shall be located in accordance with Sections R303.5.1 and R303.5.2.))~~

R303.5.1 Intake openings. Mechanical and gravity outdoor air intake openings shall be located a minimum of 10 feet (3048 mm) from any hazardous or noxious contaminant, such as vents, chimneys, plumbing vents, streets, alleys, parking lots and loading docks, except as otherwise specified in this code.

For the purpose of this section, the exhaust from *dwelling unit* toilet rooms, bathrooms and kitchens shall not be considered as hazardous or noxious.

EXCEPTIONS:

1. The 10-foot (3048 mm) separation is not required where the intake opening is located 3 feet (914 mm) or greater below the contaminant source.
2. Vents and chimneys serving fuel-burning appliances shall be terminated in accordance with the applicable provisions of Chapters 18 and 24.
3. Clothes dryer exhaust ducts shall be terminated in accordance with Section 1502.3.

R303.5.2 Exhaust openings. Exhaust air shall not be directed onto walkways. All exhaust ducts shall terminate outside the building. Terminal elements shall have at least the equivalent net free area of the duct work.

R303.5.2.1 Exhaust ducts. Exhaust ducts shall be equipped with back-draft dampers. All exhaust ducts in unconditioned spaces shall be insulated to a minimum of R-4.

R303.7 Interior stairway illumination. Interior stairways shall be provided with an artificial light source to illuminate the landings and treads. Stairway illumination shall receive primary power from the building wiring. The light source shall be capable of illuminating treads and landings to levels not less than 1 foot-candle (11 lux) measured at the center of treads and landings. There shall be a wall switch at each floor level to control the light source where the stairway has six or more risers.

EXCEPTION: A switch is not required where remote, central or automatic control of lighting is provided.

R303.8 Exterior stairway illumination. Exterior stairways shall be provided with an artificial light source located at the top landing of the stairway. Stairway illumination shall receive primary power from the building wiring. Exterior stairways providing access to a basement from the outdoor grade level shall be provided with an artificial light source located at the bottom landing of the stairway.

R303.9 Required glazed openings. Required glazed openings shall open directly onto a street or public alley, or a yard or court located on the same lot as the building.

EXCEPTIONS:

1. Required glazed openings that face into a roofed porch where the porch abuts a street, yard or court are permitted where the longer side of the porch is not less than 65 percent unobstructed and the ceiling height is not less than 7 feet (2134 mm).
2. Eave projections shall not be considered as obstructing the clear open space of a yard or court.

3. Required glazed openings that face into the area under a deck, balcony, bay or floor cantilever are permitted where an unobstructed pathway of not less than 36 inches (914 mm) in height, 36 inches (914 mm) in width, and no greater than 60 inches (1524 mm) in length is provided and opens to a yard or court. The pathway shall be measured from the exterior face of the glazed opening, or if the glazed opening is in a window well, at the window well wall furthest from the exterior face of the glazed opening.

R303.10 Required heating. When the winter design temperature in Table R301.2(1) is below 60°F (16°C), every *dwelling unit* shall be provided with heating facilities capable of maintaining a minimum room temperature of 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in all habitable rooms at design temperature. The installation of one or more portable heaters shall not be used to achieve compliance with this section.

EXCEPTION: Unheated recreational tents or yurts not exceeding 500 square feet provided it is not occupied as a permanent dwelling.

R303.10.1 Definitions. For the purposes of this section only, the following definitions apply.

DESIGNATED AREAS are those areas designated by a county to be an urban growth area in chapter 36.70A RCW and those areas designated by the U.S. Environmental Protection Agency as being in nonattainment for particulate matter.

SUBSTANTIALLY REMODELED means any alteration or restoration of a building exceeding 60 percent of the appraised value of such building within a 12 month period. For the purpose of this section, the appraised value is the estimated cost to replace the building and structure in kind, based on current replacement costs.

R303.10.2 Primary heating source. Primary heating sources in all new and substantially remodeled buildings in designated areas shall not be dependent upon wood stoves.

R303.10.3 Solid fuel burning devices. No new or used solid fuel burning device shall be installed in new or existing buildings unless such device is U.S. Environmental Protection Agency certified or exempt from certification by the United States Environmental Protection Agency and conforms with RCW 70.94.011, 70.94.450, 70.94.453, and 70.94.457.

EXCEPTIONS: 1. Wood cook stoves.
2. Antique wood heaters manufactured prior to 1940.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0303, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0303, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0303, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0303, filed 1/20/10, effective 7/1/10; WSR 04-01-109, § 51-51-0303, filed 12/17/03, effective 7/1/04.]

NEW SECTION

WAC 51-51-0309 Section R309—Garages and carports.

R309.6 Electric vehicle charging.

R309.6.1 Application. The provisions of this section shall apply to the construction of new dwelling units per Section R101.2 with attached private garages or attached private carports.

EXCEPTION: Where there is no public utility or commercial power supply.

R309.6.2 Dedicated circuit for electric vehicle charging. A minimum of one 40-ampere dedicated 208/240-volt branch circuit shall be installed in the electrical panel for each dwelling unit.

The branch circuit shall terminate at a junction box, receptacle outlet, or electric vehicle charging equipment.

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AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-03100 Section 310—Emergency escape and rescue openings.

R310.1 Emergency escape and rescue opening required. Basements, habitable attics and every sleeping room shall have not less than one operable emergency escape and rescue opening. Where basements contain one or more sleeping rooms, an emergency escape and rescue opening shall be required in each sleeping room. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court providing an unobstructed path with a width of not less than 36 inches (914 mm) that opens to a public way.

EXCEPTIONS:

1. Storm shelters and basements used only to house mechanical equipment not exceeding a total floor area of 200 square feet (18.58 m).
2. Where the *dwelling unit* or *townhouse unit* is equipped with an automatic sprinkler system installed in accordance with Section P2904, sleeping rooms in basements shall not be required to have emergency escape and rescue openings provided that the basement has one of the following:
 - 2.1. One means of egress complying with Section R311 and one emergency escape and rescue opening.
 - 2.2. Two means of egress complying with Section R311.
 3. A yard shall not be required to open directly into a public way where the yard opens to an unobstructed path from the yard to the public way. Such path shall have a width of not less than 36 inches (914 mm). The following shall not be considered obstructions:
 - 3.1. Gates with operational constraints and opening control devices without the use of keys, tools, or special knowledge.
 - 3.2. Window wells equipped with a removable cover complying with Section R310.4.4.

~~((R310.1.1 Operational constraints and opening control devices. Emergency escape and rescue openings shall be operational from the inside of the room without the use of keys, tools, or special knowledge. Window opening control devices on windows serving as a required emergency escape and rescue opening shall be not more than 70 inches (177.8 cm) above the finished floor and shall comply with ASTM F2090.))~~

R310.2.4 Emergency escape and rescue openings under decks ((and)), porches, and cantilevers. Emergency escape and rescue openings installed under decks ((and)), porches, and cantilevers shall be fully operable and provided with an unobstructed pathway of not less than 36 inches (914 mm) in height, 36 inches (914 mm) in width, and no greater than 60 inches (1524 mm) in length that opens to a yard or court. The pathway shall be measured from the exterior face of the glazed opening, or if the glazed opening is in a window well, at the window well wall furthest from the exterior face of the glazed opening.

R310.5 Replacement windows for emergency escape and rescue openings.
This section is not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-03100, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-03100, filed 1/6/20, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0311 Section R311—Means of egress.

R311.4 Vertical egress. Egress from habitable levels including habitable attics and basements not provided with an egress door in accordance with Section R311.2 shall be by ramp in accordance with Section R311.8 or a stairway in accordance with Section R311.7.

EXCEPTION: ((Stairs)) Stairways, alternating tread devices, ship's ladders, or ladders within an individual dwelling unit or sleeping unit used for access to areas of 200 square feet (18.6 m²) or less, ((and not containing the primary bathroom or kitchen)) are exempt from the requirements of Sections R311.4 and R311.7, where such devices do not provide exclusive access to a kitchen or bathroom. Such areas shall not be located more than 10 feet (3048 mm) above the finished floor of the space below.

~~((R311.7.3 Vertical rise. A flight of stairs shall not have a vertical rise larger than 12 feet 7 inches (3835 mm) between floor levels or landings.))~~

R311.7.11 Alternating tread devices. Alternating tread devices shall not be used as an element of a means of egress. Alternating tread devices shall be permitted provided that a required means of egress stairway or ramp serves the same space at each adjoining level or where a means of egress is not required. The clear width at and below the handrails shall be not less than 20 inches (508 mm).

EXCEPTION: Not adopted.

R311.7.12 Ship's ladders. Ship's ladders shall not be used as an element of a means of egress. Ship's ladders shall be permitted provided that a required means of egress stairway or ramp serves the same space at each adjoining level or where a means of egress is not required. The clear width at and below the handrails shall be not less than 20 inches.

EXCEPTION: Not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0311, filed 1/6/20, effective 7/1/20; WSR 10-03-098, § 51-51-0311, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0311, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-0311, filed 12/17/03, effective 7/1/04.]

NEW SECTION

WAC 51-51-0312 Section R312—Guards and window fall protection.

R312.1.1 Where required. *Guards* shall be provided for those portions of open-sided walking surfaces, including mezzanines, *lofts* in accordance with Section R333, stairs, ramps, and landings, that are located more than 30 inches (762 mm) measured vertically to the floor or *grade* below at any point within 36 inches (914 mm) horizontally to the edge of the open side. Insect screening shall not be considered as a *guard*.

R312.1.2 Height. Required *guards* at open-sided walking surfaces, including stairs, porches, balconies or landings, shall be not less than 36 inches (914 mm) in height as measured vertically above the adjacent walking surface or the line connecting the *nosings*.

- EXCEPTIONS:
1. *Guards* on the open sides of stairs shall have a height of not less than 34 inches (864 mm) measured vertically from a line connecting the *nosings*.
 2. Where the top of the *guard* serves as a handrail on the open sides of stairs, the top of the *guard* shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm) as measured vertically from a line connecting the *nosings*.
 3. In areas with ceiling heights of 7 feet (2134 mm) or less in *lofts* constructed in accordance with Section R333, *guards* shall not be less than 36 inches (914 mm) in height or one-half of the clear height from the *loft* floor to the *loft* ceiling, whichever is less.

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AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0313 Section R313—Automatic fire sprinkler systems.

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in a townhouse unit.

- EXCEPTIONS:
1. An automatic residential fire sprinkler system shall not be required where additions or alterations are made to an existing *townhouse unit* that does not have an automatic residential fire sprinkler system installed.
 2. *Townhouse* buildings containing no more than four *townhouse units*.

R313.1.1 Design and installation. Automatic residential fire sprinkler systems for a townhouse unit shall be designed and installed in accordance with Section P2904 or NFPA 13D.

R313.2 One- and two-family dwellings automatic ((fire)) sprinkler systems. This section is not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0313, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0313, filed 1/11/16, effective 7/1/16. Statutory Authority: Chapter 19.27 RCW. WSR 10-18-036, § 51-51-0313, filed 8/25/10, effective 9/25/10. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0313, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0313, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-0313, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-0314 Section R314—Smoke alarms and heat detection.

R314.1 General. Smoke alarms, heat detectors, and heat alarms shall comply with NFPA 72 and this section.

R314.1.1 Listings. Smoke alarms shall be listed in accordance with UL 217. Heat detectors and heat alarms shall be listed for the intended application. Combination smoke and carbon monoxide alarms shall be listed in accordance with UL 217 and UL 2034.

R314.2 Where required. Smoke alarms, heat detectors, and heat alarms shall be provided in accordance with this section.

R314.2.1 New construction. Smoke alarms shall be provided in *dwelling units*. A heat detector or heat alarm shall be provided in new attached garages.

R314.2.2 Alterations, repairs and additions. Where *alterations, repairs* or *additions* requiring a permit occur, or where one or more sleeping rooms are added or created in existing dwellings, or where an accessory dwelling unit is created within an existing *dwelling unit*, each *dwelling unit* shall be equipped with smoke alarms as required for new dwellings.

EXCEPTIONS: 1. Work involving the exterior surfaces of *dwellings*, such as the replacement of roofing or siding, the *addition* or replacement of windows or doors, or the addition of a porch or deck are exempt from the requirements of this section.
2. Installation, *alteration* or repairs of plumbing, electrical or mechanical systems are exempt from the requirements of this section.

R314.2.3 New attached garages. A heat detector or heat alarm rated for the ambient outdoor temperatures and humidity shall be installed in new garages that are attached to or located under new and existing dwellings. Heat detectors and heat alarms shall be installed in a central location and in accordance with the manufacturer's instructions.

EXCEPTION: Heat detectors and heat alarms shall not be required in dwellings without commercial power.

R314.3 Location. Smoke alarms shall be installed in the following locations:

1. In each sleeping room (~~(or sleeping loft)~~).
2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.
3. On each additional story of the dwelling, including basements and habitable attics but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
4. Smoke alarms shall be installed not less than 3 feet (914 mm) horizontally from the door or opening of a bathroom that contains a bathtub or shower unless this would prevent placement of a smoke alarm required by Section R314.3.
5. In napping areas in a family home child care.
6. In the hallway and in the room open to the hallway in dwelling units where the ceiling height of a room open to a hallway serving bedrooms exceeds that of the hallway by 24 inches (610 mm) or more.
7. Within the room to which a loft is open, in the immediate vicinity of the loft.

R314.4 Interconnection. Where more than one smoke alarm is required to be installed within an individual *dwelling unit* in accordance with Section R314.2, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual *dwelling unit*. Where an accessory *dwelling unit* is created within an existing *dwelling unit* all required smoke alarms, in the accessory *dwelling unit* and the primary *dwelling unit*, shall be interconnected in such a manner that the actuation of one alarm will activate all alarms in both the primary *dwelling unit* and the accessory *dwelling unit*. Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm.

EXCEPTION: Smoke alarms and alarms installed to satisfy Section R314.4.1 shall not be required to be interconnected to existing smoke alarms where such existing smoke alarms are not interconnected or where such new smoke alarm or alarm is not capable of being interconnected to the existing smoke alarms.

R314.4.1 Heat detection interconnection. Heat detectors and heat alarms shall be connected to an alarm or a smoke alarm that is instal-

led in the *dwelling*. Alarms and smoke alarms that are installed for this purpose shall be located in a hallway, room, or other location that will provide occupant notification.

R314.6 Power source. Smoke alarms, heat alarms, and heat detectors shall receive their primary power from the building wiring where such wiring is served from a commercial source and, where primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection.

EXCEPTIONS: 1. Smoke alarms shall be permitted to be battery operated where installed in buildings without commercial power.
2. Smoke alarms installed in accordance with Section R314.2.2 shall be permitted to be battery powered.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-0314, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-0314, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0314, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0314, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0314, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0326 Section R326—Habitable attic.

R326.1 General. *Habitable attics* shall comply with Sections R326 through R326.4.

~~(**R326.2 Minimum dimensions.** A *habitable attic* shall have a minimum floor area in accordance with Section R304 and a ceiling height in accordance with Section R305.)~~

~~**R326.3 Story above grade plane.** A *habitable attic* shall be considered a story above grade plane.~~

EXCEPTION: *A habitable attic* shall not be considered a story above grade plane provided that the *habitable attic* meets all the following requirements:
1. The aggregate area of the *habitable attic* is not greater than one-half of the floor area of the story below.
2. The *habitable attic* is located within a dwelling unit equipped with a fire sprinkler system in accordance with Section P2904 or NFPA 13D.
3. The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.
4. The floor of the *habitable attic* shall not extend beyond the exterior walls of the story below.

~~**R326.4 Means of egress.** The means of egress for *habitable attics* shall comply with the applicable provisions of Section R311.)~~

EXCEPTION: Lofts in dwelling units and sleeping units shall be permitted to comply with Section R333, subject to the limitations in Section R333.1.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0326, filed 1/6/20, effective 7/1/20. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0326, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0326, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0327 ((Section R327—Sleeping lofts.)) Section R327—Swimming pools, spas, and hot tubs.

~~((R327.1 General. Sleeping lofts shall comply with Sections R327 through R327.5.~~

~~**R327.2 Sleeping loft area and dimensions.** Sleeping lofts shall meet the minimum area and dimension requirements of Sections R327.2.1 through R327.2.3.~~

~~**R327.2.1 Area.** Sleeping lofts shall have a floor area of not less than 35 square feet (3.25 m²) and less than 70 square feet (6.5 m²).~~

~~**R327.2.2 Minimum horizontal dimensions.** Sleeping lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.~~

~~**R327.2.3 Height effect on sleeping loft area.** Portions of a sleeping loft with a sloped ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft but shall contribute to the maximum allowable area.~~

~~EXCEPTION: Under gable roofs with a minimum slope of 6 units vertical in 12 units horizontal (50 percent slope), portions of a sleeping loft with a sloped ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the sleeping loft but shall contribute to the maximum allowable area.~~

~~**R327.3 Sleeping loft access and egress.** The access to and primary egress from sleeping lofts shall be of any type described in Sections R327.3.1 through R327.3.5 and shall meet the sleeping loft where the sleeping loft's ceiling height is not less than 3 feet (914 mm) along the entire width of the access and egress component.~~

~~**R327.3.1 Stairways.** Stairways accessing sleeping lofts shall comply with Sections R327.3.1.1 through R327.3.1.7.~~

~~**R327.3.1.1 Headroom.** The headroom above the sleeping loft access and egress shall be not less than 6 feet 2 inches (1880 mm), as measured vertically, from a sloped line connecting the tread, landing, or landing platform nosing's in the center of their width, and vertically from the landing or landing platform along the center of its width.~~

~~**R327.3.1.2 Width.** Stairways accessing a sleeping loft shall not be less than 17 inches (432 mm) in clear width at or above the handrail. The width below the handrail shall be not less than 20 inches (508 mm).~~

~~**R327.3.1.3 Treads and risers.** Risers for stairs accessing a sleeping loft shall be not less than 7 inches (178 mm) and not more than 12 inches (305 mm) in height. Tread depth and riser height shall be calculated in accordance with one of the following formulas:~~

~~1. Under gable roofs with a minimum slope of 6 units vertical in 12 units horizontal (50 percent slope), portions of a sleeping loft with a sloped ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the sleeping loft but shall contribute to the maximum allowable area.~~

~~2. The tread depth shall be 20 inches (508 mm) minus four-thirds of the riser height.~~

~~**R327.3.1.4 Landings.** Intermediate landings and landings at the bottom of stairways shall comply with Section R311.7.6, except that the depth in the direction of travel shall be not less than 24 inches (508 mm).~~

~~**R327.3.1.5 Landing platforms.** The top tread and riser of stairways accessing *sleeping lofts* shall be constructed as a landing platform where the loft ceiling height is less than 6 feet 2 inches (1880 mm) where the stairway meets the *sleeping loft*. The landing platform shall be not less than 18 inches (508 mm) in width and in depth measured horizontally from and perpendicular to the nosing of the landing platform. The landing platform riser height to the edge of the *sleeping loft* floor, shall not be greater than 18 inches (406 to 457 mm) in height.~~

~~**R327.3.1.6 Handrails.** Handrails shall comply with Section R311.7.8.~~

~~**R327.3.1.7 Stairway guards.** Guards at open sides of stairways, landings, and landing platforms shall comply with Section R312.1.~~

~~**R327.3.2 Ladders.** Ladders accessing *sleeping lofts* shall comply with Sections R326.3.2.1 and R326.3.2.2.~~

~~**R327.3.2.1 Size and capacity.** Ladders accessing *sleeping lofts* shall have a rung width of not less than 12 inches (305 mm), and 10 inch (254 mm) to 14 inch (356 mm) spacing between rungs. Ladders shall be capable of supporting a 300 pound (136 kg) load on any rung. Rung spacing shall be uniform within 3/8 inch (9.5 mm).~~

~~**R327.3.2.2 Incline.** Ladders shall be installed at 70 to 80 degrees from horizontal.~~

~~**R327.3.3 Alternating tread devices.** Alternating tread devices accessing *sleeping lofts* shall comply with Sections R311.7.11.1 and R311.7.11.2. The clear width at and below the handrails shall be not less than 20 inches (508 mm).~~

~~**R327.3.4 Ships ladders.** Ships ladders accessing *sleeping lofts* shall comply with Sections R311.7.12.1 and R311.7.12.2. The clear width at and below handrails shall be not less than 20 inches (508 mm).~~

~~**R327.4 Sleeping loft guards.** *Sleeping loft* guards shall be located along the open side(s) of *sleeping lofts*. *Sleeping loft* guards shall be not less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less. *Sleeping loft* guards shall comply with Section R312.1.3 and Table R301.5 for their components.~~

~~**R327.5 Emergency escape and rescue openings.** An egress roof access window shall be installed in each *sleeping loft* and shall be deemed to meet the requirements of Section R310 where installed such that the bottom of the opening is not more than 44 inches (1118 mm) above the *sleeping loft* floor, provided the egress roof access window complies with the minimum opening area requirements of Section R310.2.1.)~~

~~**R327.1 General.** The design and construction of swimming pools, spas, and other aquatic recreation facilities shall comply with the 2018 *International Swimming Pool and Spa Code*, if the facility is one of the following:~~

- ~~1. For the sole use of residents and invited guests at a single-family dwelling;~~
- ~~2. For the sole use of residents and invited guests of a duplex owned by the residents; or~~

3. Operated exclusively for physical therapy or rehabilitation and under the supervision of a licensed medical practitioner.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0327, filed 1/6/20, effective 7/1/20. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0327, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0328 (~~(Section R328—Swimming pools, spas, and hot tubs.)~~) **Section R328—Energy storage systems.**

~~((R328.1 General. The design and construction of swimming pools, spas, and other aquatic recreation facilities shall comply with the 2018 International Swimming Pool and Spa Code, if the facility is one of the following:~~

- ~~1. For the sole use of residents and invited guests at a single-family dwelling;~~
- ~~2. For the sole use of residents and invited guests of a duplex owned by the residents; or~~
- ~~3. Operated exclusively for physical therapy or rehabilitation and under the supervision of a licensed medical practitioner.)~~

R328.2 Equipment listings. ESS shall be *listed and labeled* for residential use in accordance with UL 9540.

EXCEPTIONS:

1. Where approved, repurposed unlisted battery systems from electric vehicles are allowed to be installed outdoors or in detached sheds located not less than 5 feet (1524 mm) from exterior walls, property lines, and public ways.
2. Battery systems that are an integral part of an electric vehicle are allowed provided that the installation complies with Section 625.48 of NFPA 70.
3. Battery systems less than 1 kWh (3.6 megajoules).

R328.12 Commissioning. ESS shall be commissioned as follows:

1. Verify that the system is installed in accordance with the approved plans and manufacturer's instructions and is operating properly.
2. Provide a copy of the manufacturer's installation, operation, maintenance, and decommissioning instructions provided with the listed system.
3. Provide a label on the installed system containing the contact information for the qualified maintenance and service providers.

R328.12.1 Installation prior to closing. Where the system is installed in a one- or two-family dwelling or townhouse unit that is owned by the builder and has yet to be sold, commissioning shall be conducted as outlined in Section R329.6, and the builder shall then transfer the required information in Section R329.6 to the homeowner when the property is transferred to the owner at the closing.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0328, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0328, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0328, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0329 ((Section R329—Energy storage systems.)) Re-served.

~~((R329.1 General. Energy storage systems (ESS) shall comply with the provisions of this section.~~

~~**R329.2 Equipment listings.** ESS shall be *listed* and *labeled* for residential use in accordance with UL 9540.~~

EXCEPTIONS:

1. Where approved, repurposed unlisted battery systems from electric vehicles are allowed to be installed outdoors or in detached sheds located not less than 5 feet (1524 mm) from exterior walls, property lines and public ways.
2. Battery systems that are an integral part of an electric vehicle are allowed provided that the installation complies with Section 625.48 of NFPA 70.
3. Battery systems less than 1 kWh (3.6 megajoules).

~~**R329.3 Installation.** ESS shall be installed in accordance with the manufacturer's instructions and their listing, if applicable, and shall not be installed within the habitable space of a *dwelling unit*.~~

~~**R329.4 Electrical installation.** ESS shall be installed in accordance with NFPA 70. Inverters shall be *listed* and *labeled* in accordance with UL 1741 or provided as part of the UL 9540 listing. Systems connected to the utility grid shall use inverters listed for utility interaction.~~

~~**R329.5 Ventilation.** Indoor installations of ESS that include batteries that produce hydrogen or other flammable gases during charging shall be provided with ventilation in accordance with Section M1307.4.~~

~~**R329.6 Commissioning.** ESS shall be commissioned as follows:~~

1. Verify that the system is installed in accordance with the approved plans and manufacturer's instructions and is operating properly.
2. Provide a copy of the manufacturer's installation, operation, maintenance, and decommissioning instructions provided with the *listed* system.
3. Provide a label on the installed system containing the contact information for the qualified maintenance and service providers.

~~**R329.6.1 Installation prior to closing.** Where the system is installed in a one- or two-family dwelling or townhouse unit that is owned by the builder and has yet to be sold, commissioning shall be conducted as outlined in Section R329.6, and the builder shall then transfer the required information in Section R329.6 to the homeowner when the property is transferred to the owner at the closing.~~

~~**R329.7 Protection from impact.** ESS installed in a location subject to vehicle damage shall be protected by approved barriers.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0329, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0329, filed 1/11/16, effective 7/1/16.]

NEW SECTION

WAC 51-51-0333 Section R333—Lofts.

R333.1 General. Where provided in dwelling units or sleeping units, lofts shall comply with this code as modified by Sections R326.1 through R326.5. Lofts constructed in compliance with this section shall be considered a portion of the story below. Such lofts shall not contribute to the number of stories as regulated by this code.

EXCEPTION: Lofts need not comply with Section R326 where they meet any of the following conditions:

1. The loft has a maximum depth of less than 3 feet (914 mm).
2. The loft has a floor area of less than 35 square feet (3.3 m²).
3. The loft is not provided with a permanent means of egress.

R333.2 Loft limitations. Lofts shall comply with the following conditions:

1. The loft floor area shall be less than 70 square feet (6.5 m²).
2. The loft ceiling height shall not exceed 7 feet (2134 mm) for more than one half of the loft floor area.

The provisions of Sections R326.3 through R326.5 shall not apply to lofts that do not comply with Items 1 and 2 of this section.

R333.3 Loft ceiling height. The ceiling height below a loft shall not be less than 7 feet (2134 mm). The ceiling height above the finished floor of the loft shall not be less than 3 feet (914 mm). Portions of the loft with a sloped ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not contribute to the loft floor area.

R333.4 Loft area. The aggregate area of all lofts and mezzanines within a room shall comply with Section R325.3.

EXCEPTION: The area of a single loft located within a dwelling unit or sleeping unit equipped with an automatic sprinkler system in accordance with Sections P2094 through P2904 shall not be greater than two-thirds of the area of the room in which it is located, provided that no other lofts or mezzanines are open to the room in which the loft is located.

R333.5 Permanent egress for lofts. Where a permanent means of egress is provided for lofts, the means of egress shall comply with Section R311 as modified by Section R326.5.1.

R333.5.1 Ceiling height at loft means of egress. A minimum ceiling height of 3 feet shall be provided for the entire width of the means of egress from the loft.

[]

NEW SECTION

WAC 51-51-0334 Section R334—Stationary fuel cell power systems.

R330.1 General. Stationary fuel cell power systems in new and existing buildings and structures shall comply with Section 1206 of the *International Fire Code*.

[]

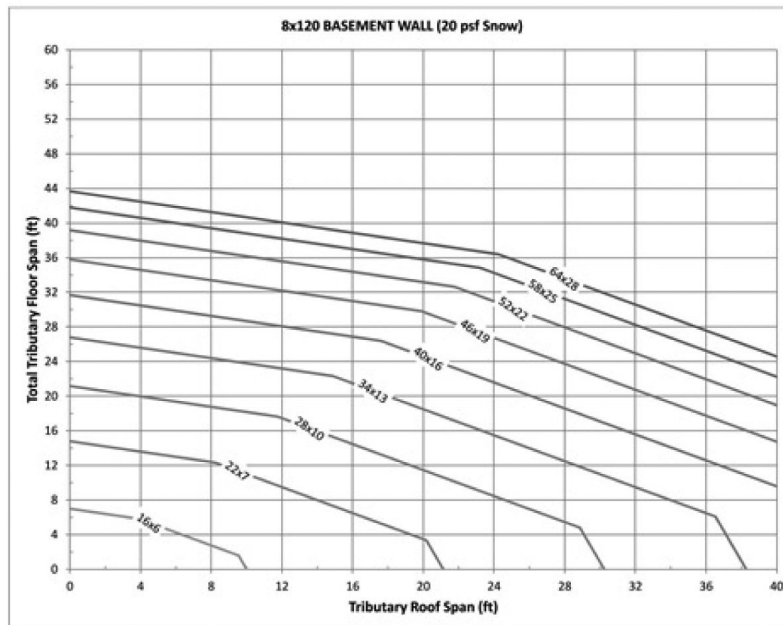
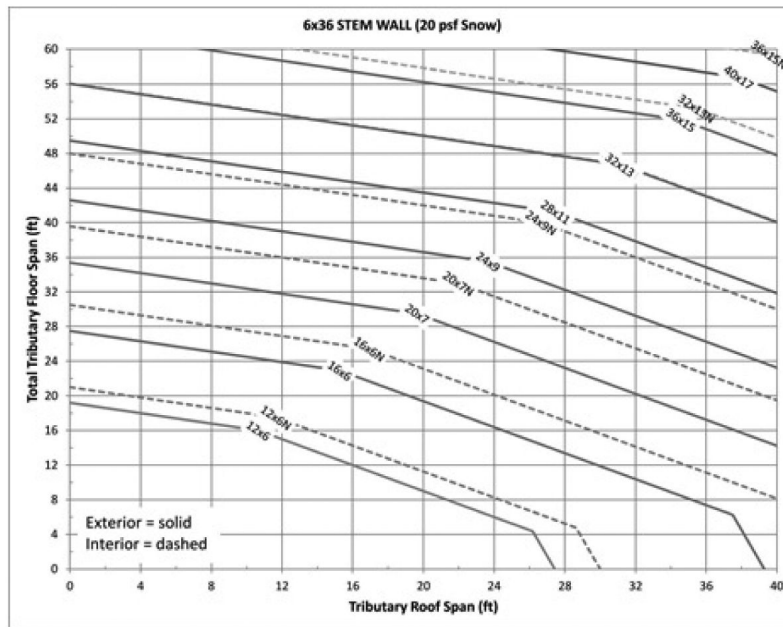
AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0403 Section R403—Footings.

R403.1.1 Minimum size. The minimum width, *W*, and thickness, *T*, for concrete footings shall be in accordance with Tables R403.1(1) through R403.1(3) and Figure R403.1(1) or R403.1.3, as applicable, but not less than 12 inches (305 mm) in width and 6 inches (152 mm) in depth. The footing width shall be based on the load-bearing value of the soil in accordance with Table R401.4.1. Footing projections, *P*, shall be not less than 2 inches (51 mm) and shall not exceed the thickness of the footing. Footing thickness and projection for fireplaces shall be in accordance with Section R1001. The size of footings supporting piers and columns shall be based on the tributary load and allowable soil pressure in accordance with Table R401.4.1. Footings for wood foundations shall be in accordance with the details set forth in Section R403.2, and Figures R403.1(2) and R403.1(3). Footings for precast foundation shall be in accordance with the details set forth in Section R403.4, Table R403.4, and Figures R403.4(1) and R403.4(2).

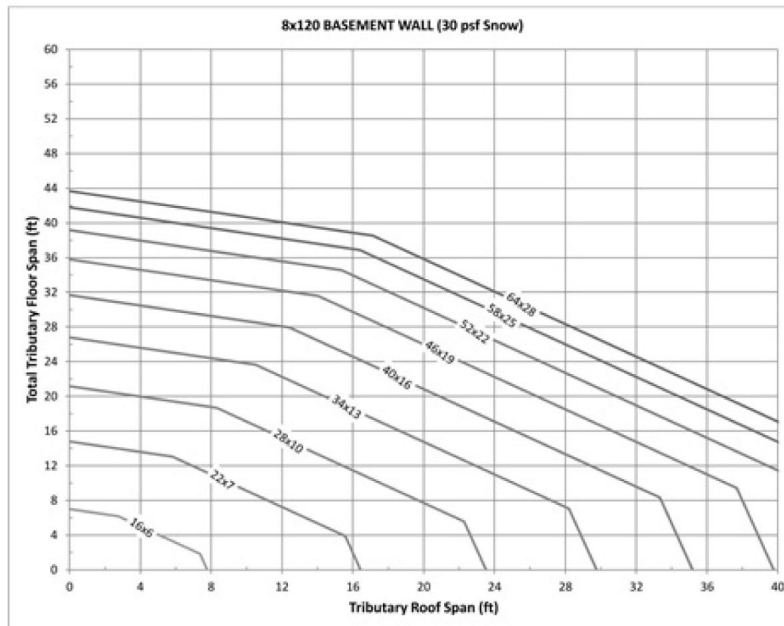
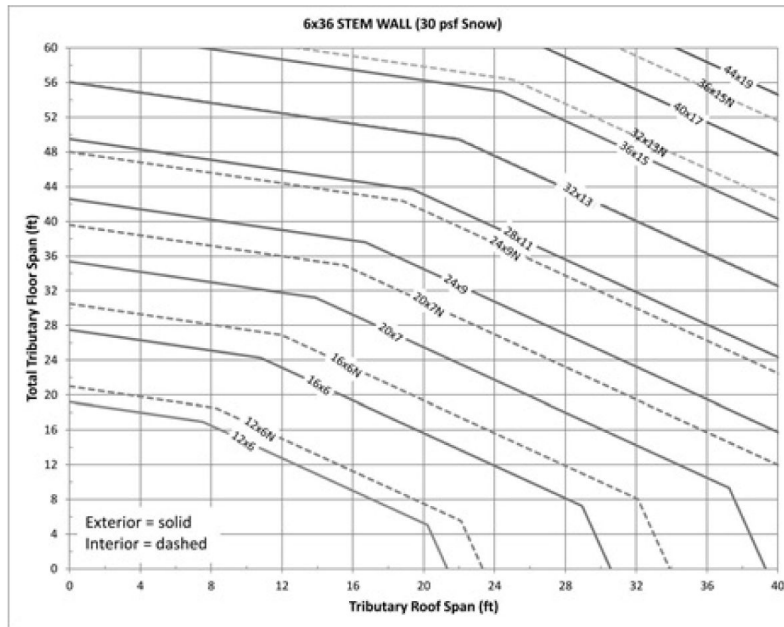
EXCEPTION: Light-frame construction shall be permitted to have minimum footing size in accordance with Figures R403.1.1(1) through R403.1.1(4) in lieu of that determined by Table R403.1(1).

Figure R403.1.1(1)
 Alternative Minimum Footing Size for Light-Frame Construction
 a, b, c, d, e, f, g, h, i
 20 PSF Snow Load



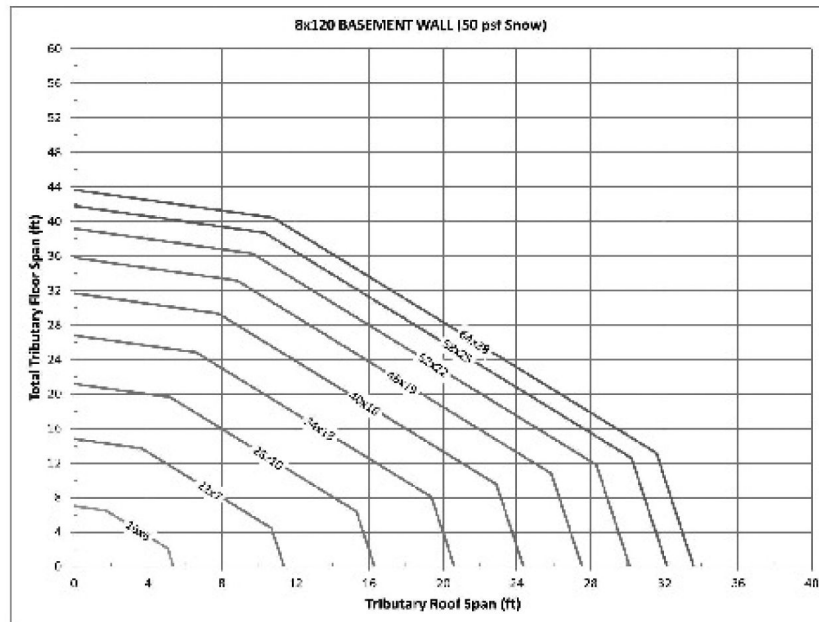
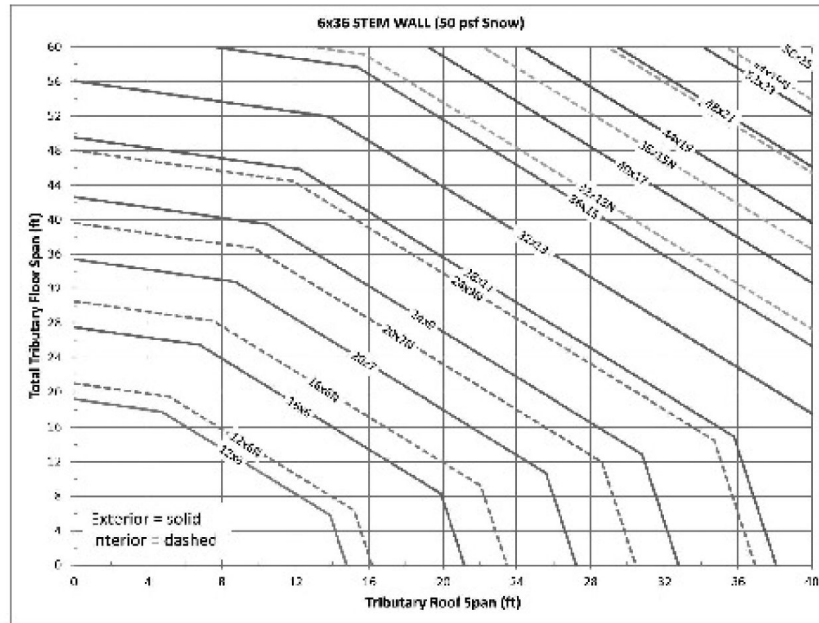
- Notes:
- a The minimum footing size is based on the following assumptions: Material weights per Section R301.2.2.1 and soil density = 120 pcf. Wood framed walls = 10 foot; crawlspace stem wall = 6 inches × 36 inches; basement wall = 8 inches × 120 inches. Total load (TL) equal to the maximum of three load combinations: LC1=D+L, LC2=D+S and LC3=D=0.75(L+S), where D=dead load, L=live load, S=snow load. TL=max(LC1, LC2, LC3).
 - b Use tributary span of floor and roof. Figure may be used to size exterior and interior footings.
 - c Add 4 feet to tributary floor span for each wood framed wall above first level (i.e., 4' for 2-story, 8' for 3-story).
 - d Multiply floor span by 1.25 for interior footings supporting continuous joists.
 - e Multiply footing width by (1500 psf/capacity) for soil capacity other than 1500 psf. See Section R403.1.1 for thickness.
 - f Dashed line may be used for interior footing size only.
 - g Use footing size indicated on line above the span combination used.
 - h For span combinations above the upper line, a design professional is required.
 - i Interpolation between footing sizes is allowed. Extrapolation is not allowed.

Figure R403.1.1(2)
 Alternative Minimum Footing Size for Light-Frame Construction
 a, b, c, d, e, f, g, h, i
 30 PSF Snow Load



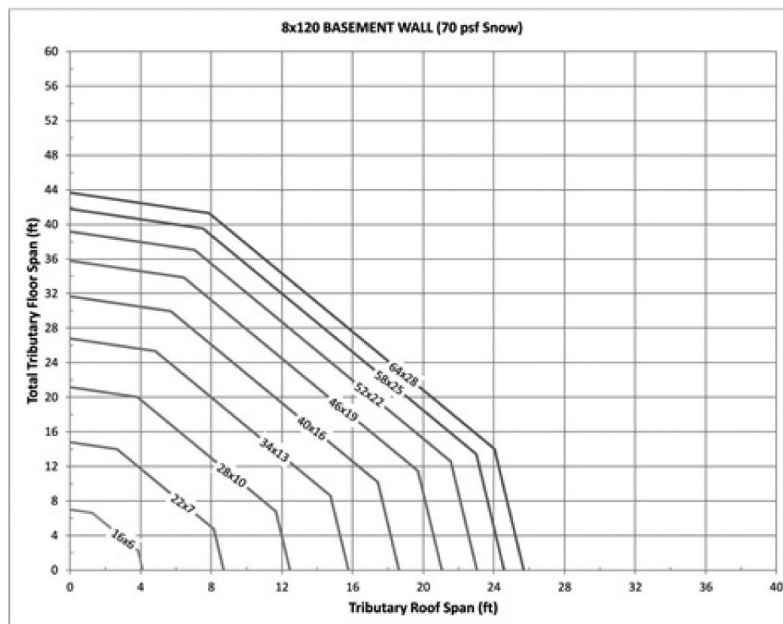
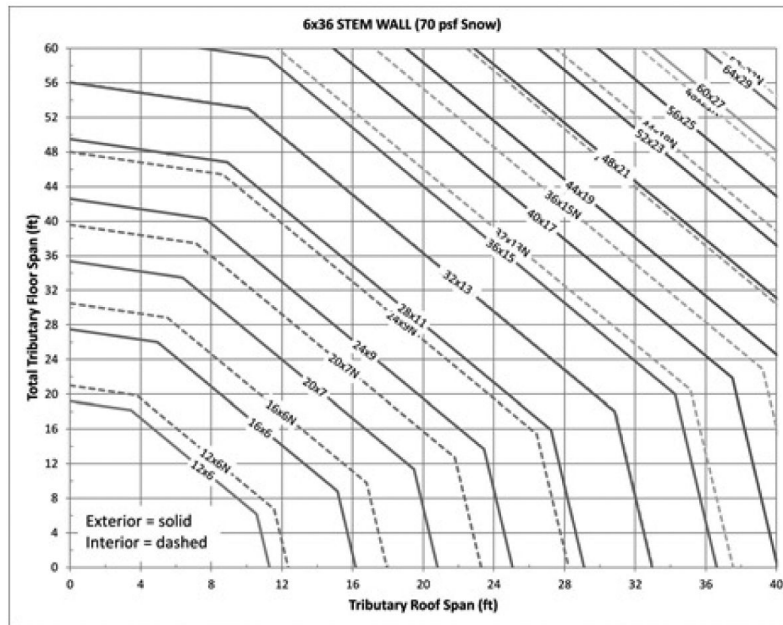
- Notes:
- a The minimum footing size is based on the following assumptions: Material weights per Section R301.2.2.1 and soil density = 120 pcf. Wood framed walls = 10 foot; crawlspace stem wall = 6 inches × 36 inches; basement wall = 8 inches × 120 inches. Total load (TL) equal to the maximum of three load combinations: LC1=D+L, LC2=D+S and LC3=D=0.75(L+S), where D=dead load, L=live load, S=snow load. TL=max(LC1, LC2, LC3).
 - b Use tributary span of floor and roof. Figure may be used to size exterior and interior footings.
 - c Add 4 feet to tributary floor span for each wood framed wall above first level (i.e., 4' for 2-story, 8' for 3-story).
 - d Multiply floor span by 1.25 for interior footings supporting continuous joists.
 - e Multiply footing width by (1500 psf/capacity) for soil capacity other than 1500 psf. See Section R403.1.1 for thickness.
 - f Dashed line may be used for interior footing size only.
 - g Use footing size indicated on line above the span combination used.
 - h For span combinations above the upper line, a design professional is required.
 - i Interpolation between footing sizes is allowed. Extrapolation is not allowed.

Figure R403.1.1(3)
 Alternative Minimum Footing Size for Light-Frame Construction
 a, b, c, d, e, f, g, h, i
 50 PSF Snow Load



- Notes:
- a The minimum footing size is based on the following assumptions: Material weights per Section R301.2.2.1 and soil density = 120 pcf. Wood framed walls = 10 foot; crawlspace stem wall = 6 inches × 36 inches; basement wall = 8 inches × 120 inches. Total load (TL) equal to the maximum of three load combinations: LC1=D+L, LC2=D+S and LC3=D+0.75(L+S), where D=dead load, L=live load, S=snow load. TL=max(LC1, LC2, LC3).
 - b Use tributary span of floor and roof. Figure may be used to size exterior and interior footings.
 - c Add 4 feet to tributary floor span for each wood framed wall above first level (i.e., 4' for 2-story, 8' for 3-story).
 - d Multiply floor span by 1.25 for interior footings supporting continuous joists.
 - e Multiply footing width by (1500 psf/capacity) for soil capacity other than 1500 psf. See Section R403.1.1 for thickness.
 - f Dashed line may be used for interior footing size only.
 - g Use footing size indicated on line above the span combination used.
 - h For span combinations above the upper line, a design professional is required.
 - i Interpolation between footing sizes is allowed. Extrapolation is not allowed.

Figure R403.1.1(4)
 Alternative Minimum Footing Size for Light-Frame Construction
 a, b, c, d, e, f, g, h, i
 70 PSF Snow Load



- Notes:
- a The minimum footing size is based on the following assumptions: Material weights per Section R301.2.2.1 and soil density = 120 pcf. Wood framed walls = 10 foot; crawlspace stem wall = 6 inches × 36 inches; basement wall = 8 inches × 120 inches. Total load (TL) equal to the maximum of three load combinations: LC1=D+L, LC2=D+S and LC3=D=0.75(L+S), where D=dead load, L=live load, S=snow load. TL=max(LC1, LC2, LC3).
 - b Use tributary span of floor and roof. Figure may be used to size exterior and interior footings.
 - c Add 4 feet to tributary floor span for each wood framed wall above first level (i.e., 4' for 2-story, 8' for 3-story).
 - d Multiply floor span by 1.25 for interior footings supporting continuous joists.
 - e Multiply footing width by (1500 psf/capacity) for soil capacity other than 1500 psf. See Section R403.1.1 for thickness.
 - f Dashed line may be used for interior footing size only.
 - g Use footing size indicated on line above the span combination used.
 - h For span combinations above the upper line, a design professional is required.
 - i Interpolation between footing sizes is allowed. Extrapolation is not allowed.

~~((R403.1.6 Foundation anchorage. Wood sill plates and wood walls supported directly on continuous foundations shall be anchored to the foundation in accordance with this section.~~

~~Cold-formed steel framing shall be anchored directly to the foundation or fastened to wood sill plates in accordance with Section R505.3.1 or R603.3.1, as applicable. Wood sill plates supporting cold-formed steel framing shall be anchored to the foundation in accordance with this section.~~

~~Wood sole plates at all exterior walls on monolithic slabs, wood sole plates of braced wall panels at building interiors on monolithic slabs and all wood sill plates shall be anchored to the foundation with minimum 1/2-inch diameter (12.7 mm) anchor bolts spaced not greater than 6 feet (1829 mm) on center or approved anchors or anchor straps spaced as required to provide equivalent anchorage to 1/2-inch diameter (12.7 mm) anchor bolts. Bolts shall extend not less than 7 inches (178 mm) into concrete or grouted cells of concrete masonry units. The bolts shall be located in the middle third of the width of the plate. A nut and washer shall be tightened on each anchor bolt. There shall be not fewer than two bolts per plate section with one bolt located not more than 12 inches (305 mm) or less than seven bolt diameters from each end of the plate section. Interior bearing wall sole plates on monolithic slab foundation that are not part of a braced wall panel shall be positively anchored with approved fasteners. Sill plates and sole plates shall be protected against decay and termites where required by Sections R317 and R318. Anchor bolts shall be permitted to be located while concrete is still plastic and before it has set. Where anchor bolts resist placement or the consolidation of concrete around anchor bolts is impeded, the concrete shall be vibrated to ensure full contact between the anchor bolts and concrete.~~

EXCEPTIONS:

- ~~1. Walls 24 inches (610 mm) total length or shorter connecting offset braced wall panels shall be anchored to the foundation with not fewer than one anchor bolt located in the center third of the plate section and shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).~~
- ~~2. Connection of walls 12 inches (305 mm) total length or shorter connecting offset braced wall panels to the foundation without anchor bolts shall be permitted. The wall shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).~~

~~**R404.1.3.3.6 Form materials and form ties.** Forms shall be made of wood, steel, aluminum, plastic, a composite of cement and foam insulation, a composite of cement and wood chips, or other approved material suitable for supporting and containing concrete. Forms shall be positioned and secured before placing concrete and shall provide sufficient strength to contain concrete during the concrete placement operation. Form ties shall be steel, solid plastic, foam plastic, a composite of cement and wood chips, a composite of cement and foam plastic, or other suitable material capable of resisting the forces created by fluid pressure of fresh concrete.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0403, filed 1/6/20, effective 7/1/20. Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-03-036, § 51-51-0403, filed 1/7/19, effective 7/1/19. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-025, § 51-51-0403, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0403, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR 10-24-061, § 51-51-0403, filed 11/29/10, effective 7/1/11. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0403, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-103, § 51-51-0403, filed

12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0403, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

**WAC 51-51-0404 ((Section R404—Foundation and retaining walls.))
Reserved.**

~~((R404.1.3.3.6 Form materials and form ties. Forms shall be made of wood, steel, aluminum, plastic, a composite of cement and foam insulation, a composite of cement and wood chips, or other approved material suitable for supporting and containing concrete. Forms shall be positioned and secured before placing concrete and shall provide sufficient strength to contain concrete during the concrete placement operation.~~

~~Form ties shall be steel, solid plastic, foam plastic, a composite of cement and wood chips, a composite of cement and foam plastic, or other suitable material capable of resisting the forces created by fluid pressure of fresh concrete.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-0404, filed 10/13/20, effective 11/13/20; WSR 16-03-025, § 51-51-0404, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0404, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR 10-24-061, § 51-51-0404, filed 11/29/10, effective 7/1/11. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0404, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-102, § 51-51-0404, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0404, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 14-24-055, filed 11/25/14, effective 5/1/15)

WAC 51-51-0408 Section R408—Under-floor space.

R408.1 Ventilation. The under-floor space between the bottom of the floor joists and the earth under any building (except space occupied by a basement) shall have ventilation openings through foundation walls or exterior walls. A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped six inches minimum at the joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of two inches.

R408.2 Openings for under-floor ventilation. The minimum net area of ventilation openings shall not be less than 1 square foot (0.0929 m²) for each 300 square feet (28 m²) of under-floor area. Required openings shall be evenly placed to provide cross ventilation of the space

except one side of the building shall be permitted to have no ventilation openings. Ventilation openings shall be covered for their height and width with any of the following materials provided that the least dimension of the covering shall not exceed 1/4 inch (6.4 mm), and operational louvers are permitted:

1. Perforated sheet metal plates not less than 0.070 inch (1.8 mm) thick.
2. Expanded sheet metal plates not less than 0.047 inch (1.2 mm) thick.
3. Cast-iron grill or grating.
4. Extruded load-bearing brick vents.
5. Hardware cloth of 0.035 inch (0.89 mm) wire or heavier.
6. Corrosion-resistant wire mesh, with the least dimension being 1/8 inch (3.2 mm).

EXCEPTION: The total area of ventilation openings shall be permitted to be reduced to 1/1,500 of the under-floor area where the ground surface is covered with an approved Class I vapor retarder material and the required openings are placed to provide cross ventilation of the space. The installation of operable louvers shall not be prohibited. If the installed ventilation is less than 1/300, or if operable louvers are installed, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with the requirements of Appendix F (Radon) of this code.

R408.3 Unvented crawl space. Ventilation openings in under-floor spaces specified in Sections R408.1 and R408.2 shall not be required where:

1. Exposed earth is covered with a continuous Class I vapor retarder. Joints of the vapor retarder shall overlap by 6 inches (152 mm) and shall be sealed or taped. The edges of the vapor retarder shall extend at least 6 inches (152 mm) up the stem wall and shall be attached and sealed to the stem wall; and a radon system shall be installed that meets the requirements of Appendix F (Radon) of this code.
2. Continuously operated mechanical exhaust ventilation is provided at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m²) of crawlspace floor area. Exhaust ventilation shall terminate to the exterior.

EXCEPTION: Plenum in existing structures complying with Section M1601.5, if under-floor space is used as a plenum.

R408.8 Under-floor vapor retarder. This section is not adopted.

[Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-055, § 51-51-0408, filed 11/25/14, effective 5/1/15. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0408, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR 10-18-036, § 51-51-0408, filed 8/25/10, effective 9/25/10. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0408, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0408, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 21-16-006, filed 7/22/21, effective 8/22/21)

WAC 51-51-0507 Section R507—Decks.

~~((R507.1 Decks. Wood-framed decks shall be in accordance with this section. Decks shall be designed for the live load required in Section R301.5 or the ground snow load indicated in Table R301.2(1), whichever~~

is greater. For decks using materials and conditions not prescribed in this section, refer to Section R301.)

TABLE R507.3.1
MINIMUM FOOTING SIZE FOR DECKS

LIVE OR SNOW LOAD (b) (psf)	TRIBUTARY AREA ^c (sq.ft.)	((SOIL BEARING CAPACITY)) LOAD-BEARING VALUE OF SOILS ^{acd}								
		1500 psf			2000 psf			≥ 3000 psf		
		Side of a square footing (inches)	Diameter of a round footing (inches)	Thickness ^f (inches)	Side of a square footing (inches)	Diameter of a round footing (inches)	Thickness ^f (inches)	Side of a square footing (inches)	Diameter of a round footing (inches)	Thickness ^f (inches)
60 Live or 70 Ground Snow Load	5	7	8	6	7	8	6	7	8	6
	20	12	14	6	11	13	6	9	10	6
	40	18	20	6	15	17	6	12	14	6
	60	21	24	8	19	21	6	15	17	6
	80	25	28	9	21	24	8	18	20	6
	100	28	31	11	24	27	9	20	22	7
	120	30	34	12	26	30	10	21	24	8
	140	33	37	13	28	32	11	23	26	9
	160	35	40	15	30	34	12	25	28	9

For SI: 1 inch = 25.4 mm, 1 square foot = 0.0929 m², 1 pound per square foot = 0.0479 kPa.

- a. Interpolation permitted, extrapolation not permitted.
- b. Reserved.
- c. Footing dimensions shall allow complete bearing of the post.
- d. If the support is a brick or CMU pier, the footing shall have a minimum 2-inch projection on all sides.
- e. Area, in square feet, of deck surface supported by post and footings.
- f. Minimum thickness shall only apply to plain concrete footings.

R507.4 Deck posts. For single-level decks, wood post size shall be in accordance with Table R507.4.

TABLE R507.4
DECK POST HEIGHT

LOADS ^b (psf)	POST SPECIES ^c	POST SIZE ^d	MAXIMUM DECK POST HEIGHT ^a (feet-inches)							
			Tributary Area ^{g,h} (sq. ft.)							
			20	40	60	80	100	120	140	160
60 Live Load, ≤60 Ground Snow Load	Douglas Fir ^e , Hem-fir ^e , SPF ^e	4 x 4	14-0	10-10	8-7	7-0	5-8	4-1	NP	NP
		4 x 6	14-0	13-10	11-1	9-5	8-2	7-3	6-4	5-4
		6 x 6	14-0	14-0	14-0	14-0	14-0	13-3	10-9	6-11
		8 x 8	14-0	14-0	14-0	14-0	14-0	14-0	14-0	14-0
	Redwood ^f , Western Cedars ^f , Ponderosa Pine ^f , Red Pine ^f	4 x 4	14-0	10-3	7-0	NP	NP	NP	NP	NP
		4 x 6	14-0	13-6	10-6	8-4	5-10	NP	NP	NP
		6 x 6	14-0	14-0	14-0	14-0	11-11	NP	NP	NP
		8 x 8	14-0	14-0	14-0	14-0	14-0	14-0	14-0	14-0
70 Ground Snow Load	Douglas Fir ^e , Hem-fir ^e , SPF ^e	4 x 4	14-0	10-1	7-11	6-6	5-3	3-7	NP	NP
		4 x 6	14-0	12-10	10-3	8-9	7-7	6-8	5-10	4-11
		6 x 6	14-0	14-0	14-0	14-0	14-0	12-2	9-9	5-9
		8 x 8	14-0	14-0	14-0	14-0	14-0	14-0	14-0	14-0
	Redwood ^f , Western Cedars ^f , Ponderosa Pine ^f , Red Pine ^f	4 x 4	14-0	9-5	6-5	NP	NP	NP	NP	NP
		4 x 6	14-0	12-6	9-8	7-7	5-3	NP	NP	NP
		6 x 6	14-0	14-0	14-0	14-0	10-8	NP	NP	NP
		8 x 8	14-0	14-0	14-0	14-0	14-0	14-0	14-0	14-0

For SI: 1 inch = 25.4 mm, 1 square foot = 0.0929 m², 1 pound per square foot = 0.0479 kPa, NP = Not permitted.

- a. Measured from the underside of the beam to top of footing or pier.
- b. 10 psf dead load. Snow load not assumed to be concurrent with live load.
- c. No. 2 grade, wet service factor included.
- d. Notched deck posts shall be sized to accommodate beam size per in accordance with Section R507.5.2.
- e. Includes incising factor.
- f. Incising factor not included.
- g. Area, in square feet, of deck surface supported by post and footing.

h. Interpolation permitted. Extrapolation not permitted.

R507.5 Deck beams. Maximum allowable spans for wood deck beams, as shown in Figure R507.5, shall be in accordance with Table R507.5. Beam plies shall be fastened with two rows of 10d (3-inch × 0.128-inch) nails minimum at 16 inches (406 mm) on center along each edge. Beams shall be permitted to cantilever at each end up to one-fourth of the allowable beam span. Deck beams of other materials shall be permitted where designed in accordance with accepted engineering practices.

Tables R507.5(1) through R507.5(4) are not adopted.

**TABLE R507.5
MAXIMUM DECK BEAM SPAN - 60 PSF LIVE LOAD or
70 PSF GROUND SNOW LOAD^c**

BEAM SPECIES ^d	BEAM SIZE ^e	EFFECTIVE DECK JOIST SPAN LENGTH ^{a,i} (feet)						
		6	8	10	12	14	16	18
		MAXIMUM DECK BEAM SPAN LENGTH ^{a,b,f} (feet-inches)						
Douglas fir-larch ^g , Hem-fir ^g , Spruce-pine-fir ^g	1-2×6	3-5	2-10	2-5	2-2	2-0	1-10	1-9
	1-2×8	4-7	3-8	3-2	2-10	2-7	2-5	2-4
	1-2×10	5-8	4-9	4-1	3-8	3-4	3-1	2-11
	1-2×12	6-7	5-8	5-0	4-6	4-1	3-10	3-7
	2-2×6	5-2	4-6	4-0	3-5	3-1	2-10	2-7
	2-2×8	6-11	6-0	5-3	4-7	4-1	3-8	3-5
	2-2×10	8-5	7-4	6-6	5-10	5-2	4-9	4-5
	2-2×12	9-10	8-6	7-7	6-11	6-4	5-9	5-4
	3-2×6	6-6	5-7	5-0	4-7	4-2	3-9	3-5
	3-2×8	8-8	7-6	6-8	6-1	5-6	5-0	4-7
Redwood ^h , Western Cedars ^h , Ponderosa Pine ^h , Red Pine ^h	1-2×6	3-6	2-11	2-6	2-3	2-0	1-11	1-9
	1-2×8	4-6	3-10	3-3	2-11	2-8	2-6	2-4
	1-2×10	5-6	4-9	4-2	3-9	3-5	3-2	3-0
	1-2×12	6-4	5-6	4-11	4-6	4-2	3-11	3-8
	2-2×6	5-3	4-7	4-1	3-6	3-2	2-11	2-8
	2-2×8	6-8	5-9	5-2	4-8	4-2	3-10	3-6
	2-2×10	8-2	7-1	6-4	5-9	5-4	4-10	4-6
	2-2×12	9-5	8-2	7-4	6-8	6-2	5-9	5-5
	3-2×6	6-4	5-8	5-1	4-8	4-3	3-10	3-6
	3-2×8	8-4	7-3	6-5	5-11	5-5	5-1	4-8
	3-2×10	10-2	8-10	7-11	7-2	6-8	6-3	5-11
	3-2×12	11-10	10-3	9-2	8-4	7-9	7-3	6-10

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 pound per square foot = 0.0479 kPa, 1 pound = 0.454 kg.

- a. Interpolation allowed. Extrapolation is not allowed.
- b. Beams supporting a single span of joists with or without cantilever.
- c. Dead load = 10 psf, L/Δ = 360 at mainspan, L/Δ = 180 at cantilever. Snow load not assumed to be concurrent with live load.
- d. No. 2 grade, wet service factor included.
- e. Beam depth shall be equal to or greater than the depth of intersecting joist for a flush beam connection.
- f. Beam cantilevers are limited to the adjacent beam's span divided by 4.
- g. Includes incising factor.
- h. Incising factor not included.
- i. Deck joist span as shown in Figure R507.5.
- j. For calculation of effective joist span, the actual joist span length shall be multiplied by the joist span factor in accordance with Table R507.5(5).

R507.6 Deck joists. Maximum allowable spans for wood deck joists, as shown in Figure R507.6, shall be in accordance with Table R507.6. The maximum joist spacing shall be limited by the decking materials in accordance with Table R507.7.

TABLE R507.6
MAXIMUM DECK JOIST SPANS

LOAD ^a (psf)	JOIST SPECIES ^b	JOIST SIZE	ALLOWABLE JOIST SPAN ^{b,c} (feet-inches)			MAXIMUM CANTILEVER ^{f,g} (feet-inches)							
			Joist Spacing (inches)			Adjacent Joist Back Span ^g (feet)							
			12	16	24	4	6	8	10	12	14	16	18
60 Live Load or 70 Ground Snow Load	Douglas fir-larch ^e , Hem-fir ^e , Spruce-pine-fir ^e	2×6	7-11	7-1	5-9	1-0	1-6	NP	NP	NP	NP	NP	NP
		2×8	10-5	9-5	7-8	1-0	1-6	2-0	2-1	NP	NP	NP	NP
		2×10	13-3	11-6	9-5	1-0	1-6	2-0	2-6	2-8	NP	NP	NP
		2×12	15-5	13-4	10-11	1-0	1-6	2-0	2-6	3-0	3-3	NP	NP
	Redwood ^f , Western Cedars ^f , Ponderosa Pine ^f , Red Pine ^f	2×6	7-4	6-8	5-10	1-0	1-4	NP	NP	NP	NP	NP	NP
		2×8	9-8	8-10	7-4	1-0	1-6	1-11	NP	NP	NP	NP	NP
		2×10	12-4	11-0	9-0	1-0	1-6	2-0	2-6	2-6	NP	NP	NP
		2×12	14-9	12-9	10-5	1-0	1-6	2-0	2-6	3-0	3-0	NP	NP

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 pound per square foot = 0.0479 kPa, 1 pound = 0.454 kg, NP = Not permitted.

- a. Dead load = 10 psf dead load. Snow load not assumed to be concurrent with live load.
- b. No. 2 grade, wet service factor included.
- c. L/Δ = 360 at main span.
- d. L/Δ = 180 at cantilever with 220-pound point load applied to end.
- e. Includes incising factor.
- f. Incising factor not included.
- g. Interpolation permitted. Extrapolation not permitted.

R507.9.1.2 Band joist details. Band joists supporting a ledger shall be a minimum 2-inch-nominal (51 mm), solid-sawn, spruce-pine-fir or better lumber or minimum 1-inch (25 mm) nominal engineered wood rim boards in accordance with Section R502.1.7. Band joists shall bear fully on the primary structure capable of supporting all required loads.

TABLE R507.9.1.3(1)
DECK LEDGER CONNECTION TO BAND JOIST

LOAD ^c (psf)	JOIST SPAN ^a (feet)	On-CENTER SPACING OF FASTENERS ^b (inches)		
		1/2-inch diameter lag screw with 1/2-inch maximum sheathing ^{d,e}	1/2-inch diameter bolt with 1/2-inch maximum sheathing ^e	1/2-inch diameter bolt with 1-inch maximum sheathing ^f
60 Live Load or 70 Ground Snow Load	6	22	36	35
	8	16	31	26
	10	13	25	21
	12	11	20	17
	14	9	17	15
	16	8	15	13
	18	7	13	11

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 pound per square foot = 0.0479 kPa.

- a. Interpolation permitted. Extrapolation is not permitted.
- b. Ledgers shall be flashed in accordance with Section R703.4 to prevent water from contacting the house band joist.
- c. Dead load = 10 psf. Snow load shall not be assumed to act concurrently with live load.
- d. The tip of the lag screw shall fully extend beyond the inside face of the band joist.
- e. Sheathing shall be wood structural panel or solid sawn lumber.
- f. Sheathing shall be permitted to be wood structural panel, gypsum board, fiberboard, lumber or foam sheathing. Up to 1/2-inch thickness of stacked washers shall be permitted to substitute for up to 1/2 inch of allowable sheathing thickness where combined with wood structural panel or lumber sheathing.

R507.9.2 Deck lateral load connections. Lateral loads shall be transferred to the ground or to a structure capable of transmitting them to the ground. Where the lateral load connection is provided in accordance with Figure R507.9.2(1), hold-down tension devices shall be installed in not less than two locations per deck, within 24 inches of each end of the deck. Each device shall have an allowable stress design capacity of not less than 1500 pounds (6672 N). Where the lateral load connections are provided in accordance with Figure R507.9.2(2),

the hold-down tension devices shall be installed in not less than four locations per deck, and each device shall have an allowable stress design capacity of not less than 750 pounds (3336 N).

EXCEPTION: Decks not more than 30 inches above grade at any point may be unattached.

**TABLE R507.9.1
PLACEMENT OF LAG SCREWS AND BOLTS IN DECK LEDGERS AND
BAND JOISTS**

MINIMUM END AND EDGE DISTANCES AND SPACING BETWEEN ROWS				
	TOP EDGE	BOTTOM EDGE	ENDS	ROW SPACING
Ledger ^a	2 inches ^d	3/4 inch	2 inches ^b	1 5/8 inches ^b
Band joist ^c	3/4 inch	2 inches ^e	2 inches ^b	1 5/8 inches ^b

For SI: 1 inch = 25.4 mm.

- a Lag screws or bolts shall be staggered from the top to the bottom along the horizontal run of the deck ledger in accordance with Figure R507.2.1(1).
- b Maximum 5 inches.
- c For engineered rim joists, the manufacturer's recommendations shall govern.
- d The minimum distance from bottom row of lag screws to the top edge of the ledger shall be in accordance with Figure R507.2.1(1).
- e The 2 inches may be reduced to 3/4 inch when the band joist is directly supported by a mudsill, a header or by double top wall plates.

**TABLE R507.9.3(1)
DECK LAGER CONNECTION TO BAND JOIST**

LOAD ^c (psf)	JOIST SPAN ^a (feet)	1/2-inch diameter leg screw with 1/2-inch maximum sheathing ^{d,e}	1/2-inch diameter bolt with 1/2-inch maximum sheathing ^e	1/2-inch diameter bolt with 1-inch maximum sheathing ^f
		ON-CENTER SPACING OF FASTENERS ^b (inches)		
60 Ground Snow Load	6	25	36	36
	8	18	35	30
	10	15	28	24
	12	12	23	20
	14	10	20	17
	16	9	17	15
70 Ground Snow Load	6	22	36	35
	8	16	31	26
	10	13	25	21
	12	11	20	17
	14	9	17	15
	16	8	15	13
	18	7	13	11

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 pound per square foot = 0.0479 kPa.

- a. Interpolation permitted. Extrapolation not permitted.
- b. Ledgers shall be flashed in accordance with Section R703.4 to prevent water from contacting the house band joist.
- c. Dead Load = 10 psf. Snow load shall not be assumed to act concurrently with live load.
- d. The tip of the lag screw shall fully extend beyond the inside face of the band joist.
- e. Sheathing shall be wood structural panel or solid sawn lumber.
- f. Sheathing shall be permitted to be wood structural panel, gypsum board, fiberboard, lumber or foam sheathing. Up to 1/2 inch thickness of stacked washers shall be permitted to substitute for up to 1/2 inch of allowable sheathing thickness where combined with wood structural panel or lumber sheathing.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-16-006, § 51-51-0507, filed 7/22/21, effective 8/22/21; WSR 20-21-041, § 51-51-0507, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-0507, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0507, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0507, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0608 (~~(Section 608—Exterior concrete wall construction.)~~) Reserved.

~~(**R608.1 General.** Exterior concrete walls shall be designed and constructed in accordance with the provisions of this section or in accordance with the provisions of PCA 100, ACI 318, or ACI 332. Where PCA 100, ACI 318, or ACI 332, or the provisions of this section are used to design concrete walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for design, unless otherwise required by the state law of the jurisdiction having authority.~~

~~**R608.5.1 Concrete and materials for concrete.** Materials used in concrete, and the concrete itself, shall conform to requirements of this section, PCA 100, ACI 318, or ACI 332.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-0608, filed 1/6/20, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-0703 **Section R703—Exterior covering.**

R703.1.1 Water resistance. The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer as required by Section R703.2 and a means of draining water that enters the assembly to the exterior. Protection against condensation in the exterior wall assembly shall be provided in accordance with Section R702.7 of this code.

EXCEPTIONS:

1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls designed in accordance with Chapter 6 and flashed according to Section R703.4 or R703.8.
2. Compliance with the requirements for a means of drainage, and the requirements of Sections R703.2 and R703.4, shall not be required for an exterior wall envelope that has been demonstrated to resist wind-driven rain through testing of the exterior wall envelope, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:
 - 2.1. Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.
 - 2.2. Exterior wall envelope test assemblies shall be at least 4 feet (1219 mm) by 8 feet (2438 mm) in size.
 - 2.3. Exterior wall assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (299Pa).
 - 2.4. Exterior wall envelope assemblies shall be subjected to a minimum test exposure duration of 2 hours.

The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope; joints at the perimeter of opening penetration; or intersections of terminations with dissimilar materials.

3. The requirement for a means of drainage shall not be construed to mean an air space cavity under the exterior cladding for an exterior wall clad with panel or lapped siding made of plywood, engineered wood, hardboard, or fiber cement. A water-resistive barrier as required by Section R703.2 will be required on exterior walls.

~~((R703.2 Water-resistive barrier. Not fewer than one layer of water-resistive barrier shall be applied over studs or sheathing with flashing as indicated in Section R703.4, in such a manner as to provide a continuous water resistive barrier behind the exterior wall veneer. Water-resistive barrier materials shall comply with one of the following:~~

- ~~1. No. 15 felt complying with ASTM D226, Type 1.~~
- ~~2. ASTM E2556, Type 1 or 2.~~
- ~~3. ASTM E331 in accordance with Section R703.1.1; or~~
- ~~4. Other approved materials in accordance with the manufacturer's installation instructions.~~

~~**R703.4 Flashing.** Approved corrosion-resistant flashing shall be applied shingle-fashion in a manner to prevent entry of water into the wall cavity or penetration of water to the building structure framing components. Self-adhered membranes used as flashing shall comply with AAMA 711. Fluid-applied membranes used as flashing in exterior walls shall comply with AAMA 714. The flashing shall extend to the surface of the exterior wall finish. Approved corrosion-resistant flashing shall be installed at all of the following locations:~~

- ~~1. Exterior window and door openings. Flashing at exterior window and door openings shall extend to the surface of the exterior wall finish or to the water resistive barrier complying with Section 703.2 for subsequent drainage. Mechanically attached flexible flashings shall comply with AAMA 712.~~
- ~~2. At the intersection of chimneys or other masonry construction with frame or stucco walls, with projecting lips on both sides under stucco copings.~~
- ~~3. Under and at the ends of masonry, wood or metal copings and sills.~~
- ~~4. Continuously above all projecting wood trim.~~
- ~~5. Where exterior porches, decks or stairs attach to a wall or floor assembly of wood-frame construction.~~
- ~~6. At wall and roof intersections.~~
- ~~7. At built-in gutters.)~~

R703.10.2 Lap siding. Fiber-cement lap siding having a maximum width of 12 inches (305 mm) shall comply with the requirements of ASTM C 1186, Type A, minimum Grade II or ISO 8336, Category A, minimum Class 2. Lap siding shall be lapped a minimum of 1 1/4 inches (32 mm) and lap siding shall be installed in accordance with the manufacturer's installation instructions or shall be designed to comply with Section R703.1. Lap siding courses shall be installed with the fastener heads exposed or concealed, in accordance with Table R703.3(1) or approved manufacturer's instructions.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-0703, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-0703, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0703, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0703, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0703, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and

chapters 19.27 and 34.05 RCW. WSR 08-01-102, § 51-51-0703, filed 12/18/07, effective 4/1/08.]

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-1503 Section M1503—Domestic cooking exhaust equipment.

M1503.2.1 Open-top broiler exhaust. Domestic open-top broiler units shall be provided with a metal exhaust hood, having a minimum thickness of 0.0157 inch (0.3950 mm) (No. 28 gage). Such hoods shall be installed with a clearance of not less than 1/4 inch (6.4 mm) between the hood and the underside of combustible material or cabinets. A clearance of not less than 24 inches (610 mm) shall be maintained between the cooking surface and the combustible material or cabinets. The hood width shall not be less than the width of the broiler unit and shall extend over the entire unit.

EXCEPTIONS: 1. Broiler units that incorporate an integral exhaust system, and that are listed and labeled for use without an exhaust hood, shall not be required to have an exhaust hood.
2. Broiler units permanently installed outside the building envelope and having the cooking surface at least 5 feet below a 1-hour fire resistance rated ceiling shall not be required to have an exhaust hood.

M1503.3 Exhaust discharge. Domestic cooking exhaust equipment shall discharge to the outdoors through a duct. The duct shall have a smooth interior surface, shall be airtight, shall be equipped with a back-draft damper and shall be independent of all other exhaust systems. Ducts serving domestic cooking exhaust equipment shall not terminate in an attic or crawl space or areas inside the building.

EXCEPTION: Where installed in accordance with the manufacturer's instructions, and where continuous local exhaust is provided in an enclosed kitchen in accordance with Table M1505.4.4(1), listed and labeled ductless range hoods shall not be required to discharge to the outdoors.

M1503.5 Kitchen exhaust rates. Where domestic kitchen cooking appliances are provided with exhaust equipment, the fans shall be sized in accordance with Section M1505.4.4.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-1503, filed 10/13/20, effective 11/13/20.]

AMENDATORY SECTION (Amending WSR 20-12-027, filed 5/27/20, effective 7/1/20)

WAC 51-51-1505 Section M1505—Mechanical ventilation.

M1505.1 General. Where local exhaust or whole-house mechanical ventilation is provided, the ventilation system shall be designed in accordance with this section.

EXCEPTION: Alternate balanced whole-house ventilation systems and local exhaust systems designed and commissioned in accordance with ASHRAE 62.2 are permitted.

M1505.4 Whole-house mechanical ventilation system. Each dwelling unit shall be equipped with a ventilation system. The whole-house mechanical ventilation systems shall be designed in accordance with Sections M1505.4.1 through M1505.4.4.

M1505.4.1 System design. The whole house ventilation system shall consist of one or more supply fans, one or more exhaust fans, or an ERV/HRV with integral fans, associated ducts and controls. Whole-house mechanical ventilation system with supply and exhaust fans per Sections M1505.4.1.2, M1505.4.1.3, M1505.4.1.4, and M1505.4.1.5. Local exhaust fans are permitted to serve as part of the whole house ventilation system when provided with the proper controls per Section M1505.4.2. The systems shall be designed and installed to exhaust and/or supply the minimum outdoor airflow rates per Section M1505.4.3 as modified by whole house ventilation system coefficients in Section M1505.4.3.1 where applicable. The whole house ventilation system shall operate continuously at the minimum ventilation rate determined per Section M1505.4.2 unless configured with intermittent off controls per Section M1505.4.3.2.

M1505.4.1.1 Whole house system component requirements. Whole house ventilation supply and exhaust fans specified in this section shall have a minimum efficacy as prescribed in the Washington State Energy Code. Design and installation of the system or equipment shall be carried out in accordance with manufacturers' installation instructions. Whole house ventilation fans shall be rated for sound at no less than the minimum airflow rate required by Section M1505.4.3.1. Ventilation fans shall be rated for sound at a maximum of 1.0 sone. This sound rating shall be at a minimum of 0.1 in. w.c. (25 Pa) static pressure in accordance with HVI procedures specified in Sections M1505.4.1.2 and M1505.4.1.3.

EXCEPTION: HVAC air handlers, ERV/HRV units, and remote mounted fans need not meet the sound requirements. To be considered for this exception, a remote mounted fan must be mounted outside the habitable spaces, bathrooms, toilets, and hallways, and there must be at least 4 ft (1 m) of ductwork between the fan and the intake grille.

The whole house supply fan shall provide ducted outdoor ventilation air to each habitable space within the residential unit.

EXCEPTION: Interior joining spaces provided with a 30 cfm whole house transfer fan or a permanent opening with an area of not less than 8 percent of the floor area of the interior adjoining space but not less than 25 square feet do not require ducted outdoor ventilation air to be supplied directly to the space. Whole house transfer fans shall meet the sone rating of Section M1505.4.1.1 and shall have whole house ventilation controls that comply with Section M1505.4.2.

M1505.4.1.2 Exhaust fans. Exhaust fans required shall be ducted directly to the outside. Exhaust air outlets shall be designed to limit the pressure difference to the outside and equipped with backdraft dampers or motorized dampers in accordance with the Washington State Energy Code. Exhaust fans shall be tested and rated in accordance with the airflow and sound rating procedures of the Home Ventilating Institute (HVI 915, HVI Loudness Testing and Rating Procedure, HVI 916, HVI Airflow Test Procedure, and HVI 920, HVI Product Performance Certification Procedure, as applicable). Exhaust fans required in this section may be used to provide local ventilation. Bathroom exhaust fans that are designed for intermittent exhaust airflow rates higher than the continuous exhaust airflow rates in Table M1505.4.3(3) shall be provided with occupancy sensors or humidity sensors to automatically override the fan to the high speed airflow rate. The exhaust fans shall be tested and the testing results shall be submitted and posted in accordance with Section M1505.4.1.6.

M1505.4.1.3 Supply fans. Supply fans used in meeting the requirements of this section shall supply outdoor air from intake openings in accordance with IMC Sections 401.4 and 401.5. When designed for intermittent off operation, supply systems shall be equipped with motorized dampers in accordance with the Washington State Energy Code. Supply fans shall be tested and rated in accordance with the airflow and

sound rating procedures of the Home Ventilating Institute (HVI 915, HVI Loudness Testing and Rating Procedure, HVI 916, HVI Airflow Test Procedure, and HVI 920, HVI Product Performance Certification Procedure, as applicable). Where outdoor air is provided by supply fan systems the outdoor air shall be filtered. The filter shall be accessible for regular maintenance and replacement. The filter shall have a Minimum Efficiency Rating Value (MERV) of at least 8.

M1505.4.1.4 Balanced whole house ventilation system. A balanced whole house ventilation system shall include both supply and exhaust fans. The supply and exhaust fans shall have airflow that is within 10 percent of each other. The tested and balanced total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. The flow rate test results shall be submitted and posted in accordance with Section M1505.4.1.7. The exhaust fan shall meet the requirements of Section M1505.4.1.2. The supply fan shall meet the requirements of Section M1505.4.1.3. Balanced ventilation systems with both supply and exhaust fans in a packaged product, such as an ERV/HRV shall meet the requirements of HVI 920, as applicable. (~~Intermittent dryer exhaust, intermittent range hood exhaust, and intermittent toilet room exhaust airflow rates above the residential dwelling or sleeping unit minimum ventilation rate~~) Local exhaust systems that are not a component of the whole-house mechanical ventilation system are exempt from the balanced airflow calculation.

M1505.4.1.5 Furnace integrated supply. Systems using space heating and/or cooling air handler fans for outdoor air supply distribution are not permitted.

EXCEPTION: Air handler fans shall have multispeed or variable speed supply airflow control capability with a low speed operation not greater than 25 percent of the rated supply airflow capacity during ventilation only operation. Outdoor air intake openings must meet the provisions of Sections R303.5 and R303.6 and must include a motorized damper that is activated by the whole house ventilation system controller. The motorized damper must be controlled to maintain the outdoor airflow intake airflow within 10 percent of the whole house mechanical exhaust airflow rate. The flow rate for the outdoor air intake must be tested and verified at the minimum ventilation fan speed and the maximum heating or cooling fan speed. The results of the test shall be submitted and posted in accordance with Section M1505.4.1.7.

M1505.4.1.6 Testing. Whole-house mechanical ventilation systems shall be tested, balanced and verified to provide a flow rate not less than the minimum required by Sections M1505.4.3 and M1505.4.4. Testing shall be performed according to the ventilation equipment manufacturer's instructions, or by using a flow hood, flow grid, or other airflow measuring device at the mechanical ventilation fan's inlet terminals, outlet terminals or grilles or in the connected ventilation ducts. Where required by the building official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the building official and be posted in the dwelling unit per Section M1505.4.1.7.

M1505.4.1.7 Certificate. A permanent certificate shall be completed by the mechanical contractor, test and balance contractor or other approved party and posted on a wall in the space where the furnace is located, a utility room, or an approved location inside the building. When located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall list the flow rate determined from the delivered airflow of the whole-house mechanical ventilation system as installed and the type of mechanical

whole house ventilation system used to comply with Section M1505.4.3.1.

M1505.4.2 System controls. The whole-house mechanical ventilation system shall be provided with controls that comply with the following:

1. The whole house ventilation system shall be controlled with manual switches, timers or other means that provide for automatic operation of the ventilation system that are readily accessible by the occupant;

2. Whole-house mechanical ventilation system shall be provided with controls that enable manual override off of the system by the occupant during periods of poor outdoor air quality. Controls shall include permanent text or a symbol indicating their function. Recommended control permanent labeling to include text similar to the following: "Leave on unless outdoor air quality is very poor." Manual controls shall be readily accessible by the occupant;

3. Whole house ventilation systems shall be configured to operate continuously except where intermittent off controls and sizing are provided per Section M1505.4.3.2.

M1505.4.3 Mechanical ventilation rate. The whole-house mechanical ventilation system shall provide outdoor air at a continuous rate as determined in accordance with Table M1505.4.3(1) or Equation 15-1.

Equation 15-1

Ventilation rate in cubic feet per minute = (0.01 × total square foot area of house) + [7.5 × (number of bedrooms + 1)] but not less than 30 cfm for each dwelling unit

**Table M1505.4.3(1)
Whole-House Mechanical Ventilation Airflow Rate**

Dwelling Unit Floor Area (square feet)	Number of Bedrooms				
	0 - 1	2	3	4	5 or more
	Airflow in cfm				
< 500	30	30	35	45	50
501 - 1,000	30	35	40	50	55
1,001 - 1,500	30	40	45	55	60
1,501 - 2,000	35	45	50	60	65
2,001 - 2,500	40	50	55	65	70
2,501 - 3,000	45	55	60	70	75
3,001 - 3,500	50	60	65	75	80
3,501 - 4,000	55	65	70	80	85
4,001 - 4,500	60	70	75	85	90
4,501 - 5,000	65	75	80	90	95

M1505.4.3.1 Ventilation quality adjustment. The minimum whole house ventilation rate from Section 1505.4.3 shall be adjusted by the system coefficient in Table M1505.4.3(2) based on the system type not meeting the definition of a *balanced whole house ventilation* system and/or not meeting the definition of a *distributed whole house ventilation* system.

$$Q_v = Q_r * C_{system}$$

(Equation 15-2)

Where:

Q_v = Quality-adjusted ventilation airflow rate in cubic feet per minute (cfm).

Q_r = Ventilation airflow rate, cubic feet per minute (cfm) from 15-1 or Table M1505.4.3(1).

C_{system} = System coefficient from Table 1505.4.3(2).

**Table M1505.4.3(2)
System Coefficient (C_{system})**

System Type	Distributed	Not Distributed
Balanced	1.0	1.25
Not balanced	1.25	1.5

M1505.4.3.2 Intermittent off operation. Whole-house mechanical ventilation systems shall be provided with advanced controls that are configured to operate the system with intermittent off operation shall operate for a least two hours in each four-hour segment. The whole house ventilation airflow rate determined in accordance with Section M1505.4.3 as corrected by Section M1505.4.3.1 is multiplied by the factor determined in accordance with Table (~~M1505.4.3(3)~~) M1505.4.3.2.

**Table M1505.4.3(3)
Intermittent Off Whole House-Mechanical Ventilation Rate Factors^{a,b}**

Run-time % in Each 4-hour Segment	50%	66%	75%	100%
Factor ^a	2	1.5	1.3	1.0

a. For ventilation system run-time values between those given, the factors are permitted to be determined by interpolation.

b. Extrapolation beyond the table is prohibited.

M1505.4.4 Local exhaust rates. Local exhaust systems shall be designed to have the capacity to exhaust the minimum airflow rate determined in accordance with Table (~~M1505.4.4(1)~~) M1505.4.4.1. If the local exhaust fan is included in the whole house ventilation system, in accordance with Section 1505.4.1, then the exhaust fan shall be controlled to operate as specified in Section M1505.4.2.

M1505.4.4.1 Local exhaust. Bathrooms, toilet rooms, and kitchens shall include a local exhaust system. Such local exhaust systems shall have the capacity to exhaust the minimum airflow rate in accordance with Table (~~M1505.4.4(1)~~) M1505.4.4.1. Fans required by this section shall be provided with controls that enable manual override or automatic occupancy sensor, humidity sensor, timer controls, or pollutant sensor controls. An "on/off" switch shall meet this requirement for manual controls. Manual fan controls shall be readily accessible in the room served by the fan.

**Table (~~M1505.4.4(1)~~) M1505.4.4.1
Minimum Local Exhaust Rates**

Area to Be Exhausted	Exhaust Rates	
	Intermittent	Continuous
((Kitchens	100 cfm	30 cfm))
<u>Open Kitchens</u>	<u>In accordance with Section M1505.4.4.3</u>	<u>Not Permitted</u>
<u>Enclosed Kitchens</u>	<u>In accordance with Section M1505.4.4.3</u>	<u>5 ACH based on kitchen volume</u>
Bathrooms - Toilet rooms	50 cfm	20 cfm

M1505.4.4.2 Local exhaust fans. Exhaust fans shall meet the following criteria:

1. Exhaust fans shall be tested and rated in accordance with the airflow and sound rating procedures of the Home Ventilating Institute (HVI 915, HVI Loudness Testing and Rating Procedure, HVI 916, HVI Air-flow Test Procedure, and HVI 920, HVI Product Performance Certification Procedure).

((EXCEPTION: ~~Where a range hood or down draft exhaust fan is used for local exhaust for a kitchen, the device is not required to be rated per these standards.~~))

2. Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table ~~((M1505.4.4(1)))~~ M1505.4.4.1. The airflows required refer to the delivered airflow of the system as installed and tested using a flow hood, flow grid, or other airflow measurement device. Local exhaust systems shall be tested, balanced, and verified to provide a flow rate not less than the minimum required by this section.

3. Design and installation of the system or equipment shall be carried out in accordance with manufacturers' installation instructions.

4. ~~((Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table M1505.4.4(1).))~~ Intermittent local exhaust systems serving kitchens shall be rated for sound at a maximum of 3 sones at one or more airflow settings not less than 100 cfm at a static pressure not less than that determined at working speed as specified in HVI 916 Section 7.2.

5. Continuous local exhaust systems serving kitchens shall be rated for sound at a maximum of 1 sones at one or more airflow settings not less than 100 cfm at a static pressure not less than that determined at working speed as specified in HVI 916 Section 7.2.

EXCEPTIONS: 1. ~~The installed airflow is not required to be field-verified where an exhaust airflow rating at a pressure of 0.25 in. w.g. ((may be)) is used, provided the duct sizing meets the prescriptive requirements of Table ((M1505.4.4(2)))~~ M1505.4.4.2.
 2. ~~((Where a range hood or down draft exhaust fan is used to satisfy the local ventilation requirements for kitchens, the range hood or down draft exhaust shall not be less than 100 cfm at 0.10 in. w.g.))~~ Remote mounted fans need not meet sound requirements. To be considered for this exception, a remote mounted fan shall be mounted outside the kitchen, and there shall be at least 4 feet (1 m) of ductwork between the fan and the intake grille.

**Table ~~((M1505.4.4(2)))~~ M1505.4.4.2
 Prescriptive Exhaust Duct Sizing**

Fan Tested cfm at 0.25 inches w.g.	Minimum Flex Diameter	Maximum Length in Feet	Minimum Smooth Diameter	Maximum Length in Feet	Maximum Elbows ^a
50	4 inches	25	4 inches	70	3
50	5 inches	90	5 inches	100	3
50	6 inches	No Limit	6 inches	No Limit	3
80	4 inches ^b	NA	4 inches	20	3
80	5 inches	15	5 inches	100	3
80	6 inches	90	6 inches	No Limit	3
100	5 inches ^b	NA	5 inches	50	3
100	6 inches	45	6 inches	No Limit	3
125	6 inches	15	6 inches	No Limit	3
125	7 inches	70	7 inches	No Limit	3

a. For each additional elbow, subtract 10 feet from length.

b. Flex ducts of this diameter are not permitted with fans of this size.

M1505.4.4.3 Local intermittent kitchen exhaust system. Kitchen range hoods for domestic cooking appliances shall meet or exceed either the minimum airflow or the minimum capture efficiency in accordance with Table M1505.4.4.3. Capture efficiency ratings shall be determined in accordance with ASTM E3087.

EXCEPTION: Other intermittent kitchen exhaust fans, including downdraft, shall meet or exceed 300 cfm airflow.

**Table M1505.4.4.3
Kitchen Range Hood Airflow Rates
(cfm) and ASTM E3087 Capture Efficiency (CE) Ratings According to
Kitchen Range Fuel Type**

Hood Over Electric Range	Hood Over Combustion Range
60% CE or 160 cfm	80% CE or 250 cfm

M1505.4.4.3.1 Field verification and diagnostic testing for local intermittent kitchen exhaust system. The local exhaust system for kitchens shall be installed to comply with local mechanical exhaust requirements specified in M1505.4.4.3 and shall be field verified in accordance with the procedures below to confirm the model is rated by HVI or AHAM to comply with the following requirements:

1. Local intermittent exhaust systems for kitchens shall be tested and verified to provide a minimum airflow rate or capture efficiency required by M1505.4.4.3. Testing shall include verification of the maximum sound rating as specified in Section M1505.4.4.3.2. Testing for the intermittent kitchen exhaust systems shall occur with the whole house ventilation system operating and with all dwelling unit or sleeping unit entry doors closed. Testing for exhaust systems that require makeup air in accordance with Section M1503.6 shall include verifying that the mechanical makeup air system is controlled to automatically start. Testing for exhaust systems that do not require mechanical makeup air in accordance with Section M1503.6 and that are exempt from pressurize equalization shall be tested with operable openings manually opened unless design exhaust airflow can be achieved with all operable openings closed. Testing shall be performed according to the ventilation equipment manufacturer's instructions, or by using a flow

hood, flow grid, or other airflow measuring device. Where required by the building official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the building official.

EXCEPTION: The installed airflow is not required to be field-verified where an exhaust airflow rating at a pressure of 0.25 in. w.g. is used, provided the duct sizing meets the prescriptive requirements of Table M1505.4.4.2.

2. The verification shall utilize certified rating data from the HVI Publication 911: Certified Home Ventilating Products Directory or another directory of certified product performance ratings approved by code official for determining compliance. The verification procedure shall consist of visual inspection of the local intermittent kitchen exhaust system to verify and record the following information:

2.1. The manufacturer name and model number.

2.2. The model is listed in the HVI Directory.

2.3. The rated airflow value listed in the HVI Directory.

2.4. The sound rating value listed in the HVI Directory.

2.5. If the value for the rated airflow given in the directory is greater than or equal to the airflow requirements specified in Section M1505.4.4.3 and if the value for the sound rating given in the directory is less than or equal to the sound rating requirements specified in Section M1505.4.4.3.2, then the local intermittent kitchen exhaust system complies, otherwise the local intermittent kitchen exhaust system does not comply.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-12-027, § 51-51-1505, filed 5/27/20, effective 7/1/20. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-025, § 51-51-1505, filed 1/11/16, effective 7/1/16.]

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

AMENDATORY SECTION (Amending WSR 16-03-025, filed 1/11/16, effective 7/1/16)

WAC 51-51-2101 Section M2101—Hydronic piping systems installation.

M2101.3 Protection of potable water. The potable water system shall be protected from backflow in accordance with the provisions listed in Section 603 of the state plumbing code.

~~((M2101.7 Prohibited tee applications. This section is not adopted.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-025, § 51-51-2101, filed 1/11/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 16-03-025, filed 1/11/16, effective 7/1/16)

WAC 51-51-2103 Section M2103—Floor heating systems.

M2103.3 Piping joints. Copper and copper alloy systems shall be soldered in accordance with ASTM B 828. Fluxes for soldering shall be in accordance with ASTM B 813. Brazing fluxes shall be in accordance with

AWS A5.31. Piping joints that are embedded shall be installed in accordance with the following requirements:

1. Steel pipe joints shall be welded.
2. Copper tubing shall be joined by brazing complying with Section ((605.3.1)) 605 of the state plumbing code.
3. Polybutylene pipe and tubing joints shall be installed with socket-type heat-fused polybutylene fittings.
4. CPVC tubing shall be joined using solvent cement joints.
5. Polypropylene pipe and tubing joints shall be installed with socket-type heat-fused polypropylene fittings.
6. Cross-linked polyethylene (PEX) tubing shall be joined using cold expansion, insert or compression fittings.
7. Raised temperature polyethylene (PE-RT) tubing shall be joined using insert or compression fittings.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-025, § 51-51-2103, filed 1/11/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 16-03-025, filed 1/11/16, effective 7/1/16)

WAC 51-51-2105 Section M2105—Ground-source heat-pump system loop piping.

M2105.9 CPVC plastic pipe. Joints between CPVC plastic pipe or fittings shall be solvent-cemented in accordance with Section ((605.2.2)) 605 of the state plumbing code. Threaded joints between fittings and CPVC plastic pipe shall be in accordance with Section M2105.9.1.

M2105.14 PVC plastic pipe. Joints between PVC plastic pipe or fittings shall be solvent-cemented in accordance with Section ((605.12.2)) 605 of the state plumbing code. Threaded joints between fittings and PVC plastic pipe shall be in accordance with Section M2105.9.1.

M2105.18 Protection of potable water. Where ground-source heat-pump ground-loop systems have a connection to a potable water supply, the potable water system shall be protected from backflow in accordance with Section 603 of the state plumbing code.

M2105.19 Pipe penetrations. Openings for pipe penetrations in walls, floors and ceilings shall be larger than the penetrating pipe. Openings through concrete or masonry building elements shall be sleeved. The annular space surrounding pipe penetrations shall be protected in accordance with Section 312 of the state plumbing code.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-025, § 51-51-2105, filed 1/11/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-4400 Referenced standards.

AHAM

Association of Home Appliance Manufacturers
1111 19th St N.W., #402
Washington D.C. 20036

HRH-2-2019: Household Range Hoods.

M1505.4.4.3.4

ANCE

**NMX-J-521/2-40-ANCE—2019/CAN/CSA-22.2 No. 60335-2-40—19/UL
60335-2-40-2019 Household and Similar Electrical Appliances - Safety-
Part 2-40: Particular Requirements for Electric Heat Pumps, Air-Conditioners
and Dehumidifiers.**

M1403.1, M1412.1, M1413.1

ANSI

**LC 1/CSA 6.26—18: Fuel Gas Piping Systems Using Corrugated Stainless
Steel Tubing (CSST).**

G2414.5.4, G2411.3, G2415.5
403.5.5

ASHRAE

34—2019: Designation and Safety Classification of Refrigerants.

M1411.1

**62.2-2019: Ventilation and Acceptable Indoor Air Quality in Residential
Buildings.**

M1505.1, M1505.4.4.3.3

ASTM

**E2556/E2556M-10: Standard Specification for Vapor Permeable Flexible
Sheet Water-Resistive Barriers Intended for Mechanical Attachment.**

M1411.1

**E2558-2013: Standard Test Method for Determining Particulate Matter
Emissions from Fires in Wood-burning Fireplaces.**

R1004.1.1

**E3087—18: Standard Test Method for Measuring Capture Efficiency of
Domestic Range Hoods.**

N1505.4.4.3.2, Table M1505.4.4.3.2

CSA

CAN/CSA/C22.2 No. 60335-2-40—2012 60335-2-40—2019

**NMX-J-521/2-40-ANCE—2019/CAN/CSA-C22.2 No. 60335-2-40—19/UL
60335-2-40-2019 Household and Similar Electric Appliances, Part 2-40-
Safety: Particular Requirements for Electric Heat Pumps, Air-Conditioners
and Dehumidifiers.**

M2006.1

HVI

HVI Publication 911: Certified Home Ventilation Products Directory.

M1505.4.4.3.4

UL

**UL/CSA/ANCE 60335-2-40—2019 Household and Similar Electrical Appliances
Safety-Part 2-40: Particular Requirements for Electrical Heat
Pumps, Air Conditioners and Dehumidifiers.**

M1403.1, M1412.1, M1413.1

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-4400, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-4400, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-4400, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-4400, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, amended and recodified as § 51-51-4400, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-4300, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-4300, filed 12/17/03, effective 7/1/04.]

NEW SECTION

WAC 51-51-4501 Chapter 45—Existing buildings and structures.

R4501 Scope and purpose.

R4501.1 General. The specific provisions in this code shall apply to the repair, alteration, addition, and relocation of existing buildings and structures. These standards shall apply where construction does not fully comply with construction standards in this code for new construction.

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NEW SECTION

WAC 51-51-4502 Section R4402—Compliance.

R4502.1 General. The work shall not cause the building to become unsafe or adversely affect the performance of the building; shall not cause an existing mechanical or plumbing system to become unsafe, hazardous, insanitary, or overloaded; and unless expressly permitted by these provisions, shall not make the building any less compliant with this code or to any previously approved alternative arrangements than it was before the work was undertaken.

R4502.2 Structural. Structural elements and systems that are altered, repaired, or replaced shall comply with the structural provisions of this chapter and of Chapter 3 through Chapter 10 of the *International Residential Code* unless noted otherwise.

R4502.2.1 Minimum design loads. The minimum design loads for the structure shall be the loads applicable at the time the building was constructed. The minimum design loads for the structural components shall comply with the *International Residential Code*. Structural elements that are uncovered during the course of the alteration and that are found to be unsafe shall be repaired in accordance with Section R102.7.1.

R4502.2.2 Unreinforced masonry parapet bracing. Unreinforced masonry buildings located in Seismic Design Category D or E shall have parapet bracing and wall anchors installed at the roofline whenever a reroofing permit is issued. Such parapet bracing and wall anchors shall be of an approved design.

R4502.3 Smoke alarms. Smoke alarms detectors shall be provided where required by Section R314.2.2.

R4502.4 Carbon monoxide alarms. Carbon monoxide alarms shall be provided where required by Section R315.2.2.

R4502.5 Replacement windows. Where an existing window, including the sash and glazed portion, or safety glazing is replaced, the replacement window or safety glazing shall comply with the requirements of Sections 4502.5.1 through 4502.5.5 as applicable.

R4502.5.1 Energy efficiency. Replacement windows shall comply with the requirements of Chapter 11.

R4502.5.2 Safety glazing. Replacement glazing in hazardous locations shall comply with the safety glazing requirements of Section R308.

R4502.5.3 Window fall protection. Window fall protection shall be installed per Section R312.2.

EXCEPTION: Where window replacement is of glazing only.

R4502.5.4 Replacement windows for emergency escape and rescue openings. Replacement windows installed in buildings meeting the scope of this code shall be exempt from Sections R310.2 and R310.4.4, provided that the replacement window meets the following conditions:

1. The replacement window is the manufacturer's largest standard size window that will fit within the existing frame or existing rough opening. The replacement window is of the same operating style as the existing window or a style that provides for an equal or greater window opening area than the existing window.

2. The replacement window is not part of a change of occupancy.

R4502.5.5 Window opening control device and fall protection device height. Window opening control devices or fall protection device shall be located at a height per Section R310.1.1 or at as low a height as can be installed within the existing clear opening.

R4502.6 Flood hazard areas. Work performed in existing buildings located in a flood hazard area as established by Table R301.2(1) shall be subject to the provisions of Section R105.3.1.1.

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NEW SECTION

WAC 51-51-4503 Section R4503—Repairs.

R4503.1 Materials. Except as otherwise required herein, repairs shall be done using like materials or materials permitted by this code for new construction.

R4503.1.1 Hazardous materials. Hazardous materials no longer permitted, such as asbestos and lead-based paint, shall not be used.

R4503.1.2 Plumbing materials and supplies. The following plumbing materials and supplies shall not be used:

1. All-purpose solvent cement, unless listed for the specific application.
2. Flexible traps and tailpieces, unless listed for the specific application.
3. Solder having more than 0.2-percent lead in the repair of potable water systems.

R4503.2 Water closets. Where any water closet is replaced with a newly manufactured water closet, the replacement water closet shall comply with the requirements of Section P2903.2.

R4503.3 Electrical. Repair or replacement of existing electrical wiring and equipment shall comply with Chapters 34 through 43.

R4503.4 Structural. Repaired structural elements and systems shall comply with Section R102.7.1 and the structural provisions of this chapter.

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NEW SECTION

WAC 51-51-4504 Section R4504—Alterations.

R4504.1 Alterations to an existing building. Where an existing building is undergoing an alteration that is within the scope of the *International Residential Code*, alterations to the existing building shall comply with this section and other applicable provisions of this code. New elements shall meet all of the requirements of this code for new construction. Engineered design in accordance with Section R301.1.3 shall be permitted to meet the requirements of this section.

R4504.2 Newly constructed elements. Newly constructed elements, components, and systems shall comply with the requirements of this code.

EXCEPTION: Added openable windows are not required to comply with the light and ventilation requirements of Section R303.

R4504.3 Nonconformities. The work shall not increase the extent of noncompliance or create nonconformity to those requirements that did not previously exist.

R4504.4 Structural. Altered structural elements and systems shall comply with Section R102.7.1 and the structural provisions of this chapter.

R4504.4.1 Alterations that decrease structural capacity. Where an alteration causes a decrease in capacity in any structural component, that structural component shall be shown to comply or shall be altered to comply with the applicable provisions of Chapters 3, 4, 5, 6, and 8.

R4504.4.2 Alterations that increase structural loads. Where an alteration causes an increase in loads as described in this section, the existing structural components that support the increased load, including the foundation, shall be shown to comply or shall be altered to comply with the applicable provisions of Chapters 3, 4, 5, 6, and 8.

Existing structural components that do not provide support for the increased loads shall not be required to comply with this section.

R4504.4.2.1 Dead load increase. Dead load shall be considered to be increased for purposes of this section when the weight of materials used for the alteration exceeds the weight of the materials replaced, or when new materials or elements are added.

EXCEPTIONS: 1. Buildings in which the increase in dead load is due entirely to the addition of a second layer of roof covering weighing 3 pounds per square foot (0.1437 kN/m²) or less over an existing single layer of roof covering.
 2. Installation of rooftop-mounted photovoltaic (PV) panel systems weighing 4 pounds per square foot or less over an existing single layer of roof covering.

R4504.4.2.2 Live load increase. An increase in live load shall be determined based on Table R301.5.

R4504.4.2.3 Snow load increase. Snow load shall be considered to be increased for purposes of this section when alteration of the roof configuration creates new areas that accumulate drifted snow.

R4504.4.2.4 Wind load increase. Wind load shall be considered to be increased for purposes of this section when the surface area of any exterior elevation subject to wind pressure is increased by more than 5 percent.

R4504.4.2.5 Seismic load increase. Seismic load shall be considered to be increased for purposes of this section in existing buildings assigned to Seismic Design Category C, D₀, D₁, or D₂ where new materials replace lighter weight materials in one of the following conditions:

1. Concrete tile or tile roof covering of similar weight is installed on more than 50 percent of the total roof area.

2. Brick veneer or cladding of similar weight is installed on walls above the second story.

R4504.5 Electrical equipment and wiring.

R4504.5.1 Materials and methods. Newly installed electrical equipment and wiring relating to work done in any work area shall comply with the materials and methods requirements of Chapters 34 through 43.

EXCEPTION: Electrical equipment and wiring in newly installed partitions and ceilings shall comply with the applicable requirements of Chapters 34 through 43.

R4504.5.2 Electrical service. Service to the dwelling unit shall not be less than 100 ampere, three-wire capacity and service equipment shall be dead front having no live parts exposed that could allow accidental contact. Type "S" fuses shall be installed where fused equipment is used.

EXCEPTION: Existing service of 60 ampere, three-wire capacity, and feeders of 30 ampere or larger two- or three-wire capacity shall be accepted if adequate for the electrical load being served.

R4504.5.3 Additional electrical requirements. Where the work area includes any of the following areas within a dwelling unit, the requirements of Sections R4508.5.3.1 through R4508.5.3.5 shall apply.

R4504.5.3.1 Enclosed areas. Enclosed areas other than closets, kitchens, basements, garages, hallways, laundry areas, and bathrooms shall have not less than two duplex receptacle outlets, or one duplex receptacle outlet and one ceiling or wall-type lighting outlet.

R4504.5.3.2 Kitchen and laundry areas. Kitchen areas shall have not less than two duplex receptacle outlets. Laundry areas shall have not less than one duplex receptacle outlet located near the laundry equipment and installed on an individual branch circuit.

R4504.5.3.3 Ground-fault circuit interruption. Ground-fault circuit interruption shall be provided on newly installed receptacle outlets if required by Chapters 34 through 43.

R4504.5.3.4 Lighting outlets. Not less than one lighting outlet controlled by a listed wall mounted control device shall be provided in every bathroom, hallway, stairway, attached garage, and detached garage with electric power to illuminate outdoor entrances and exits, and in utility rooms and basements where these spaces are used for storage or contain equipment requiring service. The wall-mounted control device shall be located near an entrance to the room on a wall.

R4504.5.3.5 Clearance. Clearance for electrical service equipment shall be provided in accordance with Chapters 34 through 43.

R4504.6 Ventilation. Reconfigured spaces intended for occupancy and spaces converted to habitable or occupiable space in any work area shall be provided with ventilation in accordance with Section R303.

R4504.7 Ceiling height. Where a habitable attic or habitable space in a basement is created in an existing building, ceiling height shall not be less than 6 foot 8 inches (2032 mm). Bathrooms, toilet rooms, and laundry rooms shall have a ceiling height of not less than 6 feet 4 inches (1931 mm).

EXCEPTIONS: 1. For rooms with sloped ceilings, the required floor area of the room shall have a ceiling height of not less than 5 feet (1524 mm) and not less than 50 percent of the required floor area shall have a ceiling height of not less than 6 feet 8 inches (2134 mm).
2. At beams, girders, ducts, or other obstructions, the ceiling height shall be not less than 6 feet 4 inches (1931 mm) from the finished floor.

R4504.8 Stairways, handrails, and guards.

R4504.8.1 Stairways.

R4504.8.1.1 Stairway illumination. Stairways within the work area shall be provided with illumination in accordance with Section R303.6.

R4504.8.1.2 Stair width. Existing stairs not otherwise being altered or modified shall be permitted to maintain their current clear width at, above and below existing handrails.

R4504.8.1.3 Stair headroom. Headroom height on existing stairs being altered or modified shall not be reduced below the existing stairway finished headroom. Existing stairs not otherwise being altered shall be permitted to maintain the current finished headroom.

R4504.8.1.4 Stair landing. Landings serving existing stairs being altered or modified shall not be reduced below the existing stairway landing depth and width. Existing stairs not otherwise being altered shall be permitted to maintain the current landing depth and width.

R4504.8.1.5 Stair treads and risers. An existing stairway shall not be required to comply with Section R311.7.5 where the existing space and construction does not allow a reduction in pitch or slope. Where risers are added to an existing stair, the tread and riser dimensions of the added risers shall match the existing stair.

R4504.8.2 Handrails and guards. If a stair or any portion of a stair is reconstructed, a handrail and guard, where required, shall be provided in accordance with Section R311 and R312.

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NEW SECTION**WAC 51-51-4505 Section R4505—Additions.**

R4505.1 Additions to an existing building. Where existing building with an addition is within the scope of the *International Residential Code*, the addition shall comply with this section and other applicable provisions of this code. Engineered design in accordance with Section R301.1.3 shall be permitted to meet the requirements of this section.

R4505.2 Horizontal attached addition. Where an addition involves new construction next to and attached to an existing building and includes alterations to the existing building, the new construction shall meet all of the requirements of this code for new construction. Alterations to the existing building shall comply with the requirements governing alterations within this code. In wood light-frame additions, connection of the structural components shall be permitted to be provided using wall top plates and addition studs that abut the existing building. Wall top plates shall be lapped and spliced in accordance with Section R602.3.2. Abutting studs shall be fastened in accordance with Table R602.3(1).

EXCEPTION: The additional structural components may be connected to the existing building in accordance with accepted engineering practice.

R4505.3 Vertical addition. Where an addition involves new construction that adds a story to any part of the existing building or vertically increases the height of any part of the existing building, the new construction and the existing building together shall meet all of the requirements of this code for new construction.

R4505.4 Structural. Altered structural elements and systems shall comply with Section R102.7.1 and the structural provisions of this chapter.

R4505.5 Exterior wall coverings. Exterior wall coverings shall comply with the requirements of Chapter 7 of this code. Insulated Vinyl Siding, Polypropylene Siding, and Vinyl Siding shall be attached to a nailable substrate or other substrate suitable for mechanical fasteners.

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NEW SECTION**WAC 51-51-4506 Section R4506—Relocations.**

R4506.1 Relocated buildings. Residential buildings or structures moved into or within the jurisdiction are not required to comply with the requirements of this code if the original use classification of the building or structure is not changed. Work performed on new and existing foundations shall comply with all of the requirements of this code for new construction.

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AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-60105 Appendix U—Dwelling unit fire sprinkler systems. The design and installation of residential fire sprinkler systems shall be in accordance with the ((2018)) International Residential Code Section P2904 Dwelling Unit Fire Sprinkler Systems.

P2904.1.1 Required sprinkler locations. Sprinklers shall be installed to protect all areas of a dwelling unit.

EXCEPTIONS:

1. Uninhabitable attics, crawl spaces and normally unoccupied concealed spaces that do not contain fuel-fired appliances do not require sprinklers. In uninhabitable attics, crawl spaces and normally unoccupied concealed spaces that contain fuel-fired equipment, a sprinkler shall be installed above the equipment; however, sprinklers shall not be required in the remainder of the space.
2. Clothes closets, linen closets and pantries not exceeding 24 square feet (2.2 m²) in area, with the smallest dimension not greater than 3 feet (915 mm) and having wall and ceiling surfaces of gypsum board.
3. Bathrooms not more than 55 square feet (5.1 m²) in area.
4. Garages; carports; exterior porches; unheated entry areas, such as mud rooms, that are adjacent to an exterior door; and similar areas.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-60105, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-60105, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-60105, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-60105, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-60105, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

WAC 51-51-60106 Appendix T—Solar-ready provisions-detached one- and two-family dwellings ((, multiple single-family dwellings ())) and townhouses ((-)). The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

AT101 Scope.

((**AT101.1 General.** These provisions shall be applicable for new construction where solar-ready provisions are required.))

AT102 General definitions. Solar-ready zone. A section or sections of the roof or building overhang designated and reserved for the future installation of a solar photovoltaic or solar water-heating system.

AT103 Solar ready zone.

((**AT103.1 General.** New detached one- and two-family dwellings, and multiple single-family dwellings (townhouses) with not less than 600 square feet (55.74 m²) of roof area oriented between 90 degrees and 270 degrees of true north shall comply with Sections U103.2 through U103.10.))

EXCEPTIONS:

1. New residential buildings with a permanently installed on-site renewable energy system.
2. A building where all areas of the roof that would otherwise meet the requirements of Section AT103 are in full or partial shade for more than 70 percent of daylight hours annually.

~~**AT103.2 Construction document requirements for solar ready zone.** Construction documents shall indicate the solar ready zone.))~~

AT103.3 Solar-ready zone area. The total solar-ready zone area shall be not less than 300 square feet (27.87 m²) exclusive of mandatory ac-

cess or set back areas as required by this code. New ~~((multiple single-family dwellings (-)))~~ townhouses ~~((+))~~ three stories or less in height above grade plane and with a total floor area less than or equal to 2,000 square feet (185.8 m²) per dwelling shall have a solar-ready zone area of not less than 150 square feet (13.94 m²). The solar-ready zone shall be composed of areas not less than 5 feet (1.52 m) in width and not less than 80 square feet (7.44 m²) exclusive of access or set back areas as required in this code or the applicable provisions of the *International Fire Code*. No portion of the solar zone shall be located on a roof slope greater than 2:12 that faces within 45 degrees of true north.

~~((AT103.4 Obstructions. Solar-ready zones shall be free from obstructions including, but not limited to, vents, chimneys, and roof-mounted equipment.))~~

~~AT103.5 Shading. The solar-ready zone shall be set back from any existing or new permanently affixed object on the building or site that is located south, east, or west of the solar zone a distance at least two times the object's height above the nearest point on the roof surface. Such objects include, but are not limited to, taller portions of the building itself, parapets, chimneys, antennas, signage, rooftop equipment, trees and roof plantings.))~~

AT103.6 Capped roof penetration sleeve. A capped roof penetration sleeve shall be provided adjacent to a solar-ready zone when the solar-ready zone has a roof slope of 2:12 or less. The capped roof penetration sleeve shall be sized to accommodate the future photovoltaic system conduit, but shall have an inside diameter not less than 1 1/4 inches.

~~((AT103.7 Roof load documentation. The structural design loads for roof dead load and roof live load shall be clearly indicated on the construction documents.))~~

~~AT103.8 Interconnection pathway. Construction documents shall indicate pathways for routing of conduit or plumbing from the solar-ready zone to the electrical service panel or service hot water system.))~~

~~AT103.9 Electrical service reserved space. The main electrical service or feeder panel for each dwelling unit shall have a reserved space to allow installation of a dual pole circuit breaker for future solar electric installation and shall be labeled "For Future Solar Electric." The reserved space shall be positioned at the opposite (load) end from the input feeder location or main circuit location.))~~

~~AT103.10 Construction documentation certificate. A permanent certificate, indicating the solar-ready zone and other requirements of this section, shall be posted near the electrical distribution panel, water heater or other conspicuous location by the builder or registered design professional.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-60106, filed 10/13/20, effective 11/13/20; WSR 16-03-025, § 51-51-60106, filed 1/11/16, effective 7/1/16.]

NEW SECTION

WAC 51-51-60108 Appendix Y—Construction and demolition material management. The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

AY101 General.

AY101.1 Purpose. The purpose of this code section is to increase the reuse and recycling of construction and demolition materials.

AY101.2 Scope. This code section applies to new *buildings* and *structures* construction, *alterations* to existing *buildings* and *structures* and the *demolition* of existing *buildings* and *structures* having a work area greater than 750 square feet or with a project value greater than \$75,000, whichever is more restrictive.

EXCEPTION: Projects determined to be unsafe.

AY102 General definitions.

Demolition. The process of razing, relocating, or removing an existing *building* or *structure*, or a portion thereof.

Divert, diverted, or diversion. The *reuse*, *recycling*, or beneficial use of construction and *demolition* materials.

Recycling. The process of transforming or remanufacturing waste materials into useable or marketable materials for use other than landfill disposal or incineration.

Reuse. The return of a material into the economic stream for use.

Salvage. The recovery of construction and *demolition building* material and components from a *building* or site in order to increase the *reuse* or repurpose potential of these materials and decrease the amount of material being sent to the landfill. *Salvaged* material may be sold, donated, or reused on site.

AY103 Construction and demolition material management.

AY103.1 Collection containers. All sites where *recyclable* construction and *demolition* materials are generated and transported for *recycling* must provide a separate container for *nonrecyclable* materials pursuant to WAC 173-345-040.

AY103.2 Salvage assessment. A *salvage* assessment shall be submitted prior to *permit* issuance. The *salvage* assessment shall identify the *building* components of an existing *building* that, if removed, have the potential to be *reused*. This assessment shall be signed by the *owner* and serve as an affidavit stating that the project shall be executed in compliance with the requirements of this code.

EXCEPTION: Projects that include only new construction.

AY103.3 Waste diversion report. A waste diversion report shall be submitted prior to issuance of the Certificate of Occupancy or approval of final inspection. The waste diversion report shall identify the following:

1. Weight or volume of project-generated construction and *demolition* material;
2. Whether the material was disposed in a landfill or *diverted*;
3. The hauler of the material;
4. The receiving facility or location; and

5. The date materials were accepted by the receiving facility or location.

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NEW SECTION

WAC 51-51-60109 Appendix Z—Building deconstruction. The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

AZ101 General.

AZ101.1 Purpose. The purpose of this section is to increase the amount of material *salvaged for reuse* through the act of *deconstruction* when a *building* or *structure* is *demolished*. Used sawn lumber is permitted to be *reused* in accordance with Section R602.1.1.1.

AZ101.2 Scope. This section applies to existing dwellings, townhouses, and accessory structures permitted to be demolished that are greater than 750 square feet and meet one of the following:

1. The structure has been identified as a historic building; or
2. The structure was built 90, or more, years ago.

EXCEPTIONS: 1. The structure is determined to be unsafe by the engineer of record;
 2. The structure shall be relocated;
 3. The engineer of record/building official determines that 50 percent, by weight, of the material in the structure that is not concrete, is not suitable for reuse.

AZ102 General definitions.

AZ102.1 General. The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of this code for general definitions.

Deconstruction. The systematic disassembly of a *structure*, in order to *salvage building* materials or components for the primary purpose of *reusing* materials to the maximum extent possible, with a secondary purpose of *recycling* the remaining materials.

Demolition. The process of razing, relocating, or removing an existing *building* or *structure*, or a portion thereof.

Heavy machinery. Heavy machinery includes, but is not limited to, track hoes, excavators, skid steer loaders, or forklifts.

Recycling. The process of transforming or remanufacturing waste materials into useable or marketable materials for use other than landfill disposal or incineration.

Reuse. The return of a material into the economic stream for use.

Salvage. The recovery of construction and *demolition building* material and components from a *building* or site in order to increase the *reuse* or repurpose potential of these materials and decrease the amount of material being sent to the landfill. *Salvaged* material may be sold, donated, or *reused*.

AZ103 Deconstruction.

AZ103.1 Deconstruction. Buildings and structures meeting the requirements of Section AZ101.2 shall be deconstructed.

AZ103.2 Heavy machinery. Heavy machinery may not be used in deconstruction to remove or dismantle components of buildings and structures in ways that render the components unsuitable for salvage.

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WSR 22-17-149
PROPOSED RULES
BUILDING CODE COUNCIL
 [Filed August 23, 2022, 4:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-027.

Title of Rule and Other Identifying Information: Chapter 51-11R WAC, Adoption and amendment of the 2021 Washington State Energy Code, Residential Provisions.

Hearing Location(s): On September 29, 2022, at October 14, 2022, at 10:00 a.m., at 129 North 2nd Street, Yakima, WA 98901; or on October 14, 2022, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person or via Zoom or conference call. The Zoom link and phone are provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: November 4, 2022.

Submit Written Comments to: State Building Code Council (SBCC), P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by October 14, 2022.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, email sbcc@des.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update from the 2018 edition of the Washington State Energy Code to the 2021 edition, incorporating changes from the 2021 International Energy Conservation Code (IECC) and those code changes submitted to increase energy savings and provide better clarity. There are a few instances where two options are provided. Testimony on the preferred option is requested.

Below are highlights of the significant changes in the 2021 Washington State Energy Code. A complete description of all changes can be found at <https://sbcc.wa.gov/sites/default/files/2022-08/2021%20WSEC-R%20full%20change%20description.pdf>.

Significant Changes in IECC Base Model Code

	Proposed Section and Title	Type of Change	Description
1.	R402.1.2 Insulation and fenestration criteria	2021 IECC change	Section R402 was revised to establish the U-factor table as the default performance basis, with the R-value as an alternate, rather than the other way around.
2.	Table R402.1.2 Insulation and fenestration requirements by component	2021 IECC change/code change (21-GP2-079)	The U-factor table was moved to be the first referenced table. Two values within the table were changed: the ceiling U-factor went from 0.026 to 0.024 in the 2021 IECC; <i>the fenestration U-factor went from 0.30 to 0.28 via code change proposal.</i>
3.	Table R402.1.3 Insulation minimum R-values and fenestration requirements by component	2021 IECC change/code change (21-GP2-079)	The R-value had four values within the table changed: <i>the fenestration U-factor went from 0.30 to 0.28 via code change proposal</i> ; and in the 2021 IECC, the ceiling U-factor went from R-49 to R-60, the wood frame wall value went from 21 int. to 20+5 or 13+10, and the slab insulation depth changed from two feet to four feet.
4.	R403.3.5/R403.3.6 Duct testing	2021 IECC change	The exception for ducts within the conditioned space was removed. The ducts must now be tested but are allowed double the leakage rate per Section R403.3.6.

	Proposed Section and Title	Type of Change	Description
5.	Table R403.6.1 Mechanical ventilation system fan efficacy	2021 IECC change	The table was edited for clarity and the fans redefined by type rather than installed location. The efficacy requirements were updated to the Energy Star Version 4.0 requirements.
6.	R403.6.2 Testing	2021 IECC change	A new requirement was added to the 2021 IECC requiring that the mechanical ventilation be tested and verified to meet the minimum flow rate requirements.
7.	R404 Electrical power and lighting	2021 IECC change	This section was expanded significantly to include lighting controls for both interior (R404.2) and exterior lighting (R404.3). Exterior lighting must follow the requirements in the commercial provisions (R404.1.1). Finally, all permanently installed lighting fixtures are required to contain high efficacy lighting sources.
8.	R503.1.4 Lighting	2021 IECC code change	The threshold for lighting to comply with Section R404.1 was decreased from 50 percent replacement to 10 percent replacement.
9.	R503.2 Change in space conditioning	2021 IECC change	This section was moved to R502, Additions, since the change in space conditioning results in additional living space.

Washington State Code Change Proposals

LOG NUMBER	PROPOSED SECTION AND TITLE	TYPE OF CHANGE	DESCRIPTION
21-GP2-084	R202 Definition "Residential building"	Code change (21-GP2-084)	This definition change alters the scope of the Washington State Energy Code, Residential Provisions to resemble more closely that of the International Residential Code. Multifamily buildings with dwellings directly accessed from the outdoors will remain in the residential provisions, but other R-2 buildings are moved under the commercial provisions.
	R401.1 Scope	Code change (21-GP2-084)	The scope of the Washington State Energy Code, Residential Provisions was changed to resemble more closely the scope of the International Residential Code. Multifamily buildings with dwellings directly accessed from the outdoors will remain in the residential provisions, but other R-2 buildings are moved under the commercial provisions.
21-GP2-079	Table R402.1.2/ R402.1.3 Insulation and fenestration requirements by component	Code change (21-GP2-079)	This proposal changes the fenestration U-factor from 0.30 to 0.28 in both tables.
21-GP2-011	R402.1.4 R-value computation	Code change (editorial) (21-GP2-011)	The code change removes a redundant sentence from the middle of the IECC language.
21-GP2-012	Table R402.4.1.1 Air barrier, air sealing and insulation installation	Code change (editorial) (21-GP2-012)	This code change revises the new IECC footnote b for clarity.
21-GP2-088 21-GP2-082	R402.4.1.2 Testing	Code change (21-GP2-082, 21-GP2-088)	The specifics on the testing standard were moved from the exception into the main body of the section and the test must include information on the time, date and location where performed. Requirements were also added that the testing personnel be trained by an accredited program. The second exception from the second set of exceptions was moved to Section R402.4.1.3. The volume adjustment capping the ceiling height at 8.5 feet was removed.
21-GP2-082	R402.4.1 Building thermal envelope air leakage	Code change (21-GP2-082)	"Air leakage" is added to the title for clarity. An additional subsection is added so the section references are updated.

LOG NUMBER	PROPOSED SECTION AND TITLE	TYPE OF CHANGE	DESCRIPTION
21-GP2-082 21-GP2-089	R402.4.1.3 Leakage rate	Code change (21-GP2-082, 21-GP2-089)	A new set of subsections was added to separate out the requirements for single family and multifamily dwelling air leakage testing. The maximum leakage rate was reduced to 3 air changes per hour for single family and 0.25 cfm (the same as the commercial requirement) for multifamily.
21-GP2-081	R402.4.2 Fireplaces	Code change/editorial (21-GP2-081)	This section was moved to R402.3.6.
	R402.4.2.1 Gas fireplace efficiency	Code change/editorial (21-GP2-081)	This section was moved to Section R403.7.2.
	R402.4.4 Combustion air openings	Code change/editorial (21-GP2-081)	This section was moved to R402.3.5.
21-GP2-015	R403.12 Residential pools and permanent residential spas	Code change/editorial (21-GP2-015)	Removes "Where installed," at the beginning of the revised IECC section. (Note: no change is shown in R403.5.4 as ICC added this language for the 2021 code, but it was removed via 014, so there is no actual change.)
21-GP2-013	R403.5.1.1 Demand recirculation water systems serving an individual dwelling unit	Code change/editorial (21-GP2-013)	
21-GP2-014	R403.5.4 Drain water heat recovery	Code change/editorial (21-GP2-014)	
21-GP2-065	R403.13 Heat pump space heating	Code change (21-GP2-065)	This new section requires that space heating be provided by a heat pump—either gas or electric—as a method to reduce greenhouse gas emissions and save energy. There are exceptions provided for dwellings with small heating loads and allowances for supplementary heating following the requirements of Section R403.1.2.
	Table R405.4.2(1) Specifications for the standard reference and proposed designs	Code change (21-GP2-065)	Heating system is revised to align with the baseline of heat pump heating introduced in this code through 21-GP2-065.
	R503.1.2 Heating and cooling systems	Code change (21-GP2-065)	An exception was added to this section to state that replacement heating equipment is not required to comply with the heat pump requirement as long as it does not exceed the heating capacity of the equipment being replaced.

LOG NUMBER	PROPOSED SECTION AND TITLE	TYPE OF CHANGE	DESCRIPTION
21-GP2-066	R403.5.7 Heat pump water heating	Code change (21-GP2-066)	This new section requires that service water heaters in single family dwellings, duplexes and townhouses be provided by heat pump water heaters. Exceptions are provided for small water heaters, small dwelling units, supplemental water heating systems, and some renewable energy systems. This includes allowances for both gas and electric heat pump water heaters.
	R403.5.7.1 Supplementary heat for heat pump water heating systems	Code change (21-GP2-066)	This is a support section for R403.5.7 and sets requirements for when a supplemental water heating system can be used with the heat pump water heater.
	Table R405.4.2(1) Specifications for the standard reference and proposed designs	Code change (21-GP2-066)	Service water heating was revised to align with the baseline of heat pump water heating as introduced in this code through 21-GP2-066.
	R503.1.3 Service hot water systems	Code change (21-GP2-066)	An exception was added to this section to state that replacement water heating equipment is not required to comply with the heat pump requirement as long as it does not exceed the heating capacity of the equipment being replaced.
21-GP2-032	R403.3.4.1 Sealed air handler	Code change (21-GP2-032)	This change requires the air handler to be located within the conditioned space.
21-GP2-049	R403.4.1 Protection of piping insulation	Code change (21-GP2-049)	Clarification of the intent or equipment maintenance, along with a requirement that the insulation be removable near the equipment requiring maintenance.
21-GP2-080	R403.5.5 Water heater installation location	Code change (21-GP2-080)	This section requires that water heaters be located within conditioned space except for highly efficient water heaters where the standby losses are overcome by the efficiency of the unit performance.
21-GP2-046	R403.5.2 Water volume determination (new)	Code change (21-GP2-046)	This section just provides the reference and procedure for determining the volume of water in piping when selecting one of the new options for credits in Section R406. This is not a base code requirement.
	Table R406.3 Energy credits	Code change (21-GP2-046)	New Option 5.2 provides half a credit for compact hot water distribution systems as is required in the commercial energy code provisions and as detailed in Section R403.5.2.
21-GP2-070	Table R405.2(2) Carbon emissions factors	Code change (21-GP2-070)	This table is moved from R405.3 to R405.2(2) and the metric for electricity is changes from 0.80 to 0.44 to better align with the commercial energy code, the Clean Buildings law and the OFM lifecycle cost tool.

LOG NUMBER	PROPOSED SECTION AND TITLE	TYPE OF CHANGE	DESCRIPTION
21-GP2-073	R406.2 Carbon emission equalization	Code change (21-GP2-073)	The last sentence was removed. It was deemed redundant.
	Table R406.2 Fuel normalization credits	Code change (21-GP2-073)	There are two options being presented for this table. Both options revise the table to include more detailed descriptions of heating systems and supplemental systems. Option 1 is the initial technical advisory group recommendation based on the original proposal and the goal of achieving the required energy savings for the cycle. Option 2 is a revised proposal that takes into account the other code change proposals going forward to public hearing and the changes in equipment values based on the new requirements in the proposed rule.
	R406.3 Additional energy efficiency requirements	Code change (21-GP2-073)	Again, there are two options being presented for this table. Both tables include a new 150 square foot threshold for additions to trigger this requirement. Option 1 is the initial technical advisory group recommendation based on the original proposal and the goal of achieving the required energy savings for the cycle. Option 2 is a revised proposal that takes into account the other code change proposals going forward to public hearing and the reduction in energy use based on the new requirements in the proposed rule.
	Table R406.3 Energy credits	Code change (21-GP2-073)	This section also has two options. For both options, one half point is equivalent to a 600 kWh energy savings. Some options were eliminated due to the fact they are now a part of the base code requirements. Option 1 is the initial technical advisory group recommendation based on the original proposal. The credits are based on the heating system type from Table R406.2. Option 2 is a revised proposal that takes into account the other code change proposals going forward to public hearing. Based on the heat pump space and water heating changes, there is no differentiating between the systems types for point values. Instead, there are options that are just not available with some systems types, as identified by footnote d. Some options are no longer available based on the fact that the base requirements now incorporate the provisions contained therein; some are just adjusted to yield a similar energy savings over the base code, or the point value is changed based on the savings reflected.
21-GP2-022	R401.2 Compliance	Code change (21-GP2-022)	This change corrects an error in the previous code that stated that compliance via Section R405 also required compliance with Section R406. R405 carries its own additional credit weighting and thus is not intended to also comply with Section R406.
	Table R405.2(1) Mandatory compliance measures for total building performance	Code change (21-GP2-022)	An error is also corrected by removing reference to R406. The additional efficiency is covered by the energy reduction targets in items 2 through 5 of Section R405.2
21-GP2-034	Table R406.3 Energy credits	Code change (21-GP2-0234)	New Option 3.8 allows a half credit for a connected thermostat.
21-GP2-023	Table R406.3 Energy credits	Code change (21-GP2-023)	Option 3.2 requires a cold climate heat pump to be used in areas with a winter design temperature at 23° or below.
21-GP2-024	Table R406.3 Energy credits	Code change (21-GP2-024)	Option 3.5 allows an alternate cold climate 10 HSPF heat pump to be substituted for an 11 HSPF heat pump but will require a cold climate heat pump similar to Option 3.2 in 023, above.
21-GP2-025	Table R406.3 Energy credits	Code change (21-GP2-025)	Option 3.6 also allows a substitution of a 9 HSPF heat pump for the required 10 HSPF in some cases.

LOG NUMBER	PROPOSED SECTION AND TITLE	TYPE OF CHANGE	DESCRIPTION
21-GP2-050	Table R406.3 Energy credits	Code change (21-GP2-050)	New Option 3.7 provides credit for an air to water heat pump with a COP rating of 3.2.
21-GP2-047	Table R406.3 Energy credits	Code change (21-GP2-047)	New Option 5.2 provides half a credit for compact hot water distribution systems as is required in the commercial energy code provisions and as detailed in Section R403.5.2.
	R403.5.2 Water volume determination (new)	Code change (21-GP2-047)	This section just provides the reference and procedure for determining the volume of water in piping when selecting one of the new options for credits in Section R406. This is not a base code requirement.
21-GP2-035	R406.3 Additional energy efficiency requirements	Code change (21-GP2-035)	Both options include a new 150 square foot threshold for additions to trigger this requirement.
	R502.1 General (Additions)	Code change/editorial (21-GP2-035)	The phrase "except as specified in this chapter" was added to support the new section R502.3.1.1.
	R502.1.1 Small additions	Code change (21-GP2-035)	A new section was added to exempt small additions (less than 150 ft ²) from the requirement to obtain additional energy efficiency credits in Section R406.
	R502.3.1.1 Existing ceilings with attic spaces	Code change (21-GP2-035)	This new section requires that when additions over 150 square feet adjoin existing attic spaces, the existing attic space needs to be brought into full compliance with the envelope provisions in R402.
	R502.3.2 Heating and cooling systems	Code change (21-GP2-035)	The section is reworded for clarity, and exception 1 is correlated with the change in R502.1.1. Former exception 3 is deleted to correlate with the IECC change to require all ducts to be tested.

Reasons Supporting Proposal: The proposal helps increase energy efficiency and decrease greenhouse gas emissions as stated in RCW 19.27A.020 and 19.27A.160, and provides additional clarity in regulations to assist both builders and enforcers.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.045, 19.27A.160.

Statute Being Implemented: Chapter 19.27A RCW.

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

Name of Proponent: SBCC and various stakeholders, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, 1500 Jefferson [Street] S.E., P.O. Box 41449, Olympia, WA, 360-407-9278; and Enforcement: Local jurisdictions.

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 Stoyan Bumbalov, P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9255, email sbcc@des.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates

the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Those portions of the rule that are exempt from the Regulatory Fairness Act (RFA) are changes that adopt a national model code provision by reference and are those noted as "2021 IECC Change" in the complete description of all changes found at <https://sbcc.wa.gov/sites/default/files/2022-08/2021%20WSEC-R%20full%20change%20description.pdf>.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Those portions of the rule that are exempt from RFA are those noted as "2021 IECC Change" in the complete description of all changes found at <https://sbcc.wa.gov/sites/default/files/2022-08/2021%20WSEC-R%20full%20change%20description.pdf>. These are changes that adopt a national model code provision by reference.

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

Small Business Economic Impact Statement (SBEIS)

There are costs imposed by the proposed rules, but the costs do not fall disproportionately on small businesses. These rules will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rules do not impact employment, reporting or recordkeeping

Description: The Washington state building code council (council) is filing a proposed rule to adopt the updated 2021 edition of IECC with state amendments, known as the 2021 Washington State Energy Code (WSEC): Chapter 51-11R WAC. Since 1985, the council has been responsible to update to new editions of the building code per RCW 19.27.074 and 19.27A.025.

The administrative compliance requirements are under the authority of the local government as dictated by RCW 19.27.050. Enforcement activities including permit issuance, plan review and approval, and inspections occur at the local level. Requirements for construction document submittal and other reporting requirements are determined by the local jurisdiction and are consistent with previously established policies. The proposed amendments to chapter 51-11R WAC include specific technical requirements for building construction to be consistent with national standards.

WSEC is updated every three years by the council. The code development process conducted by the model code organization is open to all interest groups within the design and construction industry and from governmental organizations. See www.iccsafe.org for more information about the model code development process.

Professional Services: Washington has had a statewide building code in effect since 1974. The local enforcement authority having jurisdiction administers the codes through the building and/or fire departments. Administrative procedures for state building code compliance are established and will not be changed by the adoption of the update to the current building codes. Small businesses will employ the same types of professional services for the design and construction of buildings and systems to comply with the state building code.

The proposed rule updates the state building code and does not require additional equipment, supplies, labor or other services. Services needed to comply with the building code as required by the local authority having jurisdiction.

Costs of Compliance for Businesses: The statewide code amendment proposal process is defined in chapter 51-04 WAC and the council by-laws. The council accepts proposals to amend WSEC to meet the legislative goals stated in RCW 19.27A.020 and 19.27A.160. Proposals must increase the energy efficiency in buildings. Each proponent must identify the economic impact of the proposed amendment and quantify costs. The council developed a specific set of forms for WSEC, so proponents could identify where a proposed amendment was editorial, technical or a policy change.

The council received 44 proposals to improve WSEC. The energy code technical advisory group (TAG) recommended approval of 29 amendments as submitted or as modified. Eight proposed amendments were identified by TAG as having a significant cost, with another seven having a minor or optional cost. None of these were identified as having a significant impact on small businesses.

The energy code TAG determined there is a cost for compliance on businesses for the following proposed state amendments. The council recommended filing the proposed rule to allow input through the public hearing process.

LOG NUMBER	PROPOSED SECTION AND TITLE/DESCRIPTION	ECONOMIC IMPACT
21-GP2-065	<p>R403.13 Heat pump space heating. Table R405.4.2(1) Specifications for the standard reference and proposed designs. R503.1.2 Heating and cooling systems. This requires that space heating be provided by a heat pump—either gas or electric—as a method to reduce greenhouse gas emissions and save energy. There are exceptions provided for dwellings with small heating loads and allowances for supplementary heating following the requirements of Section R403.1.2. Replacement heating equipment is not required to comply with the heat pump requirement as long as it does not exceed the heating capacity of the equipment being replaced.</p>	<p>Cost: Estimated at \$2,725 per dwelling unit or \$1.14 per square foot. Energy Savings: Estimated annual energy savings of 3.85 kWh per dwelling or 5.5 kBTU per square foot.</p>
21-GP2-066	<p>R403.5.7 Heat pump water heating. R403.5.7.1 Supplementary heat for heat pump water heating systems. Table R405.4.2(1) Specifications for the standard reference and proposed design. R503.1.3 Service hot water systems. This requires that service water heaters in single family dwellings, duplexes and townhouses be provided by heat pump water heaters. Exceptions are provided for small water heaters, small dwelling units, supplemental water heating systems, and some renewable energy systems. This includes allowances for both gas and electric heat pump water heaters. Replacement water heating equipment is not required to comply with the heat pump requirement as long as it does not exceed the heating capacity of the equipment being replaced.</p>	<p>Cost: Estimated cost of \$646 per dwelling or \$0.27 per square foot. Energy Savings: 2.3 kWh or 3.2 kBTU per square foot.</p>

LOG NUMBER	PROPOSED SECTION AND TITLE/DESCRIPTION	ECONOMIC IMPACT
21-GP2-084	<p>R202 Definition "Residential building."</p> <p>R401.1 Scope. This definition change alters the scope of the Washington State Energy Code, Residential Provisions to resemble more closely that of the International Residential Code. Multifamily buildings with dwellings directly accessed from the outdoors will remain in the residential provisions, but other R-2 buildings are moved under the commercial provisions.</p>	<p>The proponent deemed that this would most likely be cost neutral. In some cases, there would be a cost savings for the buildings constructed under the commercial code, between the decreased envelope insulation requirements and the additional energy efficiency credits required for that code. There would be some education costs.</p>
21-GP2-079	<p>Table R402.1.2/R402.1.3 Insulation and fenestration requirements by component. This proposal changes the fenestration U-factor from 0.30 to 0.28 in both tables.</p>	<p>Cost: Estimated cost of about \$400 per dwelling unit Energy Savings: Estimated at 389 kBtu per dwelling or 0.18 kBtu per square foot</p>
21-GP2-073	<p>Table R406.2 Fuel normalization credits. There are two options being presented for this table. Both options revise the table to include more detailed descriptions of heating systems and supplemental systems. Option 1 is the initial technical advisory group recommendation based on the original proposal and the goal of achieving the required energy savings for the cycle. Option 2 is a revised proposal that takes into account the other code change proposals going forward to public hearing and the changes in equipment values based on the new requirements in the proposed rule.</p> <p>R406.3 Additional energy efficiency requirements. Again, there are two options being presented for this table. Both tables include a new 150 square foot threshold for additions to trigger this requirement. Option 1 is the initial technical advisory group recommendation based on the original proposal and the goal of achieving the required energy savings for the cycle. Option 2 is a revised proposal that takes into account the other code change proposals going forward to public hearing and the reduction in energy use based on the new requirements in the proposed rule.</p> <p>Table R406.3 Energy credits. This section also has two options. For both options, one half point is equivalent to a 600 kWh energy savings. Some options were eliminated due to the fact they are now a part of the base code requirements. Option 1 is the initial technical advisory group recommendation based on the original proposal. The credits are based on the heating system type from Table R406.2. Option 2 is a revised proposal that takes into account the other code change proposals going forward to public hearing. Based on the heat pump space and water heating changes, there is no differentiating between the systems types for point values. Instead, there are options that are just not available with some systems types, as identified by footnote d. Some options are no longer available based on the fact that the base requirements now incorporate the provisions contained therein; some are just adjusted to yield a similar energy savings over the base code, or the point value is changed based on the savings reflected.</p>	<p>The cost models were based on the changes moving forwards as Option 1. If Option 2 is the option moving forward, the cost will decrease from that of the 2018 code for most dwellings based on the reduced number of additional efficiency credits required. Costs will vary depending on the options selected. There was no comparison of the difference in cost between the 2018 and 2021 requirements, but only a measure by measure estimate of cost based on 6 prototype buildings. Those costs ranged from \$173 to \$5,245 per dwelling. Energy savings for various prototype buildings and systems range from 4 kWh to 1941 kWh annually.</p>
21-GP2-080	<p>R403.5.5 Water heater installation location. This section requires that water heaters be located within conditioned space except for highly efficient water heaters where the standby losses are overcome by the efficiency of the unit performance.</p>	<p>Cost: Estimated cost of about \$746 per dwelling unit or \$0.33 per square foot. Energy Savings: Estimated annual energy savings of 271 kWh per dwelling unit.</p>

LOG NUMBER	PROPOSED SECTION AND TITLE/DESCRIPTION	ECONOMIC IMPACT
21-GP2-032	R403.3.4.1 Sealed air handler. This change requires the air handler to be located within the conditioned space.	Cost: Estimated incremental cost of \$100 per dwelling unit. Energy Savings: Estimated annual energy savings is \$30 to \$60.
21-GP2-089	R402.4.1.3 Leakage rate. The maximum leakage rate was reduced to 3 air changes per hour for single family and 0.25 cfm (the same as the commercial requirement) for multifamily.	It was deemed there is no increase in cost. While the leakage rate was reduced, the cost of testing remains the same. More attention must be paid to construction best practices to adequately seal the building thermal envelope.
21-GP2-035	R502.3.1.1 Existing ceilings with attic spaces. This new section requires that when additions over 150 square feet adjoin existing attic spaces, the existing attic space needs to be brought into full compliance with the envelope provisions in R402.	This proposal was tied to the new exception exempting additions less than 150 square feet from Section C406 compliance and was not evaluated separately for costs and energy savings. There would be an added cost based on the square footage of existing attic space needing to be upgraded. Estimated cost is between \$0.80 and \$2.60 per square foot. Estimated annual energy savings is approximately 0.6 percent.
21-GP2-088	R402.4.1.2 Testing. The specifics on the testing standard were moved from the exception into the main body of the section and the test must include information on the time, date and location where performed. Requirements were also added that the testing personnel be trained by an accredited program. The second exception from the second set of exceptions was moved to Section R402.4.1.3. The volume adjustment capping the ceiling height at 8.5 feet was removed.	There was some debate at the TAG as to whether there would be a cost associated with this measure, focusing on the requirement for training from an accredited program. Ultimately, it was determined that there would be little to no increase. There are no energy savings associated with this proposal, other than ensuring proper testing to achieve the originally intended savings.
The following proposals add options to the menu of additional energy efficiency credits to be selected. These are optional items that may be selected as part of the package for the required credits.		
21-GP2-023	Table R406.3 Energy credits. Option 3.2 requires a cold climate heat pump to be used in areas with a winter design temperature at 23° or below.	Cost: Estimated incremental cost is \$1000 per dwelling unit. Energy savings: Estimated annual energy savings of 4,000 kWh, or \$400 per year.
21-GP2-024	Table R406.3 Energy credits. Option 3.5 allows an alternate cold climate 10 HSPF heat pump to be substituted for an 11 HSPF heat pump but will require a cold climate heat pump similar to Option 3.2 in 023, above.	Cost: Estimated incremental cost is \$1500 per dwelling unit. Energy savings: Estimated annual energy savings of 4,000 kWh, or \$400 per year.
21-GP2-025	Table R406.3 Energy credits. Option 3.6 also allows a substitution of a 9 HSPF heat pump for the required 10 HSPF in some cases.	Cost: Estimated incremental cost is \$1500 per dwelling unit. Energy savings: Negligible for single zone systems, but significant for multi-zone systems.

LOG NUMBER	PROPOSED SECTION AND TITLE/DESCRIPTION	ECONOMIC IMPACT
21-GP2-050	Table R406.3 Energy credits. New Option 3.7 provides credit for an air to water heat pump with a COP rating of 3.2.	Cost: Estimated incremental cost is \$4000 per dwelling unit. Energy savings: Estimated annual energy savings of 6,000 to 12,000 kWh, or \$700 to \$1400 per year.
21-GP2-034	Table R406.3 Energy credits. New Option 3.8 allows a half credit for a connected thermostat.	Cost: Estimated incremental cost is \$200 per dwelling unit. Energy savings: Estimated annual energy savings of 600 kWh, or \$60 per year.

Loss of Sales or Revenue: The proposed rules make the state code for building construction consistent with national standards. Businesses with new products or updated testing or design standards are recognized in the updated building code. For these businesses there will be a gain in sales and revenue.

The results of reduced energy use in buildings include avoiding the need for new power generation, reducing environmental impact, and providing local employment. The legislative findings state that energy efficiency is the cheapest, quickest, and cleanest way to meet rising energy needs, confront climate change, and boost our economy.

Cost of Compliance for Small Businesses: The majority of businesses affected by the updates to the building codes are small businesses, over 95 percent of those listed in the construction and related industries have under 50 employees. The costs per employee are comparable between the largest businesses and the majority of small businesses. The cost to comply with the updated codes is not a disproportionate impact on small businesses. Where the council found the cost of compliance for small businesses to be disproportionate, the proposed rule sought to mitigate the cost through modification of the proposal. The proposed rules include a definition of small business and provide exceptions for compliance with the updated rule.

Small Businesses Involved in the Development of the Rule: SBCC conducted open public meetings of the energy code TAG, available via Zoom and telephone conference bridge, and allowed comment on every item on every agenda. SBCC appointed over 100 representatives of all segments of the business and construction community to serve on the various TAGs.

List of Industries: Below is a list of industries required to comply with the commercial energy code:

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$32,067.43	\$17,160.94* 2020 Dataset pulled from USBLS	\$32,067.43 2020 Dataset pulled from DOR
236118	Residential Remodelers	\$1,457.74	\$1,457.74* 2020 Dataset pulled from USBLS	\$901.20 2020 Dataset pulled from DOR
238110	Poured Concrete Foundation and Structure Contractors	\$3,442.28	\$5,027.07 2019 Dataset pulled from CBP	\$3,442.28 2020 Dataset pulled from DOR
238120	Structural Steel and Precast Concrete Contractors	\$15,401.97	\$20,212.19 2019 Dataset pulled from CBP	\$15,401.97 2020 Dataset pulled from DOR

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
238130	Framing Contractors	\$2,234.30	\$3,139.71 2019 Dataset pulled from CBP	\$2,234.30 2020 Dataset pulled from DOR
238140	Masonry Contractors	\$1,900.60	\$3,582.13 2019 Dataset pulled from CBP	\$1,900.60 2020 Dataset pulled from DOR
238150	Glass and Glazing Contractors	\$5,255.36	\$9,574.95 2019 Dataset pulled from CBP	\$5,255.36 2020 Dataset pulled from DOR
238160	Roofing Contractors	\$3,589.99	\$5,007.86 2019 Dataset pulled from CBP	\$3,589.99 2020 Dataset pulled from DOR
238170	Siding Contractors	\$1,905.61	\$2,485.86 2019 Dataset pulled from CBP	\$1,905.61 2020 Dataset pulled from DOR
238190	Other Foundation; Structure; and Building Exterior Contractors	\$4,622.07	\$4,141.38 2019 Dataset pulled from CBP	\$4,622.07 2020 Dataset pulled from DOR
238210	Electrical Contractors and Other Wiring Installation Contractors	\$5,941.60	\$9,599.33 2019 Dataset pulled from CBP	\$5,941.60 2020 Dataset pulled from DOR
238220	Plumbing; Heating; and Air-Conditioning Contractors	\$5,353.76	\$11,047.00 2019 Dataset pulled from CBP	\$5,353.76 2020 Dataset pulled from DOR
238290	Other Building Equipment Contractors	\$4,335.21	\$16,142.07 2019 Dataset pulled from CBP	\$4,335.21 2020 Dataset pulled from DOR
238310	Drywall and Insulation Contractors	\$3,725.66	\$9,461.67 2019 Dataset pulled from CBP	\$3,725.66 2020 Dataset pulled from DOR
238990	All Other Specialty Trade Contractors	\$3,585.74	\$3,677.28 2019 Dataset pulled from CBP	\$3,585.74 2020 Dataset pulled from DOR
321214	Truss Manufacturing	\$28,620.35	\$23,341.04 2020 Dataset pulled from ESD	\$28,620.35 2020 Dataset pulled from DOR
321911	Wood Window and Door Manufacturing	\$45,151.12	\$18,811.08 2020 Dataset pulled from ESD	\$45,151.12 2020 Dataset pulled from DOR
327310	Cement Manufacturing	\$50,878.29	\$44,741.20 2020 Dataset pulled from ESD	\$50,878.29 2020 Dataset pulled from DOR
327320	Ready-Mix Concrete Manufacturing	\$64,317.30	\$46,126.21 2020 Dataset pulled from ESD	\$64,317.30 2020 Dataset pulled from DOR
327331	Concrete Block and Brick Manufacturing	\$15,030.60	\$15,030.60 2020 Dataset pulled from ESD	\$10,431.02 2020 Dataset pulled from DOR
332312	Fabricated Structural Metal Manufacturing	\$22,220.31	\$16,337.10 2020 Dataset pulled from USBLS	\$22,220.31 2020 Dataset pulled from DOR
332321	Metal Window and Door Manufacturing	\$26,369.28	\$14,505.40 2020 Dataset pulled from ESD	\$26,369.28 2020 Dataset pulled from DOR

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
332322	Sheet Metal Work Manufacturing	\$23,337.23	\$23,337.23 2020 Dataset pulled from ESD	\$16,556.52 2020 Dataset pulled from DOR
335121	Residential Electric Lighting Fixture Manufacturing	\$2,011.37	\$2,011.37 2020 Dataset pulled from USBLS	\$1,502.01 2020 Dataset pulled from DOR
335129	Other Lighting Equipment Manufacturing	\$6,281.32	\$6,281.32 2020 Dataset pulled from ESD	\$2,494.40 2020 Dataset pulled from DOR
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$24,486.53	\$16,589.10 2020 Dataset pulled from ESD	\$24,486.53 2020 Dataset pulled from DOR
541310	Architectural Services	\$9,221.65	\$9,221.65 2020 Dataset pulled from ESD	\$3,738.99 2020 Dataset pulled from DOR
541330	Engineering Services	\$14,801.92	\$14,801.92 2020 Dataset pulled from USBLS	\$7,177.43 2020 Dataset pulled from DOR

A copy of the statement may be obtained by contacting Stoyan Bumalov, P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9255, email sbcc@des.wa.gov.

August 23, 2022
Tony Doan
Council Chair

OTS-4009.2

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-10100 Section R101—Scope and general requirements.

R101.1 Title. This code shall be known as the *Washington State Energy Code-Residential*, and shall be cited as such. It is referred to herein as "this code."

The 2021 edition of the *Washington State Energy Code* is hereby adopted. The *Washington State Energy Code* adopted under chapter 51-11R WAC shall become effective in all counties and cities of this state on July 1, 2023.

R101.2 Scope. This code applies to *residential buildings* and the buildings sites and associated systems and equipment. This code shall be the maximum and minimum energy code for residential construction in each town, city and county. Residential *sleeping units*, Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC shall utilize the commercial building sections of the en-

ergy code regardless of the number of stories of height above grade plane.

R101.3 Intent. This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.

R101.4 Applicability. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern.

R101.4.1 Mixed residential and commercial buildings. Where a building includes both *residential* building and *commercial* building portions, each portion shall be separately considered and meet the applicable provisions of the WSEC - Commercial or WSEC - Residential Provisions.

R101.5 Compliance. *Residential buildings* shall meet the provisions of WSEC - Residential Provisions. *Commercial buildings* shall meet the provisions of WSEC - Commercial Provisions.

R101.5.1 Compliance materials. The *code official* shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-10100, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, and chapters 19.27, 19.27A, and 34.05 RCW. WSR 17-17-160, § 51-11R-10100, filed 8/23/17, effective 10/1/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-10100, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10100, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-10200 Section R102—Alternative materials, design and methods of construction and equipment.

R102.1 General. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. The *code official* shall have the authority to approve an alternative material, design or method of construction upon the written application of the owner or owner's authorized agent. The code official shall first find that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code for strength, effectiveness, fire resistance,

durability, energy efficiency and safety. (~~(Where the alternative material, design or method of construction is not approved,)~~) The code official shall respond in writing, stating the reason why the alternative was approved or was not approved.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-10200, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-10200, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10200, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-10300 Section R103—Construction documents.

R103.1 General. Construction documents, technical report, and other supporting data shall be submitted in one or more sets, or in a digital format where allowed by the code official, with each application for a permit. The construction documents and technical reports shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the *code official* is authorized to require necessary construction documents to be prepared by a registered design professional.

EXCEPTION: The *code official* is authorized to waive the requirements for construction documents or other supporting data if the *code official* determines they are not necessary to confirm compliance with this code.

R103.2 Information on construction documents. Construction documents shall be drawn to scale upon suitable material. Electronic media documents are permitted to be submitted when *approved* by the *code official*. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed, and show in sufficient detail pertinent data and features of the building, systems and equipment as herein governed. Details shall include, but are not limited to, the following as applicable:

1. Energy compliance path per Section R401.2.
2. Insulation materials and their R-values.
- ~~((2-))~~ 3. Fenestration U-factors and SHGCs.
- ~~((3-))~~ 4. Area-weighted U-factor and SHGC calculations.
- ~~((4-))~~ 5. Mechanical system design criteria.
- ~~((5-))~~ 6. Mechanical and service water heating system and equipment types, sizes and efficiencies.
- ~~((6-))~~ 7. Equipment and systems controls.
- ~~((7-))~~ 8. Duct sealing, duct and pipe insulation and location.
- ~~((8-))~~ 9. Air sealing details.

R103.2.1 Building thermal envelope depiction. The building's thermal envelope shall be represented on the construction documents.

R103.3 Examination of documents. The *code official* shall examine or cause to be examined the accompanying construction documents and shall ascertain whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws

or ordinances. The *code official* is authorized to utilize a registered design professional or other approved entity not affiliated with the building design or construction in conducting the review of the plans and specifications for compliance with the code.

R103.3.1 Approval of construction documents. When the *code official* issues a permit where construction documents are required, the construction documents shall be endorsed in writing and stamped "Reviewed for Code Compliance." Such *approved* construction documents shall not be changed, modified or altered without authorization from the *code official*. Work shall be done in accordance with the *approved* construction documents.

One set of construction documents so reviewed shall be retained by the *code official*. The other set shall be returned to the applicant, kept at the site of work and shall be open to inspection by the *code official* or a duly authorized representative.

R103.3.2 Previous approvals. This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

R103.3.3 Phased approval. The *code official* shall have the authority to issue a permit for the construction of part of an energy conservation system before the construction documents for the entire system have been submitted or *approved*, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holders of such permit shall proceed at their own risk without assurance that the permit for the entire energy conservation system will be granted.

R103.4 Amended construction documents. Work shall be installed in accordance with the *approved* construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

R103.5 Retention of construction documents. One set of *approved* construction documents shall be retained by the *code official* for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-10300, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10300, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-10400 Section R104—(~~Inspections~~) Fees.

~~(R104.1 General. Construction or work for which a permit is required shall be subject to inspection by the code official or his or her des-~~

~~ignated agent, and such construction or work shall remain visible and able to be accessed for inspection purposes until approved. It shall be the duty of the permit applicant to cause the work to remain visible and able to be accessed for inspection purposes. Neither the code official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material, product, system or building component required to allow inspection to validate compliance with this code.~~

~~**R104.2 Required inspections.** The code official or his or her designated agent, upon notification, shall make the inspections set forth in Sections R104.2.1 through R104.2.5.~~

~~**R104.2.1 Footing and foundation inspection.** Inspections associated with footings and foundations shall verify compliance with the code as to R-value, location, thickness, depth of burial and protection of insulation as required by the code and approved plans and specifications.~~

~~**R104.2.2 Framing and rough-in inspection.** Inspections at framing and rough-in shall be made before application of interior finish and shall verify compliance with the code as to types of insulation and corresponding R-values and their correct location and proper installation; fenestration properties (U-factor and SHGC) and proper installation; and air leakage controls as required by the code and approved plans and specifications.~~

~~**R104.2.2.1 Wall insulation inspection.** The code official, upon notification, shall make a wall insulation inspection in addition to those inspections required in Section R109 of the International Residential Code. This inspection shall be made after all wall and cavity insulation is in place and prior to cover.~~

~~**R104.2.3 Plumbing rough-in inspection.** Inspections at plumbing rough-in shall verify compliance as required by the code and approved plans and specifications as to types of insulation and corresponding R-values and protection, and required controls.~~

~~**R104.2.4 Mechanical rough-in inspection.** Inspections at mechanical rough-in shall verify compliance as required by the code and approved plans and specifications as to installed HVAC equipment type and size, required controls, system insulation and corresponding R-value, system air leakage control, programmable thermostats, dampers, whole-house ventilation and minimum fan efficiency.~~

~~EXCEPTION: Systems serving multiple dwelling units shall be inspected in accordance with Section C104.2.4.~~

~~**R104.2.5 Final inspection.** The building shall have a final inspection and not be occupied until approved.~~

~~**R104.3 Reinspection.** A building shall be reinspected when determined necessary by the code official.~~

~~**R104.4 Approved inspection agencies.** The code official is authorized to accept reports of third-party inspection agencies not affiliated with the building design or construction, provided such agencies are approved as to qualifications and reliability relevant to the building components and systems they are inspecting.~~

~~**R104.5 Inspection requests.** It shall be the duty of the holder of the permit or their duly authorized agent to notify the code official when work is ready for inspection. It shall be the duty of the permit hold-~~

er to provide access to and means for inspections of such work that are required by this code.

R104.6 Reinspection and testing. Where any work or installation does not pass an initial test or inspection, the necessary corrections shall be made so as to achieve compliance with this code. The work or installation shall then be resubmitted to the *code official* for inspection and testing.

R104.7 Approval. After the prescribed tests and inspections indicate that the work complies in all respects with this code, a notice of approval shall be issued by the *code official*.

R104.7.1 Revocation. The *code official* is authorized to, in writing, suspend or revoke a notice of approval issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure, premise, or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.)

R104.1 Fees. A permit shall not be issued until the fees prescribed in Section R107.2 have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

R104.2 Schedule of permit fees. A fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

R104.3 Work commencing before permit issuance. Any person who commences any work before obtaining the necessary permits shall be subject to an additional fee established by the *code official*, which shall be in addition to the required permit fees.

R104.4 Related fees. The payment of the fee for the construction, alteration, removal, or demolition of work done in connection to or concurrently with the work or activity authorized by a permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

R104.5 Refunds. The *code official* is authorized to establish a refund policy.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-10400, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-10400, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-10400, filed 5/2/17, effective 6/2/17; WSR 16-02-127, § 51-11R-10400, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10400, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-10500 Section R105—((Validity)) Inspections.

R105.1 General. ~~((If a portion of this code is held to be illegal or void, such a decision shall not affect the validity of the remainder of this code.))~~ Construction or work for which a permit is required shall be subject to inspection by the code official or his or her designated agent, and such construction or work shall remain visible and able to be accessed for inspection purposes until approved. It shall be the duty of the permit applicant to cause the work to remain visible and able to be accessed for inspection purposes. Neither the code official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material, product, system or building component required to allow inspection to validate compliance with this code.

R105.2 Required inspections. The code official or his or her designated agent, upon notification, shall make the inspections set forth in Sections R104.2.1 through R104.2.5.

R105.2.1 Footing and foundation inspection. Inspections associated with footings and foundations shall verify compliance with the code as to R-value, location, thickness, depth of burial and protection of insulation as required by the code and approved plans and specifications.

R105.2.2 Framing and rough-in inspection. Inspections at framing and rough-in shall be made before application of interior finish and shall verify compliance with the code as to types of insulation and corresponding R-values and their correct location and proper installation; fenestration properties (U-factor and SHGC) and proper installation; and air leakage controls as required by the code and approved plans and specifications.

R105.2.2.1 Wall insulation inspection. The code official, upon notification, shall make a wall insulation inspection in addition to those inspections required in Section R109 of the International Residential Code. This inspection shall be made after all wall and cavity insulation is in place and prior to cover.

R105.2.3 Plumbing rough-in inspection. Inspections at plumbing rough-in shall verify compliance as required by the code and approved plans and specifications as to types of insulation and corresponding R-values and protection, and required controls.

R105.2.4 Mechanical rough-in inspection. Inspections at mechanical rough-in shall verify compliance as required by the code and approved plans and specifications as to installed HVAC equipment type and size, required controls, system insulation and corresponding R-value, system air leakage control, programmable thermostats, dampers, whole-house ventilation and minimum fan efficiency.

EXCEPTION: Systems serving multiple dwelling units shall be inspected in accordance with Section C104.2.4.

R105.2.5 Final inspection. The building shall have a final inspection and not be occupied until approved.

R105.3 Reinspection. A building shall be reinspected when determined necessary by the code official.

R105.4 Approved inspection agencies. The code official is authorized to accept reports of third-party inspection agencies not affiliated with the building design or construction, provided such agencies are

approved as to qualifications and reliability relevant to the building components and systems they are inspecting.

R105.5 Inspection requests. It shall be the duty of the holder of the permit or their duly authorized agent to notify the code official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

R105.6 Reinspection and testing. Where any work or installation does not pass an initial test or inspection, the necessary corrections shall be made so as to achieve compliance with this code. The work or installation shall then be resubmitted to the code official for inspection and testing.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10500, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-10600 Section R106—((Referenced standards)) Notice of approval.

~~((R106.1 Referenced codes and standards. The codes and standards referenced in this code shall be those listed in Chapter 5, and such codes and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections R106.1.1 and R106.1.2.~~

~~**R106.1.1 Conflicts.** Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.~~

~~**R106.1.2 Provisions in referenced codes and standards.** Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.~~

~~**R106.2 Application of references.** References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.~~

~~**R106.3 Other laws.** The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law. In addition to the requirements of this code, all occupancies shall conform to the provisions included in the state building code (chapter 19.27 RCW). In case of conflicts among codes enumerated in RCW 19.27.031 (1) through (4) and this code, an earlier named code shall govern over those following. In the case of conflict between the duct sealing and insulation requirements of this code and the duct insulation requirements of Sections 603 and 604 of the *International Mechanical Code*, the duct insulation requirements of this code shall govern.)~~

R106.1 Approval. After the prescribed tests and inspections indicate that the work complies in all respects with this code, a notice of approval shall be issued by the code official.

R106.2 Revocation. The code official is authorized to, in writing, suspend or revoke a notice of approval issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure, premise, or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-10600, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10600, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-10700 Section R107—((Fees)) Validity.

~~((R107.1 Fees. A permit shall not be issued until the fees prescribed in Section R107.2 have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.~~

~~**R107.2 Schedule of permit fees.** A fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.~~

~~**R107.3 Work commencing before permit issuance.** Any person who commences any work before obtaining the necessary permits shall be subject to an additional fee established by the code official, which shall be in addition to the required permit fees.~~

~~**R107.4 Related fees.** The payment of the fee for the construction, alteration, removal or demolition of work done in connection to or concurrently with the work or activity authorized by a permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.~~

~~**R107.5 Refunds.** The code official is authorized to establish a refund policy.))~~

R107.1 General. If a portion of this code is held to be illegal or void, such a decision shall not affect the validity of the remainder of this code.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10700, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-10800 Section R108—(~~(Stop work order)~~) Referenced standards.

~~((R108.1 Authority. Whenever the code official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the code official is authorized to issue a stop work order.~~

~~**R108.2 Issuance.** The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's authorized agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.~~

~~**R108.3 Emergencies.** Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work.~~

~~**R108.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to a fine as set by the applicable governing authority.)~~

R108.1 Referenced codes and standards. The codes and standards referenced in this code shall be those listed in Chapter 5, and such codes and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections R106.1.1 and R106.1.2.

R108.1.1 Conflicts. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

R108.1.2 Provisions in referenced codes and standards. Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.

R108.2 Application of references. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section, or provision of this code.

R108.3 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law. In addition to the requirements of this code, all occupancies shall conform to the provisions included in the state building code (chapter 19.27 RCW). In case of conflicts among codes enumerated in RCW 19.27.031 (1) through (4) and this code, an earlier named code shall govern over those following. In the case of conflict between the duct sealing and insulation requirements of this code and the duct insulation requirements of Sections 603 and 604 of the *International Mechanical Code*, the duct insulation requirements of this code shall govern.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-10800, filed 1/6/16, effective

7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10800, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-10900 Section R109—((Board of appeals)) Stop work order.

~~((R109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The code official shall be an ex officio member of said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the code official.~~

~~**R109.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.~~

~~**R109.3 Qualifications.** The board of appeals shall consist of members who are qualified by experience and training and are not employees of the jurisdiction.))~~

R109.1 Authority. Whenever the code official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the code official is authorized to issue a stop work order.

R109.2 Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's authorized agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

R109.3 Emergencies. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work.

R109.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to a fine as set by the applicable governing authority.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-10900, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-11000 Section R110—((Violations)) Means of appeal.

~~((It shall be unlawful for any person, firm, or corporation to erect or construct any building, or remodel or rehabilitate any existing building or structure in the state, or allow the same to be done, contrary to or in violation of any of the provisions of this code.))~~

R110.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the *code official* relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The *code official* shall be an ex officio member of said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the *code official*.

R110.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

R110.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training and are not employees of the jurisdiction.

R110.4 Administration. The *code official* shall take immediate action in accordance with the decision of the board.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-11000, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-11100 Section R111—((Liability)) Violations.

~~((Nothing contained in this code is intended to be nor shall be construed to create or form the basis for any liability on the part of any city or county or its officers, employees or agents for any injury or damage resulting from the failure of a building to conform to)) It shall be unlawful for any person, firm, or corporation to erect or construct any building, or remodel or rehabilitate any existing building or structure in the state, or allow the same to be done, contrary to or in violation of any of the provisions of this code.~~

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-11100, filed 2/1/13, effective 7/1/13.]

NEW SECTION

WAC 51-11R-11200 Section R112—Liability. Nothing contained in this code is intended to be nor shall be construed to create or form the basis for any liability on the part of any city or county or its officers, employees, or agents for any injury or damage resulting from the failure of a building to conform to the provisions of this code.

[]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-20201 Section R202.1—A.

ABOVE-GRADE WALL. A wall enclosing *conditioned space* that is not a below-grade wall. This includes between-floor spandrels, peripheral edges of floors, roof and basement knee walls, dormer walls, gable end walls, walls enclosing a mansard roof and skylight shafts.

~~((ACCESSIBLE. Admitting close approach as a result of not being guarded by locked doors, elevation or other effective means (see "Readily accessible").))~~ ACCESS (TO). That which enables a device, appliance, or equipment to be reached by ready access or by a means that first requires the removal or movement of a panel or similar obstruction.

ADDITION. An extension or increase in the *conditioned space* floor area, number of stories or height of a building or structure.

ADVANCED FRAMED WALLS. Studs framed on 24-inch centers with double top plate and single bottom plate. Corners use two studs or other means of fully insulating corners, and one stud is used to support each header. Headers consist of double 2x material with R-10 insulation between the header and exterior sheathing. Interior partition wall/exterior wall intersections are fully insulated in the exterior wall. (See **Standard Framing** and Appendix A, of this code.)

AIR BARRIER. One or more materials joined together in a continuous manner to restrict or prevent the passage of air through the building thermal envelope and its assemblies.

~~((AIR-IMPERMEABLE INSULATION. An insulation that functions as an air barrier material.))~~

ALTERATION. Any construction, retrofit or renovation to an existing structure other than repair or addition. Also, a change in a building, electrical, gas, mechanical or plumbing system that involves an extension, addition or change to the arrangement, type or purpose of the original installation.

APPROVED. Acceptable to the *code official*.

APPROVED AGENCY. An established and recognized agency that is regularly engaged in conducting tests or furnishing inspection services, or furnishing product certification, where such agency has been approved by the *code official*.

AUTOMATIC. Self-acting, operating by its own mechanism when actuated by some impersonal influence, as, for example, a change in current strength, pressure, temperature or mechanical configuration (see "Manual").

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-20201, filed 12/9/19, effective

7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-20201, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20201, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-20203 Section R202.3—C.

C-FACTOR (THERMAL CONDUCTANCE). The coefficient of heat transmission (surface to surface) through a building component or assembly, equal to the time rate of heat flow per unit area and the unit temperature difference between the warm side and cold side surfaces ($\text{Btu/h ft}^2 \times ^\circ\text{F}$) [$\text{W}/(\text{m}^2 \times \text{K})$].

CAVITY INSULATION. Insulating material located between framing members.

CIRCULATING HOT WATER SYSTEM. A specifically designed water distribution system where one or more pumps are operated in the service hot water piping to circulate heated water from the water-heating equipment to the fixture supply and back to the water-heating equipment.

CLIMATE ZONE. A geographical region based on climatic criteria as specified in this code.

CODE OFFICIAL. The officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

COMMERCIAL BUILDING. For this code, all buildings that are not included in the definition of "Residential buildings."

CONDITIONED FLOOR AREA. The horizontal projection of the floors associated with the *conditioned space*.

CONDITIONED SPACE. An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

CONNECTED THERMOSTAT. An internet enabled device that automatically adjusts heating and cooling temperature settings.

CONTINUOUS AIR BARRIER. A combination of materials and assemblies that restrict or prevent the passage of air through the building thermal envelope.

CONTINUOUS INSULATION (c.i.). Insulating material that is continuous across all structural members without thermal bridges other than fasteners and service openings. It is installed on the interior or exterior or is integral to any opaque surface of the building envelope.

CURTAIN WALL. Fenestration products used to create an external nonload-bearing wall that is designed to separate the exterior and interior environments.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-20203, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-20203, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters

19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20203, filed 2/1/13, effective 7/1/13.]

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

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-20204 Section R202.4—D.

DEMAND RECIRCULATION WATER SYSTEM. A water distribution system (~~((having))~~) where one or more (~~((recirculation pumps that pump water from a heated water supply pipe back to the heated water source through a cold water supply pipe))~~) pumps prime the service hot water piping with heated water upon demand for hot water.

DIMMER. A control device that is capable of continuously varying the light output and energy use of light sources.

DUCT. A tube or conduit utilized for conveying air. The air passages of self-contained systems are not to be construed as air ducts.

DUCT SYSTEM. A continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans and accessory air-handling equipment and appliances.

DUCTLESS MINI-SPLIT HEAT PUMP SYSTEM. A heating and cooling system that is comprised of one or multiple indoor evaporator/air-handling units and an outdoor condensing unit that is connected by refrigerant piping and electrical wiring. A ductless mini-split system is capable of cooling or heating one or more rooms without the use of a central ductwork system.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

DWELLING UNIT ENCLOSURE AREA. The sum of the area of ceiling, floors, and walls separating a dwelling unit's conditioned space from the exterior or from adjacent conditioned or unconditioned spaces. Wall height shall be measured from the finished floor of the dwelling unit to the underside of the floor above.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-20204, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20204, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-20206 Section R202.6—F.

FENESTRATION. Products classified as either vertical fenestration or skylights.

VERTICAL FENESTRATION. Windows (fixed or operable), glazed doors, glazed block and combination opaque/glazed doors composed of glass or other transparent or translucent glazing materials and installed at a slope of not less than 60 degrees from horizontal. Opaque areas such as spandrel panels are not considered vertical fenestration.

SKYLIGHT. Glass or other transparent or translucent glazing material installed with a slope of less than 60 degrees from horizontal, including unit skylights, tubular daylighting devices and glazing materials in solariums, sunrooms, roofs, and sloped walls.

FENESTRATION AREA. Total area of the fenestration measured using the rough opening, and including the glazing, sash and frame.

FENESTRATION PRODUCT, FIELD-FABRICATED. A fenestration product whose frame is made at the construction site of standard dimensional lumber or other materials that were not previously cut, or otherwise formed with the specific intention of being used to fabricate a fenestration product or exterior door. Field fabricated does not include site-built fenestration.

FENESTRATION PRODUCT, SITE-BUILT. A fenestration designed to be made up of field-glazed or field-assembled units using specific factory cut or otherwise factory-formed framing and glazing units. Examples of site-built fenestration include storefront systems, curtain walls, and atrium roof systems.

F-FACTOR. The perimeter heat loss factor for slab-on-grade floors (Btu/h × ft × °F) [W/(m × K)].

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-20206, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-20206, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20206, filed 2/1/13, effective 7/1/13.]

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

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-20208 Section R202.8—H.

HEATED SLAB-ON-GRADE FLOOR. Slab-on-grade floor construction in which the heating elements, hydronic tubing, or hot air distribution system is in contact with, or placed within or under, the slab.

HIGH-EFFICACY LIGHT SOURCES. (~~Fixtures that use light emitting diodes (LED), T-8 or smaller diameter linear fluorescent lamps, or other lamps with a minimum efficacy of 65 lumens per watt.~~) Compact fluorescent lamps, light emitting diode (LED) lamps, T-8 or smaller diameter linear fluorescent lamps, or other lamps with an efficacy of not less than 65 lumens per watt, or luminaires with an efficacy of not less than 45 lumens per watt.

HISTORIC BUILDINGS. Buildings that are listed in or eligible for listing in the *National Register of Historic Places*, or designated as historic under an appropriate state or local law.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-20208, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-20208, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20208, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-20215 Section R202.15—O.

OCCUPANT SENSOR CONTROL. An automatic control device that detects the presence or absence of people within an area and causes lighting, equipment, or appliances to be regulated accordingly.

ON-SITE RENEWABLE ENERGY. Energy from renewable energy resources harvested at the building site.

OPAQUE DOOR. A door that is not less than 50 percent opaque in surface area.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-20215, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-20215, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20215, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-20218 Section R202.18—R.

~~((READILY ACCESSIBLE. Capable of being reached quickly for operation, renewal or inspection without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders or access equipment (see "Accessible").))~~ READY ACCESS (TO). That which enables a device, appliance, or equipment to be directly reached without requiring the removal or movement of any panel or similar obstruction.

RENEWABLE ENERGY CERTIFICATE (REC). An instrument that represents the environmental attributes of one megawatt hour of renewable energy; also known as an energy attribute certificate (EAC).

RENEWABLE ENERGY RESOURCES. Energy derived from solar radiation, wind, waves, tides, landfill gas, biogas, biomass, or extracted from hot fluid or steam heated within the earth.

REPAIR. The reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

REROOFING. The process of recovering or replacing an existing roof covering. See "Roof recover" and "Roof replacement."

RESIDENTIAL BUILDING. For this code, ~~((includes))~~ the following building types are residential buildings:

1. Detached one- and two-family dwellings ~~((τ)).~~
2. Multiple single-family dwellings (townhouses) ~~((and)).~~
3. Group ~~((R-2τ))~~ R-3 ~~((and R-4))~~ occupancy areas in buildings three stories or less in height above grade plane ~~((τ, as well as))~~ whose dwelling units are accessed directly from the exterior.
4. Accessory structures ~~((thereto))~~ to residential buildings. Group R-2 buildings with dwelling units accessed from interior corridors or other interior spaces are not residential buildings.

ROOF ASSEMBLY. A system designed to provide weather protection and resistance to design loads. The system consists of a roof covering and roof deck or a single component serving as both the roof covering and the

roof deck. A roof assembly includes the roof covering, underlayment and roof deck, and can also include a thermal barrier, an ignition barrier, insulation or a vapor retarder.

ROOF RECOVER. The process of installing an additional roof covering over a prepared existing roof covering without removing the existing roof covering.

ROOF REPAIR. Reconstruction or renewal of any part of an existing roof for the purposes of its maintenance.

ROOF REPLACEMENT. The process of removing the existing roof covering, repairing any damaged substrate and installing a new roof covering.

R-VALUE (THERMAL RESISTANCE). The inverse of the time rate of heat flow through a body from one of its bounding surfaces to the other surface for a unit temperature difference between the two surfaces, under steady state conditions, per unit area ($h \cdot \text{ft}^2 \cdot ^\circ\text{F}/\text{Btu}$) [$(\text{m}^2 \cdot \text{K})/\text{W}$].

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-20218, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-20218, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20218, filed 2/1/13, effective 7/1/13.]

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

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-20220 Section R202.20—T.

THERMAL DISTRIBUTION EFFICIENCY (TDE). The resistance to changes in air heat as air is conveyed through a distance of air duct. TDE is a heat loss calculation evaluating the difference in the heat of the air between the air duct inlet and outlet caused by differences in temperatures between the air in the duct and the duct material. TDE is expressed as a percent difference between the inlet and outlet heat in the duct.

THERMAL ISOLATION. Physical and space conditioning separation from *conditioned space(s)*. The *conditioned space(s)* shall be controlled as separate zones for heating and cooling or conditioned by separate equipment.

THERMOSTAT. An automatic control device used to maintain temperature at a fixed or adjustable set point.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-20220, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-30310 Section R303.1—Identification.

R303.1 Identification. Materials, systems and equipment shall be identified in a manner that will allow a determination of compliance with the applicable provisions of this code.

R303.1.1 Building thermal envelope insulation. An *R*-value identification mark shall be applied by the manufacturer to each piece of *building thermal envelope* insulation 12 inches (305 mm) or greater in width. Alternately, the insulation installers shall provide a certification listing the type, manufacturer and *R*-value of insulation installed in each element of the *building thermal envelope*. For blown or sprayed insulation (fiberglass and cellulose), the initial installed thickness, settled thickness, settled *R*-value, installed density, coverage area and number of bags installed shall be *listed* on the certification. For sprayed polyurethane foam (SPF) insulation, the installed thickness of the areas covered and *R*-value of installed thickness shall be *listed* on the certification. For insulated siding, the *R*-value shall be labeled on the product's package and shall be listed on the certification. The insulation installer shall sign, date and post the certification in a conspicuous location on the job site.

EXCEPTION: For roof insulation installed above the deck, the *R*-value shall be labeled as required by the material standards specified in Table 1508.5 of the *International Building Code* or Table R906.2 of the *International Residential Code*.

R303.1.1.1 Blown or sprayed roof/ceiling insulation. The thickness of blown-in or sprayed roof/ceiling insulation (fiberglass or cellulose) shall be written in inches (mm) on markers that are installed at least one for every 300 square feet (28 m²) throughout the attic space. The markers shall be affixed to the trusses or joists and marked with the minimum initial installed thickness with numbers a minimum of 1 inch (25 mm) in height. Each marker shall face the attic access opening. Spray polyurethane foam thickness and installed *R*-value shall be *listed* on certification provided by the insulation installer.

R303.1.2 Insulation mark installation. Insulating materials shall be installed such that the manufacturer's *R*-value mark is readily observable upon inspection. For insulation materials that are installed without an observable manufacturer's *R*-value mark, such as blown or draped products, an insulation certificate complying with Section R303.1.1 shall be left immediately after installation by the installer, in a conspicuous location within the building, to certify the installed *R*-value of the insulation material.

R303.1.3 Fenestration product rating. *U*-factors of fenestration products (windows, doors and skylights) shall be determined in accordance with NFRC 100.

EXCEPTION: Where required, garage door *U*-factors shall be determined in accordance with either NFRC 100 or ANSI/DASMA 105.

U-factors shall be determined by an accredited, independent laboratory, and labeled and certified by the manufacturer.

Products lacking such a labeled *U*-factor shall be assigned a default *U*-factor from Table R303.1.3(1), R303.1.3(2) or R303.1.3(4). The solar heat gain coefficient (SHGC) and visible transmittance (VT) of glazed fenestration products (windows, glazed doors and skylights) shall be determined in accordance with NFRC 200 by an accredited, independent laboratory, and labeled and certified by the manufacturer. Products lacking such a labeled SHGC or VT shall be assigned a default SHGC or VT from Table R303.1.3(3).

EXCEPTIONS: 1. Units without NFRC ratings produced by a *small business* may be assigned default *U*-factors from Table R303.1.3(5) for vertical fenestration.

2. Owner-built, nonoperable wood frame window consisting of a double pane unit with low-*e* ($E = 0.04$ or less), 1/2-inch air space with argon fill.

R303.1.4 Insulation product rating. The thermal resistance (*R*-value) of insulation shall be determined in accordance with the U.S. Federal Trade Commission *R*-value rule (C.F.R. Title 16, Part 460) in units of $h \times ft^2 \times ^\circ F/Btu$ at a mean temperature of $75^\circ F$ ($24^\circ C$).

R303.1.4.1 Insulated siding. The thermal resistance (*R*-value) of insulated siding shall be determined in accordance with ASTM C1363. Installation for testing shall be in accordance with the manufacturer's installation instructions.

R303.1.5 Air-impermeable insulation. Insulation having an air permeability not greater than 0.004 cubic feet per minute per square foot (0.002 L/(s \times m²)) under pressure differential of 0.3-inch water gauge (75 Pa) when tested in accordance with ASTM E2178 shall be determined air-impermeable insulation.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-30310, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-30310, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-30310, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-30310, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-30330 Section R303.3—Maintenance information.

R303.3 Maintenance information. Maintenance instructions shall be furnished for equipment and systems that require preventive maintenance. Required regular maintenance actions shall be clearly stated and incorporated on a readily (~~accessible~~) visible label. The label shall include the title or publication number for the operation and maintenance manual for that particular model and type of product.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-30330, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40100 Section R401—General.

R401.1 Scope. This chapter applies to residential buildings. Group R-2 occupancy areas with dwelling units accessed from enclosed interior corridors or other enclosed interior spaces must comply with the Washington State Energy Code (WSEC), Commercial Provisions. Other Group

R-2 occupancy areas are permitted to comply with the WSEC, Commercial Provisions, in lieu of the WSEC, Residential Provisions.

EXCEPTION: Water heaters that each serve only an individual Group R-2 dwelling unit in a building three stories or less above grade plane are permitted to comply with the requirements of the WSEC, Residential Provisions.

R401.2 Compliance. Projects shall comply with one of the following:

1. Sections R401 through R404. In addition, dwelling units and sleeping units in a *residential building* shall comply with Section R406.
2. Section R405. (~~In addition, dwelling units and sleeping units in a residential building shall comply with Section R406.~~)
3. Section R407.

R401.3 Certificate. A permanent certificate shall be completed by the builder or other approved party and posted on a wall in the space where the furnace is located, a utility room, or an approved location inside the building. When located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall (~~list~~) indicate the following:

1. The predominant R-values of insulation installed in or on ceiling/roof, walls, foundation (slab, below-grade wall, and/or floor) and ducts outside conditioned spaces(~~(+)~~).
2. U-factors for fenestration and the solar heat gain coefficient (SHGC) of fenestration(~~(+)~~). Where there is more than one value for each component, the certificate shall indicate the area weighted average value.
3. The results from any required duct system and building envelope air leakage testing done on the building(~~(+and)~~).
4. The results from the whole-house mechanical ventilation system flow rate test. (~~Where there is more than one value for each component, the certificate shall list the value covering the largest area. The certificate shall list~~)
5. The types, sizes, and efficiencies of heating, cooling, whole-house mechanical ventilation, and service water heating appliances. Where a gas-fired unvented room heater, electric furnace, or baseboard electric heater is installed in the residence, the certificate shall list "gas-fired unvented room heater," "electric furnace" or "baseboard electric heater," as appropriate. An efficiency shall not be listed for gas-fired unvented room heaters, electric furnaces or electric baseboard heaters.
6. Where on-site photovoltaic panel systems have been installed, the array capacity, inverter efficiency, panel tilt, orientation and estimated annual electrical generation shall be noted on the certificate.
7. The code edition under which the structure was permitted, and the compliance path used.

The code official may require that documentation for any required test results include an electronic record of the time, date, and location of the test. A date-stamped smart phone photo or air leakage testing software may be used to satisfy this requirement.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40100, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40100, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters

19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40100, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40210 Section R402.1—General.

R402.1 General. The *building thermal envelope* shall meet the requirements of Sections R402.1.1 through R402.1.6.

EXCEPTION: The following buildings, or portions thereof, separated from the remainder of the building by *building thermal envelope* assemblies complying with this code shall be exempt from the *building thermal envelope* provisions of this code.

1. Those with a peak design rate of energy usage less than 3.4 Btu/h ft² (10.7 W/m²) or 1.0 watt/ft² of floor area for space conditioning purposes.
2. Those that do not contain *conditioned space*.
3. Greenhouses isolated from any conditioned space and not intended for occupancy.

R402.1.1 Vapor retarder. Wall assemblies in the *building thermal envelope* shall comply with the vapor retarder requirements of Section R702.7 of the *International Residential Code* or Section 1405.3 of the *International Building Code*, as applicable.

R402.1.2 Insulation and fenestration criteria. The *building thermal envelope* shall meet the requirements of Table ((R402.1.1)) R402.1.2 based on the climate zone specified in Chapter 3. Assemblies shall have a U-factor equal to or less than that specified in Table R402.1.2. Fenestration shall have a U-factor equal to or less than specified in Table R402.1.2.

R402.1.3 R-value alternative. Assemblies with R-value of insulation materials equal to or greater than that specified in Table R402.1.3 shall be an alternative to the U-factor in Table R402.1.2.

~~((R402.1.2)) R402.1.4 R-value computation.~~ ((Insulation R-value shall be determined as specified in Section R303.1.4. Insulation material used in layers, such as framing cavity insulation or continuous insulation,)) *Cavity insulation* alone shall be used to determine compliance with the *cavity insulation* R-value requirement in Table R402.1.3. Where *cavity insulation* is installed in multiple layers, the R-values of the *cavity insulation* layers shall be summed to ((compute the corresponding component R-value)) determine compliance with the *cavity insulation* R-value requirements. The manufacturer's settled R-value shall be used for blown insulation. *Continuous insulation* (ci) alone shall be used to determine compliance with the continuous insulation R-value requirements in Table R402.1.3. Where *continuous insulation* is installed in multiple layers, the R-values of the *continuous insulation* layers shall be summed to determine compliance with the *continuous insulation* R-value requirements. Computed R-values shall not include an R-value for other building materials or air films. Where insulated siding is used for the purpose of complying with the continuous insulation requirements of Table ((R402.1.1)) R402.1.3, the manufacturer's labeled R-value for insulated siding shall be reduced by R-0.6.

~~((R402.1.3 U-factor alternative.~~ An assembly with a U-factor equal to or less than that specified in Table R402.1.3 shall be permitted as an alternative to the R-value in Table R402.1.1. U-factors shall be determined as specified in Section R402.1.5.

R402.1.4) R402.1.5 Total UA alternative. If the proposed *building thermal envelope* UA is less than or equal to the target UA, the building shall be considered in compliance with Table ((R402.1.1))

R402.1.2. The proposed UA shall be calculated in accordance with Equation 2. The target UA shall be calculated in accordance with Equation 1. *U*-factors shall be determined as specified in Section ((R402.1.5))

R402.1.6. In addition to UA compliance, the maximum fenestration *U*-factors of Section R402.5 shall be met.

((R402.1.5)) R402.1.6 U-factor reference and calculations. The *U*-factors for typical construction assemblies are included in Appendix A in chapter 51-11C WAC. These values shall be used for all calculations. Where proposed construction assemblies are not represented in Appendix A, values shall be calculated in accordance with the ASHRAE *Handbook of Fundamentals* using the framing factors listed in Appendix A where applicable and shall include the thermal bridging effects of framing materials. The SHGC requirements shall be met in addition to UA compliance.

Fenestration *U*-factors shall comply with Section R303.1.3, Fenestration product rating.

~~((R402.1.6 Vapor retarder. Wall assemblies in the building thermal envelope shall comply with the vapor retarder requirements of Section R702.7 of the International Residential Code or Section 1405.3 of the International Building Code, as applicable.))~~

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40210, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-40210, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40210, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40210, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40211 Table ((R402.1.1)) R402.1.2—Insulation and fenestration requirements by component.

TABLE ((R402.1.1)) R402.1.2
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT^a

((Climate Zone	Fenestration <i>U</i> -Factor ^b	Skylight ^b <i>U</i> -Factor	Ceiling <i>R</i> -Value ^c	Wood Frame Wall ^{g,h} <i>R</i> -Value	Floor <i>R</i> -Value	Below-Grade ^{c,h} Wall <i>R</i> -Value	Slab ^{d,f} <i>R</i> -Value & Depth
5 and Marine 4	0.30	0.50	49	21-int	30	10/15/ 21int+5TB	10, 2 ft

For SI: 1 foot = 304.8 mm, ci = continuous insulation, int = intermediate framing.

^a *R*-values are minimums. *U*-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the compressed *R*-value of the insulation from Appendix Table A101.4 shall not be less than the *R*-value specified in the table.

^b The fenestration *U*-factor column excludes skylights.

^c "10/15/21+5TB" means R-10 continuous insulation on the exterior of the wall, or R-15 on the continuous insulation on the interior of the wall, or R-21 cavity insulation plus a thermal break between the slab and the basement wall at the interior of the basement wall. "10/15/21+5TB" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the wall. "TB" means R-5 thermal break between floor slab and basement wall.

^dR-10 continuous insulation is required under heated slab on grade floors. See Section R402.2.9.1.

^eFor single rafter- or joist-vaulted ceilings, the insulation may be reduced to R38 if the full insulation depth extends over the top plate of the exterior wall.

^fR-7.5 continuous insulation installed over an existing slab is deemed to be equivalent to the required perimeter slab insulation when applied to existing slabs complying with Section R503.1.1. If foam plastic is used, it shall meet the requirements for thermal barriers protecting foam plastics.

^gFor log structures developed in compliance with Standard ICC 400, log walls shall meet the requirements for *climate zone 5* of ICC 400.

^hInt. (intermediate framing) denotes framing and insulation as described in Section A103.2.2 including standard framing 16 inches on-center, 78 percent of the wall cavity insulated and headers insulated with a minimum of R-10 insulation.)

CLIMATE ZONE 5 AND MARINE 4	
<u>Fenestration <i>U</i>-factor^b</u>	<u>0.28</u>
<u>Skylight <i>U</i>-factor</u>	<u>0.50</u>
<u>Ceiling <i>U</i>-factor</u>	<u>0.024</u>
<u>Above-Grade Wall <i>U</i>-factor</u>	<u>0.056</u>
<u>Floor <i>U</i>-factor</u>	<u>0.029</u>
<u>Slab on Grade <i>F</i>-factor</u>	<u>0.54</u>
<u>Below Grade 2' Depth</u>	
<u>Wall <i>U</i>-factor</u>	<u>0.042</u>
<u>Slab <i>F</i>-factor</u>	<u>0.59</u>
<u>Below Grade 3.5' Depth</u>	
<u>Wall <i>U</i>-factor</u>	<u>0.040</u>
<u>Slab <i>F</i>-factor</u>	<u>0.56</u>
<u>Below Grade 7' Depth</u>	
<u>Wall <i>U</i>-factor</u>	<u>0.035</u>
<u>Slab <i>F</i>-factor</u>	<u>0.50</u>

^a *U*-factors or *F*-factors shall be obtained from measurement, calculation, or an approved source or as specified in Section R402.1.5.

^b A maximum *U*-factor of 0.32 shall apply to vertical fenestration products installed in buildings located above 4000 feet in elevation above sea level, or in windborne debris regions where protection of openings is required under Section R301.2.1.2 of the *International Residential Code*.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40211, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-40211, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40211, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, and 19.27.074. WSR 13-20-121, § 51-11R-40211, filed 10/1/13, effective 11/1/13. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40211, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40213 Table R402.1.3—((Equivalent *U*-factors)) Insulation minimum *R*-values and fenestration requirements by components.

TABLE R402.1.3
((EQUIVALENT *U*-FACTORS)^a

Climate Zone 5 and Marine 4	
Fenestration <i>U</i> -Factor	0.30
Skylight <i>U</i> -Factor	0.50
Ceiling <i>U</i> -Factor	0.026
Above-Grade Wall <i>U</i> -Factor	0.056
Floor <i>U</i> -Factor	0.029
Slab on Grade <i>F</i> -Factor	0.54
Below-Grade 2' Depth	
Wall <i>U</i> -Factor	0.042
Slab <i>F</i> -Factor	0.59
Below-Grade 3.5' Depth	
Wall <i>U</i> -Factor	0.040
Slab <i>F</i> -Factor	0.56
Below-Grade 7' Depth	
Wall <i>U</i> -Factor	0.035
Slab <i>F</i> -Factor	0.50

^a *U*-factors or *F*-factors shall be obtained from measurement, calculation or an approved source or as specified in Section R402.1.5.)

INSULATION MINIMUM R-VALUES AND FENESTRATION REQUIREMENTS BY COMPONENTS^a

Climate Zone 5 and Marine 4	
Fenestration ^{b,j} <i>U</i> -Factor	0.28
Skylight ^b <i>U</i> -Factor	0.50
Ceiling ^c <i>R</i> -Value	60
Wood Frame Wall ^{g,i} <i>R</i> -Value	20+5 or 13+10
Floor <i>R</i> -Value	30
Below-Grade Wall ^{c,h} <i>R</i> -Value	10/15/21 int + 5TB
Slab ^{d,f} <i>R</i> -Value and Depth	10, 4 ft.

For SI: 1 foot = 304.8 mm, ci = continuous insulation, int = intermediate framing.

^a *R*-values are minimums. *U*-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the compressed *R*-value of the insulation from Appendix Table A101.4 shall not be less than the *R*-value specified in the table.

^b The fenestration *U*-factor column excludes skylights.

^c "10/15/21+5TB" means R-10 continuous insulation on the exterior of the wall, or R-15 on the continuous insulation on the interior of the wall, or R-21 cavity insulation plus a thermal break between the slab and the basement wall at the interior of the basement wall. "10/15/21+5TB" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the wall. "TB" means R-5 thermal break between floor slab and basement wall.

^d R-10 continuous insulation is required under heated slab on grade floors. See Section R402.2.9.1.

^e For single rafter- or joist-vaulted ceilings, the insulation may be reduced to R-38 if the full insulation depth extends over the top plate of the exterior wall.

^f R-7.5 continuous insulation installed over an existing slab is deemed to be equivalent to the required perimeter slab insulation when applied to existing slabs complying with Section R503.1.1. If foam plastic is used, it shall meet the requirements for thermal barriers protecting foam plastics.

^g For log structures developed in compliance with Standard ICC 400, log walls shall meet the requirements for *climate zone 5* of ICC 400.

^h Int. (intermediate framing) denotes framing and insulation as described in Section A103.2.2 including standard framing 16 inches on center, 78 percent of the wall cavity insulated and headers insulated with a minimum of R-10 insulation.

ⁱ The first value is cavity insulation, the second value is continuous insulation. Therefore, as an example "13+10" means R-13 cavity insulation plus R-10 continuous insulation.

^j A maximum *U*-factor of 0.32 shall apply to vertical fenestration products installed in buildings located above 4000 feet in elevation above sea level, or in windborne debris regions where protection of openings is required under Section R301.2.1.2 of the *International Residential Code*.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40213, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40213, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters

19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40213, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40215 Target/Proposed UA equations.

EQUATION 1 - GROUP R OCCUPANCY

TARGET UA

$$UA_T = U_W A_W + U_{BGW} A_{BGW} + U_{VG} A_{VG} + U_{OG} A_{OG} + U_F A_F + U_{RC} A_{RC} + U_D A_D + F_S P_S + F_{BGS} P_{BGS}$$

Where:

- UA_T = The target combined thermal transmittance of the gross exterior wall, floor and roof/ceiling area.
- U_W = The thermal transmittance value of the opaque above grade wall found in Table ((R402.1.3)) R402.1.2.
- A_W = Opaque above grade wall area.
- U_{BGW} = The thermal transmittance value of the below grade opaque wall found in Table ((R402.1.3)) R402.1.2.
- A_{BGW} = Opaque below grade wall area.
- U_{VG} = The thermal transmittance value of the fenestration found in Table ((R402.1.3)) R402.1.2.
- A_{VG} = (a) The proposed glazing area; where proposed fenestration glazing area is less than 15 percent of the conditioned floor area, minus A_{OG} .
(b) 15 percent of the conditioned floor area; where the proposed fenestration glazing area is 15 percent or more of the conditioned floor area, minus A_{OG} .
- U_{OG} = The thermal transmittance value of the skylight glazing found in Table ((R402.1.3)) R402.1.2.
- A_{OG} = Skylight glazing area (if the proposed A_{OG} exceeds 15 percent, the target A_{OG} shall be 15 percent of the total floor area of the conditioned space).
- U_F = The thermal transmittance value of the floor found in Table ((R402.1.3)) R402.1.2.
- A_F = Floor area over unconditioned space.
- U_{RC} = The thermal transmittance value of the ceiling found in Table ((R402.1.3)) R402.1.2.
- A_{RC} = Roof/ceiling area.
- U_D = The thermal transmittance value of the fenestration found in Table ((R402.1.3)) R402.1.2.
- A_D = Opaque door area.
- F_S = Concrete slab on grade component F -factor found in Table ((R402.1.3)) R402.1.2.
- P_S = Lineal ft. of concrete slab on grade perimeter.
- F_{BGS} = Concrete below grade slab component F -factor found in Table ((R402.1.3)) R402.1.2.
- P_{BGS} = Lineal ft. of concrete below grade slab perimeter.

EQUATION 2 - GROUP R OCCUPANCY

PROPOSED UA

$$UA = U_W A_W + U_{BGW} A_{BGW} + U_{VG} A_{VG} + U_{OG} A_{OG} + U_F A_F + U_{RC} A_{RC} + U_D A_D + F_S P_S + F_{BGS} P_{BGS}$$

Where:

- UA = The combined thermal transmittance of the gross exterior wall, floor and roof/ceiling assembly area.
- U_W = The thermal transmittance of the opaque above grade wall area.
- A_W = Opaque above grade wall area.
- U_{BGW} = The thermal transmittance value of the below grade opaque wall.
- A_{BGW} = Opaque below grade wall area.
- U_{VG} = The thermal transmittance value of the fenestration glazing.

A _{VG}	=	Fenestration glazing area, including windows in exterior doors.
U _{OG}	=	The thermal transmittance value of the skylight glazing.
A _{OG}	=	Skylight glazing area.
U _F	=	The thermal transmittance of the floor.
A _F	=	Floor area over unconditioned space.
U _{RC}	=	The thermal transmittance of the ceiling.
A _{RC}	=	Ceiling area.
U _D	=	The thermal transmittance value of the opaque door area.
A _D	=	Opaque door area.
F _S	=	Concrete slab on grade component <i>F</i> -factor.
P _S	=	Lineal ft. of concrete slab on grade perimeter.
F _{BGS}	=	Concrete below grade slab component <i>F</i> -factor.
P _{BGS}	=	Lineal ft. of concrete below grade slab perimeter.

NOTE: Where more than one type of wall, window, roof/ceiling, door and skylight is used, the U and A terms for those items shall be expanded into subelements as:

$$U_{W1}A_{W1} + U_{W2}A_{W2} + U_{W3}A_{W3} + \dots \text{etc.}$$

NOTE: Below grade walls: The wall is assumed to extend from the slab upward to the top of the mud sill for the distance specified in Table A104.1, with 6 inches of concrete wall extending above grade. This will be calculated separately from above grade walls using the wall height that best describes the system.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40215, filed 12/9/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-40220 Section R402.2—Specific insulation requirements.

R402.2 Specific insulation requirements. In addition to the requirements of Section R402.1, insulation shall meet the specific requirements of Sections R402.2.1 through R402.2.11.

R402.2.1 Ceilings with attic spaces. Where Section ((R402.1.1)) R402.1.3 would require ((R-49)) R-60 in the ceiling or attic, installing ((R-38)) R-49 over 100 percent of the ceiling area requiring insulation shall ((be deemed to)) satisfy the requirement for ((R-49)) R-60 wherever the full height of uncompressed ((R-38)) R-49 insulation extends over the wall top plate at the eaves. This reduction shall not apply to the ((U-factor alternative approach)) insulation and fenestration criteria in Section ((R402.1.3)) R402.1.2 and the total UA alternative in Section ((R402.1.4)) R402.1.5.

R402.2.1.1 Loose insulation in attic spaces. Open-blown or poured loose fill insulation may be used in attic spaces where the slope of the ceiling is not more than 3 feet in 12 and there is at least 30 inches of clear distance from the top of the bottom chord of the truss or ceiling joist to the underside of the sheathing at the roof ridge.

R402.2.2 Reserved.

R402.2.3 Eave baffle. For air-permeable insulation((s)) in vented attics, a baffle shall be installed adjacent to soffit and eave vents.

Baffles shall maintain ~~((an))~~ a net free area opening equal to or greater than the size of the vent. The baffle shall extend over the top of the attic insulation. The baffle shall be permitted to be any solid material. The baffle shall be installed to the outer edge of the exterior wall top plate so as to provide maximum space for attic insulation coverage over the top plate. Where soffit venting is not continuous, baffles shall be installed continuously to prevent ventilation air in the eave soffit from bypassing the baffle.

R402.2.4 Access hatches and doors. Access hatches and doors from conditioned spaces to unconditioned spaces ~~((e.g.,))~~ such as attics and crawl spaces ~~(())~~ shall be ~~((weatherstripped and))~~ insulated to ~~((a level equivalent to the insulation on the surrounding surfaces. Access shall be provided to all equipment that prevents damaging or compressing the insulation. A wood framed or equivalent baffle or retainer is required to be provided when loose fill insulation is installed, the purpose of which is to prevent the loose fill insulation from spilling into the living space when the attic access is opened, and to provide a permanent means of maintaining the installed R-value of the loose fill insulation))~~ the same R-value required by Table R402.1.3 for the wall or ceiling in which they are installed.

EXCEPTION: Vertical doors ~~((that provide))~~ providing access from conditioned spaces to unconditioned spaces ~~((shall be permitted to meet))~~ that comply with the fenestration requirements of Table ~~((R402.1.1))~~ R402.1.3.

R402.2.4.1 Access hatches and door insulation installation and retention. Vertical or horizontal access hatches and doors from conditioned spaces to unconditioned spaces such as attics and crawl spaces shall be weatherstripped. Access that prevents damaging or compressing the insulation shall be provided to all equipment. Where loose fill insulation is installed, a wood framed or equivalent baffle or retainer, or dam shall be installed to prevent the loose-fill insulation from spilling into the living spaces, from higher to lower sections of the attic and from attics covering conditioned spaces to unconditioned spaces. The baffle or retainer shall provide a permanent means of maintaining the installed R-value of the loose fill insulation.

R402.2.5 Mass walls. Mass walls, where used as a component of the building thermal envelope ~~((of a building))~~, shall be one of the following:

1. ~~((Constructed of))~~ Above-grade walls of concrete block, concrete, insulated concrete form, masonry cavity, brick (but not brick veneer), adobe, compressed earth block, rammed earth, mass timber, ~~((solid timber))~~ or solid logs.
2. Any other wall having a heat capacity greater than or equal to 6 Btu/ft² x °F (123 kJ/m² x K).

R402.2.6 Steel-frame ceilings, walls, and floors. Steel-frame ceilings, walls, and floors shall comply with the U-factor requirements of Table ~~((R402.1.3))~~ R402.1.2.

R402.2.7 Floors. Floor framing cavity insulation shall comply with one of the following:

1. Insulation shall be installed to maintain permanent contact with the underside of the subfloor decking in accordance with manufacturer instructions to maintain required R-value or readily fill the available cavity space. Insulation supports shall be installed so spacing is no more than 24 inches on center. Foundation vents shall be placed so that the top of the vent is below the lower surface of the floor insulation.

2. Floor framing cavity insulation shall be permitted to be in contact with the top side of sheathing separating the cavity and the unconditioned space below. Insulation shall extend from the bottom to the top of all perimeter floor framing members and the framing members shall be air sealed.

3. A combination of cavity and continuous insulation shall be installed so that the cavity insulation is in contact with the top side of the continuous insulation that is installed on the underside of the floor framing separating the cavity and the unconditioned space below. The combined R-value of the cavity and continuous insulation shall equal the required R-value for floors. Insulation shall extend from the bottom to the top of all perimeter floor framing members and the framing members shall be air sealed.

EXCEPTIONS:

1. ((The floor framing cavity insulation shall be permitted to be in contact with the topside of sheathing or continuous insulation installed on the bottom side of floor framing where combined with insulation that meets or exceeds the minimum Wood Frame Wall R-value in Table R402.1.1 and extends from the bottom to the top of all perimeter floor framing members.
- 2.)) When foundation vents are not placed so that the top of the vent is below the lower surface of the floor insulation, a permanently attached baffle shall be installed at an angle of 30° from horizontal, to divert air flow below the lower surface of the floor insulation.
- ((3.)) 2. Substantial contact with the surface being insulated is not required in enclosed floor/ceiling assemblies containing ducts where full R-value insulation is installed between the duct and the exterior surface.

R402.2.8 Below-grade walls. Below-grade exterior wall insulation used on the exterior (cold) side of the wall shall extend from the top of the below-grade wall to the top of the footing and shall be approved for below-grade use. Above-grade insulation shall be protected. Insulation used on the interior (warm) side of the wall shall extend from the top of the below-grade wall to the below-grade floor level and shall include R-5 rigid board providing a thermal break between the concrete wall and the slab.

R402.2.9 Slab-on-grade floors. The minimum thermal resistance (R-value) of the insulation around the perimeter of unheated or heated slab-on-grade floors shall be as specified in Table ((C402.1.1)) C402.1.3. The insulation shall be placed on the outside of the foundation or on the inside of the foundation wall. The insulation shall extend downward from the top of the slab for a minimum distance as shown in the table or to the top of the footing, whichever is less, or downward to at least the bottom of the slab and then horizontally to the interior or exterior for the total distance shown in the table. A two-inch by two-inch (maximum) pressure treated nailer may be placed at the finished floor elevation for attachment of interior finish materials. Insulation extending away from the building shall be protected by pavement or by a minimum of 10 inches (254 mm) of soil.

R402.2.9.1 Heated slab-on-grade floors. The entire area of a heated slab-on-grade floor shall be thermally isolated from the soil with a minimum of R-10 insulation. The insulation shall be an approved product for its intended use. If a soil gas control system is present below the heated slab-on-grade floor, which results in increased convective flow below the heated slab-on-grade floor, the heated slab-on-grade floor shall be thermally isolated from the sub-slab gravel layer. R-10 heated slab-on-grade floor insulation is required for all compliance paths.

R402.2.10 Masonry veneer. Insulation shall not be required on the horizontal portion of the foundation that supports a masonry veneer.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-40220, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27

RCW. WSR 20-01-047, § 51-11R-40220, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40220, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40220, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40230 Section R402.3—Fenestration.

R402.3 Fenestration. In addition to the requirements of Section R402, fenestration shall comply with Sections R402.3.1 through R402.3.5.

R402.3.1 U-factor. An area-weighted average of fenestration products shall be permitted to satisfy the *U*-factor requirements.

R402.3.2 Glazed fenestration SHGC. An area-weighted average of fenestration products more than 50 percent glazed shall be permitted to satisfy the SHGC requirements.

R402.3.3 Glazed fenestration exemption. Up to 15 square feet (1.4 m²) of glazed fenestration per dwelling unit shall be permitted to be exempt from *U*-factor and SHGC requirements in Section ((R402.1.1)) R402.1.2. This exemption shall not apply to the ((*U*-factor alternative approach in Section R402.1.3 and the)) total UA alternative in Section ((R402.1.4)) R402.1.5.

R402.3.4 Opaque door exemption. One side-hinged opaque door assembly up to 24 square feet (2.22 m²) in area is exempted from the *U*-factor requirement in Section ((R402.1.1)) R402.1.2. This exemption shall not apply to ((the *U*-factor alternative approach in Section R402.1.3 and)) the total UA alternative in Section ((R402.1.4)) R402.1.5.

R402.3.5 ((Reserved.)) Combustion air openings. In Climate Zones 3 through 8, where open combustion air ducts provide combustion air to open combustion, space conditioning fuel burning appliances, the appliances and combustion air openings shall be located outside of the building thermal envelope, or enclosed in a room isolated from inside the thermal envelope. Such rooms shall be sealed and insulated in accordance with the envelope requirements of Table R402.1.3, where the walls, floors, and ceilings shall meet the minimum of the below-grade wall *R*-value requirements. The door into the room shall be fully gasketed and any water lines and ducts in the room insulated in accordance with Section R403. The combustion air duct shall be insulated where it passes through conditioned space to a minimum of R-8.

EXCEPTIONS:

1. Direct vent appliances with both intake and exhaust pipes installed continuous to the outside.
2. Fireplaces and stoves complying with Sections R402.3.6 and R1006 of the *International Residential Code*.

R402.3.6 Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers or doors, and outdoor combustion air. When using tight-fitting doors on factory-built fireplaces listed and labeled in accordance with UL 127, the doors shall be tested and listed for the fireplace. Where using tight-fitting doors on masonry fireplaces, the doors shall be listed and labeled in accordance with UL 907. Gas fireplaces shall comply with the efficiency requirements in Section R403.7.2.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40230, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40230, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40230, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-40240 Section R402.4—Air leakage.

R402.4 Air leakage. The *building thermal envelope* shall be constructed to limit air leakage in accordance with the requirements of Sections R402.4.1 through ~~((R402.4.4))~~ R402.4.5.

R402.4.1 Building thermal envelope air leakage. The *building thermal envelope* shall comply with Sections R402.4.1.1 ~~((and R402.4.1.2))~~ through R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction.

R402.4.1.1 Installation. The components of the *building thermal envelope* as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. Where required by the *code official*, an *approved* third party shall inspect all components and verify compliance.

R402.4.1.2 Testing. The building or dwelling unit shall be tested ~~((and verified as having an air leakage rate of not exceeding 5 air changes per hour. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). For this test only, the volume of the home shall be the conditioned floor area in ft² (m²) multiplied by 8.5 feet (2.6 m). Where required by the code official, testing shall be conducted by an approved third party.))~~ for air leakage. Testing shall be conducted in accordance with RESNET/ICC 380, ASTM E779 or ASTM E1827. Test pressure and leakage rate shall comply with Section R402.1.3. A written report of the test results, including verified location and time stamp of the date of the test, shall be signed by the ((party conducting the test)) testing agency and provided to the building owner and code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope. Once visual inspection has confirmed air sealing ((see)) has been conducted in accordance with Table R402.4.1.1((+)), operable windows and doors manufactured by *small business* ((shall be)) are permitted to be sealed off at the frame prior to the test.

((EXCEPTION: For dwelling units that are accessed directly from the outdoors, other than detached one family dwellings and townhouses, an air leakage rate not exceeding 0.4 cfm per square foot of the dwelling unit enclosure area shall be an allowable alternative. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals) in accordance with RESNET/ICC 380, ASTM E779 or ASTM E1827. For the purpose of this test only, the enclosure area is to be calculated as the perimeter of the dwelling unit, measured to the outside face of the exterior walls, and the centerline of party walls, times 8.5 feet, plus the ceiling and floor area. Doors and windows of adjacent dwelling units (including top and bottom units) shall be open to the outside during the test. This exception is not permitted for dwelling units that are accessed from corridors or other enclosed common areas.))

Testing of single-family dwellings and townhouses shall be conducted in accordance with RESNET/ICC 380. Test pressure and leakage rate shall comply with Section R402.1.3.1.

For Group R-2 occupancies, testing shall be conducted in accordance with ASTM E779, ASTM E1827, or ASTM E3158. Test pressure and leakage rate shall comply with Section R402.1.3.2. The individual performing the air leakage test shall be trained and certified by a certification body that is, at the time of permit application, and ISO 17024 accredited certification body including, but not limited to, the Air Barrier Association of America.

During testing:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed, beyond the intended weatherstripping or other infiltration control measures;
2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of the test, shall be open, access hatches to conditioned crawl spaces and conditioned attics shall be open;
4. Exterior or interior terminations for continuous ventilation systems and heat recovery ventilators shall be sealed;
5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and
6. Supply and return registers, if installed at the time of the test, shall be fully open.

EXCEPTION(S): ((1.) Additions less than 500 square feet of conditioned floor area.

((2. Additions tested with the existing home having a combined maximum air leakage rate of 7 air changes per hour. To qualify for this exception, the date of construction of the existing house must be prior to the 2009 Washington State Energy Code.))

~~((R402.4.2 Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers or doors, and outdoor combustion air. When using tight-fitting doors on factory-built fireplaces listed and labeled in accordance with UL 127, the doors shall be tested and listed for the fireplace. Where using tight-fitting doors on masonry fireplaces, the doors shall be listed and labeled in accordance with UL 907.~~

~~**R402.4.2.1 Gas fireplace efficiency.** All vented gas fireplace heaters rated to ANSI Z21.88 shall be listed and labeled with a fireplace efficiency (FE) rating of 50 percent or greater in accordance with CSA P.4.1. Vented gas fireplaces (decorative appliances) certified to ANSI Z21.50 shall be listed and labeled, including their FE ratings, in accordance with CSA P.4.1.)~~

R402.4.1.3 Leakage rate. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) shall comply with Section R402.4.1.3.1. Group R-2 multifamily buildings shall comply with Section R402.4.1.3.2.

R402.4.1.3.1 Dwelling unit leakage rate. The maximum air leakage rate for any dwelling unit under any compliance path shall not exceed 3.0 air changes per hour. Testing shall be conducted with a blower door test at a test pressure of 0.2 inches w.g. (50 Pa).

EXCEPTION: Additions tested with the existing home having a combined maximum air leakage rate of 7 air changes per hour. To qualify for this exception, the date of construction of the existing dwelling must be prior to the 2009 Washington State Energy Code.

R402.4.1.3.2 Group R-2 multifamily building leakage rate. For Group R-2 multifamily buildings, the maximum leakage rate for any dwelling unit shall not exceed 0.25 cfm per square foot of the dwelling unit enclosure area. Testing shall be conducted with a blower door at a test pressure of 0.2 inches w.g. (50 Pa). Doors and windows of adja-

cent dwelling units (including top and bottom units) shall be open to the outside during the test.

R402.4.3 Air leakage of fenestration. Windows, skylights and sliding glass doors shall have an air infiltration rate of no more than 0.3 cfm per square foot (1.5 L/s/m²), and swinging doors no more than 0.5 cfm per square foot (2.6 L/s/m²), when tested according to NFRC 400 or AAMA/WDMA/CSA 101/I.S.2/A440 by an accredited, independent laboratory and *listed and labeled* by the manufacturer.

EXCEPTIONS: 1. Field-fabricated fenestration products (windows, skylights and doors).
2. Custom exterior fenestration products manufactured by a small business provided they meet the applicable provisions of Chapter 24 of the *International Building Code*. Once visual inspection has confirmed the presence of a gasket, operable windows and doors manufactured by *small business* shall be permitted to be sealed off at the frame prior to the test.

~~(**R402.4.4 Combustion air openings.** In Climate Zones 3 through 8, where open combustion air ducts provide combustion air to open combustion, space conditioning fuel burning appliances, the appliances and combustion air openings shall be located outside of the building thermal envelope, or enclosed in a room isolated from inside the thermal envelope. Such rooms shall be sealed and insulated in accordance with the envelope requirements of Table R402.1.1, where the walls, floors and ceilings shall meet the minimum of the below-grade wall R-value requirement. The door into the room shall be fully gasketed and any water lines and ducts in the room insulated in accordance with Section R403. The combustion air duct shall be insulated where it passes through conditioned space to a minimum of R-8.~~

EXCEPTIONS: 1. Direct vent appliances with both intake and exhaust pipes installed continuous to the outside.
2. Fireplaces and stoves complying with Section R402.4.2 and Section R1006 of the *International Residential Code*.)

R402.4.5 Recessed lighting. Recessed luminaires installed in the *building thermal envelope* shall be Type IC-rated and certified under ASTM E283 as having an air leakage rate not more than 2.0 cfm (0.944 L/s) when tested at a 1.57 psf (75 Pa) pressure differential and shall have a label attached showing compliance with this test method. All recessed luminaires shall be sealed with a gasket or caulk between the housing and the interior wall or ceiling covering.

R402.4.6 Electrical and communication outlet boxes (air-sealed boxes). Electrical and communication outlet boxes installed in the building thermal envelope shall be sealed to limit air leakage between conditioned and unconditioned spaces. Electrical and communication outlet boxes shall be tested in accordance with NEMA OS 4, *Requirements for Air-Sealed Boxes for Electrical and Communication Applications*, and shall have an air leakage rate of not greater than 2.0 cubic feet per minute (0.944 L/s) at a pressure differential of 1.57 psf (75 Pa). Electrical and communication outlet boxes shall be marked "NEMA OS 4" or "OS 4" in accordance with NEMA OS 4. Electrical and communication outlet boxes shall be installed per the manufacturer's instructions and with any supplied components required to achieve compliance with NEMA OS 4.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-40240, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40240, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40240, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27.020, and 19.27.074. WSR 14-24-123, § 51-11R-40240, filed 12/3/14, effective

1/3/15. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40240, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40241 Table R402.4.1.1—Air barrier and insulation installation.

**TABLE R402.4.1.1
AIR BARRIER, AIR SEALING AND INSULATION INSTALLATION^a**

COMPONENT	AIR BARRIER CRITERIA ^(a)	INSULATION CRITERIA ^(a)
General requirements	<p>A continuous air barrier shall be installed in the building envelope.</p> <p>((Exterior thermal envelope contains a continuous air barrier.))</p> <p>Breaks or joints in the air barrier shall be sealed.</p>	<p>Air-permeable insulation shall not be used as a sealing material.</p>
Cavity insulation installation		<p>All cavities in the thermal envelope shall be filled with insulation. The density of the insulation shall be at the manufacturers' product recommendation and said density shall be maintained for all volume of each cavity. Batt type insulation will show no voids or gaps and maintain an even density for the entire cavity. Batt insulation shall be installed in the recommended cavity depth. Where an obstruction in the cavity due to services, blocking, bracing or other obstruction exists, the batt product will be cut to fit the remaining depth of the cavity. Where the batt is cut around obstructions, loose fill insulation shall be placed to fill any surface or concealed voids, and at the manufacturers' specified density. Where faced batt is used, the installation tabs must be stapled to the face of the stud. There shall be no compression to the batt at the edges of the cavity due to inset stapling installation tabs.</p> <p>Insulation that upon installation readily conforms to available space shall be installed filling the entire cavity and within the manufacturers' density recommendation.</p>
Ceiling/attic	<p>The air barrier in any dropped ceiling/soffit shall be aligned with the insulation and any gaps in the air barrier sealed.</p> <p>Access openings, drop down stair or knee wall doors to unconditioned attic spaces shall be sealed.</p>	<p>The insulation in any dropped ceiling/soffit shall be aligned with the air barrier.</p> <p>Batt insulation installed in attic roof assemblies may be compressed at exterior wall lines to allow for required attic ventilation.</p>
Walls	<p>The junction of the foundation and sill plate shall be sealed. The junction of the top plate and top of exterior walls shall be sealed. Knee walls shall be sealed.</p>	<p>Cavities within corners and headers of frame walls shall be insulated by completely filling the cavity with a material having a thermal resistance of R-3 per inch minimum. Exterior thermal envelope insulation for framed walls shall be installed in substantial contact and continuous alignment with the air barrier.</p>

COMPONENT	AIR BARRIER CRITERIA ^(a)	INSULATION CRITERIA ^(a)
Windows, skylights and doors	The space between window/door jambs and framing and skylights and framing shall be sealed.	
Rim joists	Rim joists shall include ((the)) <u>an exterior air barrier^b</u> . <u>The junctions of the rim board to the sill plate and the rim board and the subfloor shall be air sealed.</u>	Rim joists shall be insulated so that the <u>insulation maintains permanent contact with the exterior rim board^b</u> .
Floors (including above garage and cantilevered floors)	The air barrier shall be installed at any exposed edge of insulation.	Floor framing cavity insulation shall be installed to maintain permanent contact with the underside of subfloor decking or floor framing cavity insulation shall be permitted to be in contact with the topside of sheathing or continuous insulation installed on the underside of floor framing and extend from the bottom to the top of all perimeter floor framing members.
<u>Basement, crawl space ((walls)), and slab foundations</u>	Exposed earth in unvented crawl spaces shall be covered with a Class I, black vapor retarder with overlapping joints taped. <u>Penetrations through concrete foundation walls and slabs shall be air sealed.</u> <u>Class I vapor retarders shall not be used as an air barrier on below-grade walls and shall be installed in accordance with Section R702.7 of the <i>International Residential Code</i>.</u>	((Where provided instead of floor insulation, insulation shall be permanently attached to the crawlspace walls.)) <u>Crawl space insulation, where provided instead of floor insulation, shall be installed in accordance with Section R402.2.10.</u> <u>Conditioned basement foundation wall insulation shall be installed in accordance with Section R402.2.8.1.</u> <u>Slab on grade floor insulation shall be installed in accordance with Section R402.2.10.</u>
Shafts, penetrations	Duct ((shafts, utility penetrations,)) and flue shafts ((opening)) to exterior or unconditioned space shall be <u>air sealed</u> . <u>Utility penetrations of the air barrier shall be caulked, gasketed, or otherwise sealed and shall allow for expansion and contraction of materials and mechanical vibration.</u>	Insulation shall be fitted tightly around <u>utilities passing through shafts and penetrations in the building thermal envelope to maintain required R-value.</u>
Narrow cavities	<u>Narrow cavities, of an inch or less, not able to be insulated, shall be air sealed.</u>	Batts in narrow cavities shall be cut to fit and installed to the correct density without any voids or gaps or compression, or narrow cavities shall be filled by insulation that on installation readily conforms to the available cavity space.
Garage separation	Air sealing shall be provided between the garage and conditioned spaces.	<u>Insulated portions of the garage separation assembly shall be installed in accordance with Sections R303 and R402.2.8.</u>
Recessed lighting	Recessed light fixtures installed in the building thermal envelope shall be <u>air sealed ((to the finished surface)) in accordance with Section R402.4.5.</u>	Recessed light fixtures installed in the building thermal envelope shall be air tight and IC rated <u>and shall be buried or surrounded with insulation.</u>

COMPONENT	AIR BARRIER CRITERIA ^(a)	INSULATION CRITERIA ^(a)
Plumbing ((and)), wiring, or other obstructions	<u>All holes created by wiring, plumbing, or other obstructions in the air barrier assembly shall be air sealed.</u>	Batt insulation shall be cut neatly to fit around wiring and plumbing in exterior walls. There shall be no voids or gaps or compression where cut to fit. Insulation that on installation readily conforms to available space shall extend behind piping and wiring. <u>Insulation shall be installed to fill the available space and surround wiring, plumbing, or other obstructions, unless the required R-value can be met by installing insulation and air barrier systems completely to the exterior side of the obstructions.</u>
Shower/tub on exterior wall	The air barrier installed at exterior walls adjacent to showers and tubs shall separate the wall from the showers and tubs.	Exterior walls adjacent to showers and tubs shall be insulated.
Electrical/phone box on exterior wall	The air barrier shall be installed behind electrical or communication boxes or air sealed boxes shall be installed.	
HVAC register boots	HVAC supply and return register boots shall be sealed to the subfloor, wall covering or ceiling penetrated by the boot.	
Concealed sprinklers	When required to be sealed, concealed fire sprinklers shall only be sealed in a manner that is recommended by the manufacturer. Caulking or other adhesive sealants shall not be used to fill voids between fire sprinkler cover plates and walls or ceilings.	

IC = insulation contact.

^a In addition, inspection of log walls shall be in accordance with the provisions of ICC-400.

^b Insulation installed in unconditioned/ventilated attic spaces is not required to be enclosed within an air barrier assembly.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40241, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40241, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40241, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40250 Section R402.5—Maximum fenestration U-factor and SHGC.

R402.5 Maximum fenestration U-factor. The area-weighted average maximum fenestration U-factor permitted using tradeoffs from Section ((R402.1.4)) R402.1.5 or R405 shall be 0.48 for vertical fenestration, and 0.75 for skylights.

EXCEPTION: The maximum U-factor and solar heat gain coefficient (SHGC) for fenestration shall not be required in storm shelters complying with ICC 500.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40250, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40250, filed 1/6/16, effective

7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40250, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 22-13-100, filed 6/14/22, effective 7/15/22)

WAC 51-11R-40310 Section R403.1—Controls.

R403.1 Controls. (~~At least~~) Not less than one thermostat shall be provided for each separate heating and cooling system.

R403.1.1 Programmable or connected thermostat. Where the primary heating system is a forced-air furnace, at least one thermostat per dwelling unit shall be Energy Star certified and capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day and different days of the week. The thermostat shall allow for, at a minimum, a 5-2 programmable schedule (weekdays/weekends) and be capable of providing at least two programmable setback/setup periods per day. This thermostat shall include the capability to set back, set up or temporarily operate the system to maintain zone temperatures down to 55°F (13°C) or up to 85°F (29°C). The thermostat shall (~~initially~~) be programmed initially by the manufacturer with a heating temperature set point (~~no higher~~) of not greater than 70°F (21°C) and a cooling temperature set point (~~no lower~~) of not less than 78°F (26°C). The thermostat and/or control system shall have an adjustable deadband of not less than 10°F.

EXCEPTIONS:

1. Systems controlled by an occupant sensor that is capable of shutting the system off when no occupant is sensed for a period of up to 30 minutes.
2. Systems controlled solely by a manually operated timer capable of operating the system for no more than two hours.
3. Ductless mini-split heat pump systems that have an integral proprietary thermostat.

R403.1.2 Heat pump supplementary heat. Unitary air cooled heat pumps shall include controls that minimize supplemental heat usage during start-up, set-up, and defrost conditions. These controls shall anticipate need for heat and use compression heating as the first stage of heat. Controls shall indicate when supplemental heating is being used through visual means (e.g., LED indicators). Heat pumps equipped with supplementary heaters shall be installed with controls that prevent supplemental heater operation above 40°F. At final inspection the auxiliary heat lock out control shall be set to 35°F or less.

R403.1.3 Continuously burning pilot lights. The natural gas systems and equipment listed below are not permitted to be equipped with continuously burning pilot lights.

1. Fan-type central furnaces.
2. Household cooking appliances.

EXCEPTION: Household cooking appliances without electrical supply voltage connections and in which each pilot light consumes less than 150 Btu/hr.

3. Pool heaters.
4. Spa heaters.
5. (~~Beginning September 1, 2022,~~) Fireplaces.

EXCEPTION: Any fireplace with on-demand, intermittent or interrupted ignition (as defined in ANSI Z21.20) is not considered continuous.

[Statutory Authority: RCW 19.27A.045 and 19.27A.020. WSR 22-13-100, § 51-11R-40310, filed 6/14/22, effective 7/15/22. Statutory Authority:

RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40310, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40310, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40310, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-40315 Section R403.2—Hot water boiler.

R403.2 Hot water boiler ((~~outdoor~~)) temperature ((~~setback~~)) reset.

~~((Hot water boilers that supply heat to the building through one or two pipe heating systems shall have an outdoor temperature setback control that lowers the boiler water temperature based on the outdoor temperature.))~~ The manufacturer shall configure each gas, oil, and electric boiler (other than a boiler equipped with a tankless domestic water heating coil) with an automatic means of adjusting the water temperature supplied by the boiler to ensure incremental change of the inferred heat load will cause an incremental change in the temperature of the water supplied by the boiler. This can be accomplished with outdoor reset, indoor reset, or water temperature sensing.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40315, filed 1/6/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40320 Section R403.3—Ducts.

R403.3 Ducts. Ducts and air handlers shall be installed in accordance with Sections R403.3.1 through R403.3.7.

~~**R403.3.1 ((~~Insulation~~**. Ducts outside the building thermal envelope shall be insulated to a minimum of R-8. Ducts within a concrete slab or in the ground shall be insulated to R-10 with insulation designed to be used below grade))~~ **Ducts located outside conditioned space.** Supply and return ducts located outside *conditioned space* shall be insulated to and R-value of not less than R-8 for ducts 3 inches (76 mm) in diameter and larger and not less than R-6 for ducts smaller than 3 inches (76 mm) in diameter. Ducts buried beneath a building shall be insulated as required per this section or have an equivalent thermal distribution efficiency. Ducts within a concrete slab or in the ground shall be insulated to R-10 with insulation designed to be used below grade. Underground ducts utilizing the *thermal distribution efficiency* method shall be listed and labeled to indicate the R-value equivalency.

((EXCEPTION: Ducts or portions thereof located completely inside the *building thermal envelope*. Ducts located in crawl spaces do not qualify for this exception.))

R403.3.2 Ducts located in conditioned space. For ducts to be considered as being located inside a conditioned space, such ducts shall comply with the following:

1. All duct systems shall be located completely within the continuous air barrier and within the building thermal envelope.

2. All heating, cooling, and ventilation system components shall be installed inside the conditioned space including, but not limited to, forced air ducts, hydronic piping, hydronic floor heating loops, convectors and radiators. Combustion equipment shall be direct vent or sealed combustion.

3. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts is permitted to be located outside the conditioned space, provided they are insulated to a minimum of R-8.

3.1. Metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic.

3.2. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool.

4. Ductwork in floor cavities located over unconditioned space shall comply with all of the following:

4.1. A continuous air barrier installed between unconditioned space and the duct.

4.2. Insulation installed in accordance with Section R402.2.7.

4.3. A minimum R-19 insulation installed in the cavity width separating the duct from unconditioned space.

5. Ductwork located within exterior walls of the building thermal envelope shall comply with the following:

5.1. A continuous air barrier installed between unconditioned space and the duct.

5.2. A minimum R-10 insulation installed in the cavity width separating the duct from unconditioned space.

5.3. The remainder of the cavity insulation shall be fully insulated to the drywall side.

R403.3.3 Ducts buried within ceiling insulation. Where supply and return air ducts are partially or completely buried in ceiling insulation, such ducts shall comply with all of the following:

1. The supply and return ducts shall have an insulation R-value not less than R-8.

2. At all points along each duct, the sum of the ceiling insulation R-value against and above the top of the duct, and against and below the bottom of the duct, shall be not less than R-19, excluding the R-value of the duct insulation.

EXCEPTION: Sections of the supply duct that are less than 3 feet (914 mm) from the supply outlet shall not be required to comply with these requirements.

R403.3.3.1 Effective R-value of deeply buried ducts. Where using a simulated energy performance analysis, sections of ducts that are: Installed in accordance with Section R403.3.3; located directly on, or within 5.5 inches (140 mm) of the ceiling; surrounded with blown-in attic insulation having an R-value of R-30 or greater and located such that the top of the duct is not less than 3.5 inches (89 mm) below the top of the insulation, shall be considered as having an effective duct insulation R-value of R-25.

R403.3.4 Sealing. Ducts, air handlers, and filter boxes shall be sealed. Joints and seams shall comply with either the *International Mechanical Code* or *International Residential Code*, as applicable.

EXCEPTIONS: 1. Air-impermeable spray foam products shall be permitted to be applied without additional joint seals.
2. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams, and locking-type joints and seams of other than the snap-lock and button-lock types.

~~((R403.3.2.1))~~ **R403.3.4.1 Sealed air handler and location.** Air handlers shall have a manufacturer's designation for an air leakage of no more than 2 percent of the design air flow rate when tested in accordance with ASHRAE 193. Air handlers shall be located in the conditioned space.

~~((R403.3.3))~~ **R403.3.5 Duct testing.** Ducts shall be leak tested in accordance with WSU RS-33, using the maximum duct leakage rates specified.

EXCEPTION(S): ((1. The total leakage or leakage to the outdoors test is not required for ducts and air handlers located entirely within the building thermal envelope. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts may be located outside the conditioned space. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool. Ducts located in crawl spaces do not qualify for this exception.
2.)) A duct air leakage test shall not be required for ducts serving ((heat or energy recovery ventilators)) ventilation systems that are not integrated with the ducts serving heating or cooling systems.

A written report of the results shall be signed by the party conducting the test and provided to the *code official*.

~~((R403.3.4))~~ **R403.3.6 Duct leakage.** The total leakage of the ducts, where measured in accordance with Section R403.3.3, shall be as follows:

1. Rough-in test: Total leakage shall be less than or equal to ~~((4))~~ 4.0 cfm (113.3 L/min) per 100 square feet (9.29 m²) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure. All registers shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to ~~((3))~~ 3.0 cfm (85 L/min) per 100 square feet (9.29 m²) of conditioned floor area.

2. Postconstruction test: Leakage to outdoors shall be less than or equal to ~~((4))~~ 4.0 cfm (113.3 L/min) per 100 square feet (9.29 m²) of conditioned floor area or total leakage shall be less than or equal to ~~((4))~~ 4.0 cfm (113.3 L/min) per 100 square feet (9.29 m²) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test.

3. Test for ducts within thermal envelope: Where all ducts and air handlers are located entirely within the building thermal envelope, total leakage shall be less than or equal to 8.0 cubic feet per minute (226.6 L/min) per 100 square feet (9.29 m²) of conditioned floor area. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts may be located outside the conditioned space. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool. Ducts located in crawl spaces do not qualify for this exception.

~~(R403.3.5)~~ R403.3.7 Building cavities. Building framing cavities shall not be used as ducts or plenums. Installation of ducts in exterior walls, floors or ceilings shall not displace required envelope insulation.

~~(R403.3.6 Ducts buried within ceiling insulation.~~ Where supply and return air ducts are partially or completely buried in ceiling insulation, such ducts shall comply with all of the following:

1. The supply and return ducts shall have an insulation R-value not less than R-8.

2. At all points along each duct, the sum of the ceiling insulation R-value against and above the top of the duct, and against and below the bottom of the duct, shall be not less than R-19, excluding the R-value of the duct insulation.

EXCEPTION: Sections of the supply duct that are less than 3 feet (914 mm) from the supply outlet shall not be required to comply with these requirements.

~~R403.3.6.1 Effective R-value of deeply buried ducts.~~ Where using a simulated energy performance analysis, sections of ducts that are: Installed in accordance with Section R403.3.6; located directly on, or within 5.5 inches (140 mm) of the ceiling; surrounded with blown-in attic insulation having an R-value of R-30 or greater and located such that the top of the duct is not less than 3.5 inches (89 mm) below the top of the insulation, shall be considered as having an effective duct insulation R-value of R-25.

~~R403.3.7 Ducts located in conditioned space.~~ For ducts to be considered as being located inside a conditioned space, such ducts shall comply with the following:

1. All duct systems shall be located completely within the continuous air barrier and within the *building thermal envelope*.

2. All heating, cooling and ventilation system components shall be installed inside the conditioned space including, but not limited to, forced air ducts, hydronic piping, hydronic floor heating loops, convectors and radiators. Combustion equipment shall be direct vent or sealed combustion.

3. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts is permitted to be located outside the conditioned space, provided they are insulated to a minimum of R-8.

3.1. Metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic.

3.2. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool.)

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40320, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-40320, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40320, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40320, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40330 Section R403.4—Mechanical system piping insulation.

R403.4 Mechanical system piping insulation. Mechanical system piping capable of carrying fluids above 105°F (41°C) or below 55°F (13°C) shall be insulated to a minimum of R-6.

EXCEPTION: Up to 200 feet of hydronic system piping installed within the conditioned space may be insulated with a minimum of 1/2-inch insulation with a *k* value of 0.28.

R403.4.1 Protection of piping insulation. Piping insulation, including termination ends, exposed to weather shall be protected from damage, including that caused by sunlight, moisture, ~~((equipment maintenance))~~ physical damage, and wind, and shall provide shielding from solar radiation that can cause degradation of the material. Protection shall be removable for the exposed length or no less than six inches from the equipment for maintenance. Adhesive tape shall not be permitted.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40330, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40330, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40330, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40340 Section R403.5—Service hot water systems.

R403.5 Service hot water systems. Energy conservation measures for service hot water systems shall be in accordance with ~~((Sections R403.5.1 through R403.5.5))~~ this section. Service water-heating equipment shall meet the requirements of DOE 10 C.F.R. Part 430 Uniform Energy Factor or the equipment shall meet the requirements of Section C404.2.

R403.5.1 Heated water circulation and temperature maintenance systems. Heated water circulation systems shall be in accordance with Section R403.5.1.1. Heat trace temperature maintenance systems shall be in accordance with Section R403.5.1.2. Automatic controls, temperature sensors and pumps shall be ~~((accessible))~~ in a location with access. Manual controls shall be ~~((readily accessible))~~ in a location with ready access.

R403.5.1.1 Circulation systems. Heated water circulation systems shall be provided with a circulation pump. The system return pipe shall be a dedicated return pipe ~~((or a cold water supply pipe))~~. Gravity and thermo-syphon circulation systems ~~((shall be))~~ are prohibited. Controls ~~((for circulating hot water system pumps shall start the pump based on the identification of a demand for hot water within the occupancy. The controls shall))~~ automatically turn off the circulation pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water.

R403.5.1.1.1 Demand recirculation water systems serving an individual dwelling unit. Demand recirculation water systems shall have controls that start the pump upon receiving a signal from the action of a user of a fixture or appliance, sensing the presence of a user of a fixture or sensing the flow of hot or tempered water to a fixture fitting or appliance.

R403.5.1.2 Heat trace systems. Electric heat trace systems shall comply with IEEE 515.1 or UL 515. Controls for such systems shall automatically adjust the energy input to the heat tracing to maintain the desired water temperature in the piping in accordance with the times when heated water is used in the occupancy.

~~R403.5.2 ((Demand recirculation water systems.~~ ~~Demand recirculation water systems shall have controls that comply with both of the following:~~

~~1. The controls shall start the pump upon receiving a signal from the action of a user of a fixture or appliance, sensing the presence of a user of a fixture or sensing the flow of hot or tempered water to a fixture fitting or appliance.~~

~~2. The controls shall limit the temperature of the water entering the cold water piping to not greater than 104°F (40°C).~~) **Water volume determination.** The volume shall be the sum of the internal volumes of pipe, fittings, valves, meters, and manifolds between the nearest source of heated water and the termination of the fixture supply pipe. Water heaters, circulating water systems, and heat trace temperature maintenance systems shall be considered to be sources of heated water. The volume in the piping shall be determined from Table C404.3.1 in the Washington State Energy Code, Commercial Provisions or Table L502.7 of the Uniform Plumbing Code. The volume contained within fixture shutoff valves, within flexible water supply connectors to a fixture fitting and within a fixture fitting shall not be included in the water volume determination. Where heated water is supplied by a recirculating system or heat-traced piping, the volume shall include the portion of the fitting on the branch pipe that supplies water to the fixture.

R403.5.3 Hot water pipe insulation. Insulation for service hot water pipe, both within and outside the conditioned space, shall have a minimum thermal resistance (*R*-value) of *R*-3.

EXCEPTION: Pipe insulation is permitted to be discontinuous where it passes through studs, joists or other structural members and where the insulated pipes pass other piping, conduit or vents, provided the insulation is installed tight to each obstruction.

R403.5.4 Drain water heat recovery units. Drain water heat recovery units shall comply with CSA 55.2 or IAPMO PS 92. Drain water heat recovery units shall be in accordance with CSA 55.1 or IAPMO IGC 346-2017.

R403.5.5 Water heater installation location. Service hot water systems shall be installed within the building thermal envelope.

EXCEPTION: Where the hot water system efficiency is greater than or equal to 2.0 UEF.

R403.5.6 Electric water heater insulation. All electric water heaters in unconditioned spaces, or on concrete floors in conditioned spaces, shall be placed on an insulated surface with a minimum thermal resistance of *R*-10, and a minimum compressive strength of 40 psi or engineered to support the appliance.

R403.5.7 Heat pump water heating. Service hot water in one- and two-family dwellings and multiple single-family dwellings (townhouses) shall be provided by a heat pump system. The heat pump water heating system shall be sized to provide 100 percent of peak hot water demand. Where the heat pump is located in unconditioned space, the heat pump water heating system shall be sized to provide 100 percent of peak hot water demand at an entering source dry bulb (or wet bulb if rated for wet bulb temperatures) air temperature of 40°F (4°C).

EXCEPTIONS:

1. Resistance heating elements integrated into heat pump equipment.
2. Electric water heaters with a rated water storage volume of no greater than 20 gallons.
3. Dwelling units with no more than 1,000 square feet of conditioned floor area.
4. Supplementary water heating systems in accordance with Section R403.5.7.1, provided the system capacity does not exceed the capacity of the heat pump water heating system.
5. Solar water heating systems.
6. Waste heat and energy recovery systems.
7. Heat trace freeze protection systems.
8. Snow and ice melt systems.

R403.5.7.1 Supplementary heat for heat pump water heating systems.

Heat pumps used for water heating and having supplementary water heating equipment shall have controls that limit supplementary water heating equipment operation to only those times when one of the following applies:

1. The heat pump water heater cannot meet hot water demand.
2. For heat pumps located in unconditioned space, the outside air temperature is below 40°F (4°C).
3. The heat pump is operating in defrost mode.
4. The vapor compression cycle malfunctions or loses power.

EXCEPTION:

Heat trace temperature maintenance systems, provided the system capacity does not exceed the capacity of the heat pump water heating system.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40340, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40340, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27.020, and 19.27.074. WSR 14-24-053, § 51-11R-40340, filed 11/25/14, effective 5/1/15. Statutory Authority: RCW 19.27A.025, 19.27A.045, and 19.27.074. WSR 13-20-121, § 51-11R-40340, filed 10/1/13, effective 11/1/13. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40340, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40350 Section R403.6—Mechanical ventilation.

R403.6 Mechanical ventilation. The buildings complying with Section R402.4.1 shall be provided with mechanical ventilation that meets the requirements of Section M1505 in the *International Residential Code* or Section 403 in the *International Mechanical Code*, as applicable, or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating.

R403.6.1 Whole-house mechanical ventilation system fan efficacy. Mechanical ventilation system fans shall meet the efficacy requirements

of Table R403.6.1 at one or more rating points. Fans shall be tested in accordance with HVI 916 and listed. The airflow shall be reported in the product listing or on the label. Fan efficacy shall be reported in the product listing or shall be derived from the input power and airflow values reported in the product listing on the label. Fan efficacy for fully ducted HRV, ERV, balanced, and in-line fans shall be determined at a static pressure of not less than 0.2 inch w.c. (49.85 Pa). Fan efficacy for ducted range hoods, bathroom and utility room fans shall be determined at a static pressure of not less than 0.1 inch w.c. (24.91 Pa).

((EXCEPTION: Where an air handler that is integral to the tested and listed HVAC equipment is used to provide whole-house ventilation, the air handler shall be powered by an electronically commutated motor.))

R403.6.2 Testing. Mechanical ventilation systems shall be tested and verified to provide the minimum ventilation flow rates required by Section R403.6. Testing shall be performed according to the ventilation equipment manufacturer's instructions, or by using a flow hood or box, flow grid, or other airflow measuring device at the mechanical ventilation fan's inlet terminals or grilles, outlet terminals or grilles, or in the connected ventilation ducts. Where required by the code official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official.

EXCEPTION: Kitchen range hoods that are ducted to the outside with 6-inch (152 mm) or larger duct and not more than one 90-degree (1.57 rad) elbow or equivalent in the duct run.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40350, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40350, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40350, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-40351 Table R403.6.1—Mechanical ventilation system fan efficacy.

**TABLE R403.6.1
WHOLE HOUSE MECHANICAL VENTILATION SYSTEM FAN EFFICACY^a**

((Fan Location	Air Flow Rate Minimum (cfm)	Minimum Efficacy (cfm/watt)	Air Flow Rate Maximum (cfm)
HRV or ERV	Any	1.2 cfm/watt	Any
Range hoods	Any	2.8	Any
In-line fan	Any	2.8	Any
Bathroom; utility room	10	1.4	<90
Bathroom; utility room	90	2.8	Any))

System Type	Air Flow Rate (cfm)	Minimum Efficacy (cfm/watt)
HRV, ERV or balanced	Any	1.2

<u>System Type</u>	<u>Air Flow Rate (cfm)</u>	<u>Minimum Efficacy (cfm/watt)</u>
<u>Range hoods</u>	<u>Any</u>	<u>2.8</u>
<u>In-line supply or exhaust fan</u>	<u>Any</u>	<u>3.8</u>
<u>Other exhaust fan</u>	<u><90</u>	<u>2.8</u>
<u>Other exhaust fan</u>	<u>≥90</u>	<u>3.5</u>

For SI: 1 cfm = 28.3 L/min.

a. ((When tested in accordance with HVI Standard 916-)) Design outdoor or exhausted airflow rates/watt of fan used.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-40351, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40351, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40351, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40351, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-40360 Section R403.7—Equipment sizing.

R403.7 Equipment sizing and efficiency rating. Heating and cooling equipment shall be sized in accordance with ACCA Manual S based on building loads calculated in accordance with ACCA Manual J or other *approved* heating and cooling calculation methodologies. The output capacity of heating and cooling equipment shall not be greater than that of the smallest available equipment size that exceeds the loads calculated, including allowable oversizing limits. Equipment shall meet the minimum federal efficiency standards as referenced in Tables C403.3.2(1), C403.3.2(2), C403.3.2(3), C403.3.2(4), C403.3.2(5), C403.3.2(6), C403.3.2(7), C403.3.2(8) and C403.3.2(9) and tested and rated in accordance with the applicable test procedure.

~~((R403.7.1 Electric resistance zone heated units. All detached one- and two-family dwellings and multiple single-family dwellings (townhouses) up to three stories in height above grade plane using electric zonal heating as the primary heat source shall install an inverter-driven ductless mini-split heat pump in the largest zone in the dwelling. Building permit drawings shall specify the heating equipment type and location of the heating system.~~

EXCEPTION: Total installed heating capacity of 2 kW per dwelling unit or less.)

R403.7.1 Gas fireplace efficiency. All vented gas fireplace heaters rated to ANSI Z21.88 shall be listed and labeled with a fireplace efficiency (FE) rating of 50 percent or greater in accordance with CSA P.4.1. Vented gas fireplaces (decorative appliances) certified to ANSI Z21.50 shall be listed and labeled, including their FE ratings, in accordance with CSA P.4.1.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-40360, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27

RCW. WSR 20-01-047, § 51-11R-40360, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40360, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40360, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40390 Section R403.10—Pool and spa energy consumption.

R403.10 ((Pool and permanent spa)) Energy consumption of pools and spas. ~~The energy consumption of pools and permanent spas shall ((comply with))~~ be controlled by the requirements in Sections R403.10.1 through R403.10.4.2.

R403.10.1 Heaters. The electric power to heaters shall be controlled by ~~((a readily accessible))~~ an on-off switch that is an integral part of the heater mounted on the exterior of the heater in a location with ready access, or external to and within 3 feet (914 mm) of the heater. Operation of such switch shall not change the settings of the heater thermostat. Such switches shall be in addition to a circuit breaker for the power to the heater.

R403.10.2 Time switches. Time switches or other control method that can automatically turn off and on heaters and pump motors according to a preset schedule shall be installed for heaters and pump motors. Heaters and pump motors that have built in time switches shall be deemed in compliance with this requirement.

EXCEPTIONS: 1. Where public health standards require 24-hour pump operation.
2. Pumps that operate solar- and waste-heat-recovery pool heating systems.

R403.10.3 Covers. Outdoor heated pools and outdoor permanent spas shall be provided with a vapor-retardant cover, or other approved vapor retardant means.

EXCEPTION: Where more than 75 percent of the energy for heating, computed over an operating season of not ~~((less))~~ fewer than three calendar months, is from a heat pump or on-site renewable energy system, covers or other vapor-retardant means shall not be required.

R403.10.4 Residential pool pumps. Pool pump motors may not be split-phase or capacitor start-induction run type.

R403.10.4.1 Two-speed capability.

1. Pump motors: Pool pump motors with a capacity of 1 hp or more shall have the capability of operating at two or more speeds with low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate.

2. Pump controls: Pool pump motor controls shall have the capability of operating the pool pump with at least two speeds. The default circulation speed shall be the lowest speed, with a high speed override capability being for a temporary period not to exceed one normal cycle.

R403.10.4.2 Pump operation. Circulating water systems shall be controlled so that the circulation pump(s) can be conveniently turned off, automatically or manually, when the water system is not in operation.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40390, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40390, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40390, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40391 Section R403.10—Other pools and spas.

R403.11 Portable spas. The energy consumption of electric-powered portable spas shall be controlled by the requirements of APSP-14.

R403.12 Residential pools and permanent residential spas. (~~Residential swimming pools and permanent residential spas that are accessory to detached one- and two-family dwellings and townhouses three stories or less in height above grade plane and that are available only to the household and its guests~~) The energy consumption of residential swimming pools and permanent residential spas shall be controlled in accordance with the requirements of APSP-15.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40391, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40391, filed 1/6/16, effective 7/1/16.]

NEW SECTION

WAC 51-11R-40392 Section R403.13—Heat pump space heating.

R403.13 Heat pump space heating. Space heating shall be provided by a heat pump system.

- EXEMPTIONS:
1. Detached one- and two-family dwellings and multiple-single family dwellings (townhouses up to three stories in height above grade having an installed HVAC heating capacity no greater than 1.5 watts of electric resistance heating per square foot of *dwelling unit conditioned floor area*, or up to 500 watts, whichever is greater.
 2. Group R-2 *dwelling or sleeping units* having an installed HVAC heating capacity no greater than 750 watts in Climate Zone 4, and 1,000 watts in Climate Zone 5, in any separate habitable room with exterior fenestration are permitted to be heated using electric resistance appliances. Four buildings in location with exterior design conditions below 4°F (-15.6°C), an additional 250 watts above that allowed for Climate Zone 5 is permitted.
 - 2.1. A room within a dwelling or sleeping unit that has two primary walls facing different cardinal directions, each with exterior fenestration, is permitted to have an installed HVAC heating capacity no greater than 1,000 watts in Climate Zone 4, and 1,300 watts in Climate Zone 5. Bay windows and other minor offsets are not considered primary walls. For buildings in location with exterior design conditions below 4°F (-15.6°C), an additional 250 watts above that allowed for Climate Zone 5 is permitted.
 3. Resistance heating elements integrated into heat pump equipment.
 4. Solar thermal systems.
 5. Waste heat, radiant heat exchanger, and energy recovery systems.
 6. Supplementary heat in accordance with Section R403.1.2.
 7. Where there is no electric utility service available at the building site.
 8. Heating systems that rely primarily on biomass are allowed in Climate Zone 5.

[]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40410 Section R404.1—Lighting equipment.

R404.1 Lighting equipment. (~~Not less than 90 percent of lamps in~~) All permanently installed lighting fixtures, excluding kitchen appliance lighting fixtures, shall ((be)) contain only high-efficacy ((lamps)) lighting sources.

R404.1.1 Exterior lighting. Connected exterior lighting for residential buildings shall comply with Section C405.5.

EXCEPTION: Solar-powered lamps not connected to any electrical service.

~~((R404.1.1))~~ **R404.1.2 Fuel gas lighting equipment.** Fuel gas lighting systems shall not have continuously burning pilot lights.

R404.2 Interior lighting controls. Permanently installed interior lighting fixtures shall be controlled with either a dimmer, an occupant sensor control, or other control that is installed or built into the fixture.

EXCEPTION: Lighting controls shall not be required for the following:

1. Bathrooms;
2. Hallways;
3. Lighting designed for safety or security.

R404.3 Exterior lighting controls. Where the total permanently installed exterior lighting power is greater than 30 watts, the permanently installed exterior lighting shall comply with the following:

1. Lighting shall be controlled by a manual on and off switch which permits automatic shut-off actions.

EXCEPTION: Lighting serving multiple dwelling units.

2. Lighting shall be automatically shut off when daylight is present and satisfies the lighting needs.

3. Controls that override automatic shut-off actions shall not be allowed unless the override automatically returns automatic control to its normal operation within 24 hours.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40410, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40410, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40410, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-40500 Section R405—(~~Simulated performance alternative (Performance))~~) Total building performance.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40500, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40510 Section R405.1—Scope.

R405.1 Scope. This section establishes criteria for compliance using ~~((simulated energy))~~ total building performance analysis. Such analysis shall include heating, cooling, mechanical ventilation, and service water heating energy only.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40510, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40510, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 22-10-094, filed 5/3/22, effective 6/3/22)

WAC 51-11R-40520 Section R405.2—~~((Mandatory requirements))~~ Performance based compliance.

R405.2 ~~((Mandatory requirements))~~ Performance based compliance. Compliance ~~((with this section requires compliance with those sections shown in Table R405.2. All supply and return ducts not completely inside the building thermal envelope shall be insulated to a minimum of R-8))~~ based on total building performance requires the following:

1. The requirements of the sections indicated within Table R405.2(1).
 2. For structures less than 1,500 square feet of conditioned floor area, the annual carbon emissions shall be less than or equal to 64 percent of the annual carbon emissions of the standard reference design.
 3. For structures 1,500 to 5,000 square feet of conditioned floor area, the annual carbon emissions shall be no more than 47 percent of the standard reference design.
 4. For structures over 5,000 square feet of conditioned floor area, the annual carbon emissions shall be no more than 41 percent of the standard reference design.
 5. For structures serving Group R-2 occupancies, the annual carbon emissions shall be less than or equal to 61 percent of the annual energy consumption of the standard reference design. See Section R401.1 and residential building in Section R202 for Group R-2 scope.
- Carbon emissions for both the standard reference design and the proposed design shall be calculated using Table R405.2(2). Energy use derived from simulation analysis shall be expressed in pounds of carbon per square foot of conditioned floor area.

TABLE R405.2(1)
MANDATORY COMPLIANCE MEASURES FOR ~~((SIMULATED PERFORMANCE ALTERNATIVE))~~ TOTAL BUILDING PERFORMANCE

Section ^a	Title	Comments
General		
R401.3	Certificate	
Envelope		

Section ^a	Title	Comments
<u>R402.1.1</u>	<u>Vapor retarder</u>	
<u>R402.2.3</u>	<u>Eave baffle</u>	
<u>R402.2.4.1</u>	<u>Access hatches and doors</u>	
<u>R402.2.10.1</u>	<u>Crawlspace wall insulation installations</u>	
R402.4	Air leakage	
R402.5	Maximum fenestration <i>U</i> -factor	
Systems		
R403.1	Controls	
((R403.1.2	Heat pump supplemental heat	
<u>R403.3.2</u>	<u>Sealing</u>	
<u>R403.3.1</u>	<u>Insulation</u>	
<u>R403.3.3</u>	<u>Duct testing</u>	
<u>R403.3.4</u>	<u>Duct leakage</u>	
<u>R403.3.5</u>	<u>Building cavities))</u>	
<u>R403.3</u>	<u>Ducts</u>	Except for <u>R403.3.2</u> and <u>R403.3.3</u>
R403.4	Mechanical system piping insulation	
R403.5.1	Heated water circulation and temperature maintenance system	
<u>R403.5.3</u>	<u>Drain water heat recovery units</u>	
<u>R403.5.7</u>	<u>Heat pump water heating</u>	
R403.6	Mechanical ventilation	
R403.7	Equipment sizing and efficiency rating	
R403.8	Systems serving multiple dwelling units	
R403.9	Snow melt system controls	
R403.10	((Pool and permanent spa energy consumption)) <u>Energy consumption of pools and spas</u>	
R403.11	Portable spas	
<u>R403.12</u>	<u>Residential pools and permanent residential spas</u>	
<u>R403.13</u>	<u>Heat pump space heating</u>	
Electrical Power and Lighting		
R404.1	Lighting equipment	
((R404.1.1	Lighting equipment))	

Section ^a	Title	Comments
R404.2	((Electric readiness)) <u>Interior lighting controls</u>	
((Other Requirements		
R406	Additional energy efficiency requirements))	

^a Reference to a code section includes all the relative subsections except as indicated in the table.

TABLE R405.2 (2)
CARBON EMISSIONS FACTORS

Type	CO ₂ e (lb/unit)	Unit
<u>Electricity</u>	<u>0.44</u>	<u>kWh</u>
<u>Natural gas</u>	<u>11.7</u>	<u>Therm</u>
<u>Oil</u>	<u>19.2</u>	<u>Gallon</u>
<u>Propane</u>	<u>10.5</u>	<u>Gallon</u>
<u>Other^a</u>	<u>195.00</u>	<u>mmBtu</u>
<u>On-site renewable energy</u>	<u>0.00</u>	

^a District energy systems may use alternative emission factors supported by calculations *approved* by the *code official*.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 22-10-094, § 51-11R-40520, filed 5/3/22, effective 6/3/22. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40520, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40520, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-40530 Section R405.3—((Performance-based compliance)) Documentation.

~~((R405.3 Performance-based compliance. Compliance based on simulated energy performance requires that a proposed residence (proposed design) be shown to have an annual energy consumption based on carbon emissions of the fuels and energy use in the proposed building. Carbon emissions for both the standard reference design and the proposed design shall be calculated using Table R405.3. Energy use derived from simulation analysis shall be expressed in pounds of carbon per square foot of conditioned floor area as follows:~~

~~1. For structures less than 1,500 square feet of conditioned floor area, the annual carbon emissions shall be less than or equal to 73 percent of the annual carbon emissions of the standard reference design.~~

~~2. For structures 1,500 to 5,000 square feet of conditioned floor area, the annual carbon emissions shall be no more than 56 percent of the standard reference design.~~

3. For structures over 5,000 square feet of conditioned floor area, the annual carbon emissions shall be no more than 50 percent of the *standard reference design*.

4. For structures serving Group R-2 occupancies, the annual carbon emissions shall be less than or equal to 70 percent of the annual energy consumption of the *standard reference design*.

TABLE R405.3
CARBON EMISSIONS FACTORS

Type	CO ₂ e (lb/unit)	Unit
Electricity	0.80	kWh
Natural gas	11.7	Therm
Oil	19.2	Gallon
Propane	10.5	Gallon
Other ^a	195.00	mmBtu
On-site renewable energy	0.00	

^a District energy systems may use alternative emission factors supported by calculations *approved by the code official*.)

R405.3 Documentation. Documentation of the software used for the performance design and the parameters for the building shall be in accordance with Sections R405.3.1 through R405.3.3.

R405.3.1 Compliance software tools. Documentation verifying that the methods and accuracy of the compliance software tools conform to the provisions of this section shall be provided to the *code official*.

R405.3.2 Compliance report. Compliance software tools shall generate a report that documents that the *proposed design* complies with Section R405.2.

A compliance report on the *proposed design* shall be submitted with the application for the building permit. Upon completion of the building, a confirmed compliance report based upon the confirmed condition of the building shall be submitted to the *code official* before a certificate of occupancy is issued.

Compliance reports shall include information in accordance with Sections R405.3.2.1 and R405.3.2.2.

R405.3.2.1 Compliance report for permit application. A compliance report submitted with the application for building permit shall include all of the following:

1. Building street address, or other building site identification.
2. The name, organization, and contact information of the individual performing the analysis and generating the compliance report.
3. The name and version of the compliance software tool.
4. Documentation of all inputs entered into the software used to produce the results for the reference design and/or the rated home.
5. A certificate indicating that the *proposed design* complied with Section R405.2. The certificate shall document the building components' energy specifications that are included in the calculation including: Component-level insulation R-values or U-factors; duct system and building envelope air leakage testing assumptions; and the type and rated efficiencies of proposed heating, cooling, mechanical ventilation, and service water-heating equipment to be installed. If on-site renewable energy systems will be installed, the certificate shall report the type and production size of the proposed system. Ad-

ditional documentation reporting estimated annual energy production shall be provided.

6. When a site-specific report is not generated, the proposed design shall be based on the worst-case orientation and configuration of the rated home.

R405.3.2.2 Compliance report for certificate of occupancy. A compliance report submitted for obtaining the certificate of occupancy shall include all of the following:

1. Building street address, or other building site identification.

2. Declaration of the total building performance path on the title page of the energy report and the title page of the building plans.

3. A statement bearing the name of the individual performing the analysis and generating the report, along with their organization and contact information, indicating that the as-built building complies with Section R405.2.

4. The name and version of the compliance software tool.

5. A site-specific energy analysis report that is in compliance with Section R405.2.

6. A final confirmed certificate indicating compliance based on inspection, and a statement indicating that the confirmed rated design of the built home complies with Section R405.2. The certificate shall report the energy features that were confirmed to be in the home, including component level insulation R-values or U-factors; results from any required duct system and building envelope air leakage testing; and the type and rated efficiencies of the heating, cooling, mechanical ventilation, and service water-heating equipment installed.

7. Where on-site renewable energy systems have been installed, the certificate shall report the type and production size of the installed system. Additional documentation reporting estimated annual energy production shall be provided.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-40530, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40530, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40530, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40530, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-40540 Section R405.4—((Documentation)) Calculation procedure.

~~((R405.4 Documentation. Documentation of the software used for the performance design and the parameters for the building shall be in accordance with Sections R405.4.1 through R405.4.3.~~

~~**R405.4.1 Compliance software tools.** Documentation verifying that the methods and accuracy of the compliance software tools conform to the provisions of this section shall be provided to the code official.~~

~~**R405.4.2 Compliance report.** Compliance software tools shall generate a report that documents that the *proposed design* complies with Section R405.3.~~

~~A compliance report on the *proposed design* shall be submitted with the application for the building permit. Upon completion of the building, a compliance report based upon the as-built condition of the building shall be submitted to the code official before a certificate of occupancy is issued. Batch sampling of buildings to determine energy code compliance for all buildings in the batch shall be prohibited.~~

~~Compliance reports shall include information in accordance with Sections R405.4.2.1 and R405.4.2.2. Where the *proposed design* of a building could be built on different sites where the cardinal orientation of the building on each site is different, compliance of the *proposed design* for the purposes of the application for the building permit shall be based upon the worst-case orientation, worst-case configuration, worst-case building air leakage and worst-case duct leakage. Such worst-case parameters shall be used as inputs to the compliance software for energy analysis.~~

~~**R405.4.2.1 Compliance report for permit application.** A compliance report submitted with the application for building permit shall include all of the following:~~

- ~~1. Building street address, or other building site identification.~~
- ~~2. A statement indicating that the *proposed design* complies with Section R405.3.~~
- ~~3. An inspection checklist documenting the building component characteristics of the *proposed design* as indicated in Table R405.5.2(1). The inspection checklist shall show results for both the *standard reference design* and the *proposed design* with all user inputs to the compliance software to generate the results.~~
- ~~4. A site-specific energy analysis report that is in compliance with Section R405.3.~~
- ~~5. Name of the individual performing the analysis and generating the report.~~
- ~~6. Name and version of the compliance software tool.~~

~~**R405.4.2.2 Compliance report for certificate of occupancy.** A compliance report submitted for obtaining the certificate of occupancy shall include all of the following:~~

- ~~1. Building street address, or other building site identification.~~
- ~~2. A statement indicating that the as-built building complies with Section R405.3.~~
- ~~3. A certificate indicating that the building passes the performance matrix for code compliance and the energy saving features of the building.~~
- ~~4. A site-specific energy analysis report that is in compliance with Section R405.3.~~
- ~~5. Name of the individual performing the analysis and generating the report.~~
- ~~6. Name and version of the compliance software tool.~~

~~R405.4.3 Additional documentation.~~ ~~The code official shall be permitted to require the following documents:~~

- ~~1. Documentation of the building component characteristics of the standard reference design.~~
- ~~2. A certification signed by the builder providing the building component characteristics of the proposed design as given in Table R405.5.2(1).~~
- ~~3. Documentation of the actual values used in the software calculations for the proposed design.)~~

R405.4 Calculation procedure. Calculations of the performance design shall be in accordance with Sections R405.4.1 and R405.4.2.

R405.4.1 General. Except as specified by this section, the *standard reference design* and *proposed design* shall be configured and analyzed using identical methods and techniques.

R405.4.2 Residence specifications. The *standard reference design* and *proposed design* shall be configured and analyzed as specified by Table R405.4.2(1). Table R405.4.2(1) shall include by reference all notes contained in Table R402.1.3.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40540, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40540, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-40550 ((Section R405.5—Calculation procedure.)) Reserved.

~~((R405.5 Calculation procedure. Calculations of the performance design shall be in accordance with Sections R405.5.1 and R405.5.2.~~

~~**R405.5.1 General.** Except as specified by this section, the *standard reference design* and *proposed design* shall be configured and analyzed using identical methods and techniques.~~

~~**R405.5.2 Residence specifications.** The *standard reference design* and *proposed design* shall be configured and analyzed as specified by Table R405.5.2(1). Table R405.5.2(1) shall include by reference all notes contained in Table R402.1.1.)~~

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40550, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-40551 Table ((R405.5.2(1))) R405.4.2(1)—Specifications for the standard reference and proposed designs.

TABLE ((R405-5.2(1))) R402.4.2(1)
 SPECIFICATIONS FOR THE STANDARD REFERENCE AND PROPOSED DESIGNS

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
Above-grade walls	Type: Mass wall if proposed wall is mass; otherwise wood frame. Gross area: Same as proposed U-factor: From Table ((R402.1.3)) R402.1.2 Solar absorptance = 0.75 Emittance = 0.90	As proposed As proposed As proposed As proposed As proposed
Below-grade walls	Type: Same as proposed Gross area: Same as proposed U-factor: From Table ((R402.1.3)) R402.1.2, with insulation layer on interior side of walls.	As proposed As proposed As proposed
Above-grade floors	Type: Wood frame Gross area: Same as proposed U-factor: From Table ((R402.1.3)) R402.1.2	As proposed As proposed As proposed
Ceilings	Type: Wood frame Gross area: Same as proposed U-factor: From Table ((R402.1.3)) R402.1.2	As proposed As proposed As proposed
Roofs	Type: Composition shingle on wood sheathing Gross area: Same as proposed Solar absorptance = 0.75 Emittance = 0.90	As proposed As proposed As proposed As proposed
Attics	Type: Vented with aperture = 1 ft ² per 300 ft ² ceiling area	As proposed
Foundations	Type: Same as proposed foundation wall area above and below-grade Soil characteristics: Same as proposed.	As proposed As proposed
Opaque doors	Area: 40 ft ² Orientation: North U-factor: Same as fenestration from Table ((R402.1.3)) R402.1.2.	As proposed As proposed As proposed
Vertical fenestration other than opaque doors ^a	Total area ^h = (a) The proposed glazing area; where proposed glazing area is less than 15% of the conditioned floor area. (b) 15% of the conditioned floor area; where the proposed glazing area is 15% or more of the conditioned floor area.	As proposed
	Orientation: Equally distributed to four cardinal compass orientations (N, E, S & W).	As proposed
	U-factor: From Table ((R402.1.3)) R402.1.2	As proposed
	SHGC: From Table R402.1.1 except that for climates with no requirement (NR) SHGC = 0.40 shall be used.	As proposed
	Interior shade fraction: 0.92 - (0.21 × SHGC for the standard reference design) External shading: None	0.92 - (0.21 × SHGC as proposed) As proposed
Skylights	None	As proposed
Air exchange rate	Air leakage rate of 5 air changes per hour at a pressure of 0.2 inches w.g. (50 Pa). The mechanical ventilation rate shall be in addition to the air leakage rate and the same as in the proposed design, but no greater than $0.01 \times CFA + 7.5 \times (N_{br} + 1)$ where: CFA = conditioned floor area N _{br} = number of bedrooms - <u>The mechanical ventilation system type shall be the same as in the proposed design.</u> Energy recovery shall not be assumed for mechanical ventilation.	As proposed ^a . The mechanical ventilation rate ^b shall be in addition to the air leakage rate and shall be as proposed.

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
Mechanical ventilation	None, except where mechanical ventilation is specified by the proposed design, in which case: Annual vent fan energy use: $kWh/yr = (1e_f) \times (0.0876 \times CFA + 65.7 \times (N_{br} + 1))$ where: e_f = the minimum ((exhaust)) fan efficacy from Table R403.6.1 corresponding to the system type at a flow rate of $0.01 \times CFA + 7.5 \times (N_{br} + 1)$ CFA = conditioned floor area N_{br} = number of bedrooms	As proposed
Internal gains	$IGain = 17,900 + 23.8 \times CFA + 4104 \times N_{br}$ (Btu/day per dwelling unit)	Same as standard reference design
Internal mass	An internal mass for furniture and contents of 8 pounds per square foot of floor area.	Same as standard reference design, plus any additional mass specifically designed as a thermal storage element ^c but not integral to the building envelope or structure.
Structural mass	For masonry floor slabs, 80% of floor area covered by R-2 carpet and pad, and 20% of floor directly exposed to room air.	As proposed
	For masonry basement walls, as proposed, but with insulation required by Table ((R402.1.3)) R402.1.2 located on the interior side of the walls.	As proposed
	For other walls, for ceilings, floors, and interior walls, wood frame construction.	As proposed
Heating systems ^{d, e}	((Where the proposed design utilizes electric heating without a heat pump)) The standard reference design shall be an air source heat pump meeting the requirements of Section C403 of the WSEC—Commercial Provisions. ((For all other systems, the same system type as proposed, and the same system efficiency required by prevailing minimum federal standard.)) Capacity: Sized in accordance with Section R403.6	As proposed
Cooling systems ^{d, f}	Same system type as proposed. Same system efficiency as required by prevailing minimum federal standard. Capacity: Sized in accordance with Section R403.6.	As proposed
Service water heating ^{d, e, f, g}	((Same system type as proposed. Same system efficiency as required by prevailing minimum federal standard. Use: Same as proposed design)) The standard reference design shall be a heat pump water heating meeting the standards for Tier 1 of NEEA's Advanced Water Heating Specifications. Use, in units of gal/day = $25.5 + (8.5 \times N_{br})$ Where N_{br} = number of bedrooms	As proposed ((gal/day = $30 + (10 \times N_{br})$)) Use, in units of gal/day = $25.5 + (8.5 \times N_{br}) \times (1 - HWDS)$ Where: N_{br} = number of bedrooms HWDS = factor for the compactness of the hot water distribution system

Compactness ratio ¹ factor		HWDS
1 story	2 or more stories	
>60%	>30%	0
>30% to ≤60%	>15% to ≤30%	0.05
>15% to ≤30%	>7.5% to ≤15%	0.10
≤15%	≤7.5%	0.15

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
Thermal distribution systems	<p>Duct insulation: From Section R403.3.3.</p> <p>Duct location: Same as proposed design.</p> <p>A thermal distribution system efficiency (DSE) of 0.93 shall be applied to both the heating and cooling system efficiencies for all systems.</p> <p>Exception: For nonducted heating and cooling systems that do not have a fan, the standard reference design distribution system efficiency (DSE) shall be 1.</p>	<p><u>Duct insulation: As proposed.</u></p> <p><u>Duct location: As proposed.</u></p> <p>As specified in Table R405.5.2(2).</p>
Thermostat	Type: Manual, cooling temperature setpoint = 75°F; Heating temperature setpoint = 72°F	Same as standard reference

For SI: 1 square foot = 0.93 m², 1 British thermal unit = 1055 J, 1 pound per square foot = 4.88 kg/m², 1 gallon (U.S.) = 3.785 L, °C = (°F-3)/1.8, 1 degree = 0.79 rad

- a Where required by the *code official*, testing shall be conducted by an *approved party*. Hourly calculations as specified in the ASHRAE *Handbook of Fundamentals*, or the equivalent, shall be used to determine the energy loads resulting from infiltration.
- b The combined air exchange rate for infiltration and mechanical ventilation shall be determined in accordance with Equation 43 of 2001 ASHRAE *Handbook of Fundamentals*, page 26.24 and the "Whole-house Ventilation" provisions of 2001 ASHRAE *Handbook of Fundamentals*, page 26.19 for intermittent mechanical ventilation.
- c Thermal storage element shall mean a component not part of the floors, walls or ceilings that is part of a passive solar system, and that provides thermal storage such as enclosed water columns, rock beds, or phase-change containers. A thermal storage element must be in the same room as fenestration that faces within 15 degrees (0.26 rad) of true south, or must be connected to such a room with pipes or ducts that allow the element to be actively charged.
- d For a proposed design with multiple heating, cooling or water heating systems using different fuel types, the applicable standard reference design system capacities and fuel types shall be weighted in accordance with their respective loads as calculated by accepted engineering practice for each equipment and fuel type present.
- e For a proposed design without a proposed heating system, a heating system with the prevailing federal minimum efficiency shall be assumed for both the standard reference design and proposed design.
- f For a proposed design home without a proposed cooling system, an electric air conditioner with the prevailing federal minimum efficiency shall be assumed for both the standard reference design and the proposed design.
- g For a proposed design with a nonstorage-type water heater, a 40-gallon storage-type water heater with the prevailing federal minimum energy factor for the same fuel as the predominant heating fuel type shall be assumed. For the case of a proposed design without a proposed water heater, a 40-gallon storage-type water heater with the prevailing federal minimum efficiency for the same fuel as the predominant heating fuel type shall be assumed for both the proposed design and standard reference design.
- h For residences with conditioned basements, R-2 and R-4 residences and townhouses, the following formula shall be used to determine fenestration area:

$$AF = A_s \times FA \times F$$

Where:

- AF = Total fenestration area.
- A_s = Standard reference design total fenestration area.
- FA = (Above-grade thermal boundary gross wall area)/(above-grade boundary wall area + 0.5 x below-grade boundary wall area).
- F = (Above-grade thermal boundary wall area)/(above-grade thermal boundary wall area + common wall area) or 0.56, whichever is greater.

and where:

Thermal boundary wall is any wall that separates conditioned space from unconditioned space or ambient conditions.

Above-grade thermal boundary wall is any thermal boundary wall component not in contact with soil.

Below-grade boundary wall is any thermal boundary wall in soil contact.

Common wall area is the area of walls shared with an adjoining dwelling unit.

L and CFA are in the same units.

- i The factor for the compactness of the hot water distribution system is the ratio of the area of the rectangle that bounds the source of hot water and the fixtures that it serves (the "hot water rectangle") divided by the floor area of the dwelling.
 1. Sources of hot water include water heaters, or in multifamily buildings with central water heating systems, circulation loops, or electric heat traced pipes.
 2. The hot water rectangle shall include the source of hot water and the points of termination of all hot water fixture supply piping.
 3. The hot water rectangle shall be shown on the floor plans and the area shall be computed to the nearest square foot.
 4. Where there is more than one water heater and each water heater serves different plumbing fixtures and appliances, it is permissible to establish a separate hot water rectangle for each hot water distribution system and add the area of these rectangles together to determine the compactness ratio.
 5. The basement or attic shall be counted as a story when it contains the water heater.
 6. Compliance shall be demonstrated by providing a drawing on the plans that shows the hot water distribution system rectangle(s), comparing the area of the rectangle(s) to the area of the dwelling and identifying the appropriate compactness ratio and HWDS factor.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-40551, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40551, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and

19.27.074. WSR 16-02-127, § 51-11R-40551, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40551, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-40552 Table ((R405.5.2(2))) R405.4.2(2)—Default distribution system efficiencies for proposed designs.

**TABLE ((R405.5.2(2))) R402.4.2(2)
DEFAULT DISTRIBUTION SYSTEM EFFICIENCIES FOR PROPOSED
DESIGNS^a**

DISTRIBUTION SYSTEM CONFIGURATION AND CONDITION	DISTRIBUTION SYSTEM EFFICIENCY
Distribution system components located in unconditioned space	0.88
Distribution systems entirely located in conditioned space ^b	0.93
Zonal systems ^c	1.00

For SI: 1 cubic foot per minute = 0.47 L/s, 1 square foot = 0.093m², 1 pound per square inch = 6895 Pa, 1 inch water gauge = 1250 Pa.

^a Values given by this table are for distribution systems, which must still meet all prescriptive requirements for duct and pipe system insulation and leakage.

^b Entire system in conditioned space shall mean that no component of the distribution system, including the air-handler unit, is located outside of the conditioned space. All components must be located on the interior side of the thermal envelope (inside the insulation) and also inside of the air barrier. Refrigerant compressors and piping are allowed to be located outside.

^c Zonal systems are systems where the heat source is located within each room. Systems shall be allowed to have forced airflow across a coil but shall not have any ducted airflow external to the manufacturer's air-handler enclosure. Hydronic systems do not qualify.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40552, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40552, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-40560 Section ((R405.6)) R405.5—Calculation software tools.

((R405.6)) R405.5 Calculation software tools. Calculation software, where used, shall be in accordance with Sections ((R405.6.1)) R405.5.1 through ((R405.6.3)) R405.5.3.

((R405.6.1)) R405.5.1 Minimum capabilities. Calculation procedures used to comply with this section shall be software tools capable of calculating the annual energy consumption of all building elements

that differ between the *standard reference design* and the *proposed design* and shall include the following capabilities:

1. Calculation of whole-building (as a single zone) sizing for the heating and cooling equipment in the *standard reference design* residence in accordance with Section R403.6.
2. Calculations that account for the effects of indoor and outdoor temperatures and part-load ratios on the performance of heating, ventilating and air-conditioning equipment based on climate and equipment sizing.
3. Printed *code official* inspection checklist listing each of the *proposed design* component characteristics from Table R405.5.2(1) determined by the analysis to provide compliance, along with their respective performance ratings (e.g., R-value, U-factor, SHGC, HSPF, AFUE, SEER, EF, etc.).

((R405.6.2)) R405.5.2 Specific approval. Performance analysis tools meeting the applicable sections of Section R405 shall be permitted to be *approved*. Tools are permitted to be *approved* based on meeting a specified threshold for a jurisdiction. The *code official* shall be permitted to approve tools for a specified application or limited scope.

((R405.6.3)) R405.5.3 Input values. When calculations require input values not specified by Sections R402, R403, R404 and R405, those input values shall be taken from an approved source.

[Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40560, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40610 Section R406.1—Scope.

R406.1 Scope. This section establishes additional energy efficiency requirements for all new construction covered by this code, including additions subject to Section R502 and change of occupancy or use subject to Section R505 unless specifically exempted in Section R406. Credits from both Sections R406.2 and R406.3 are required.

R406.2 Carbon emission equalization. This section establishes a base equalization between fuels used to define the equivalent carbon emissions of the options specified. The permit shall define the base fuel selection to be used and the points specified in Table R406.2 shall be used to modify the requirements in Section R406.3. (~~The sum of credits from Tables R406.2 and R406.3 shall meet the requirements of Section R406.3.~~)

TABLE R406.2

FUEL NORMALIZATION CREDITS

TABLE R406.2 OPTION 1 (TAG Recommendation based on initial proposal to achieve targeted energy savings for the cycle)

System Type	Description of Primary Heating Source	Credits	
		All Other	Group R-2 ^a
(1)	Combustion heating equipment meeting minimum federal efficiency standards for the equipment listed in Table C403.3.2(4) or C403.3.2(5)	0	0
2	For an initial heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(1)C or C403.3.2(2) or Air to water heat pump units that are configured to provide both heating and cooling and are rated in accordance with AHRI 550/590	1.0	1.0
3	For heating system based on electric resistance only (either forced air or Zonal)	-1.0	-1.0
4	For heating system based on electric resistance with a ductless mini-split heat pump system in accordance with Section R403.7.1 including the exception	0.5	N/A
5	All other heating systems	-1	-0.5))
1	For combustion heating system using equipment meeting minimum federal efficiency standards for the equipment listed in Table C403.3.2(4) or C403.3.2(5)	0	0
2	For a primary heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(2) and secondary heating provided by a combustion furnace meeting minimum standards listed in Table C403.3.2(4) ^b	1.5	0
3	For heating system based on electric resistance only (either forced air or zonal)	0.5	-0.5
4 ^c	For an initial heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(1)C or C403.3.2(2) or Air to water heat pump units that are configured to provide both heating and cooling and are rated in accordance with AHRI 550/590	3.0	2.0
5	For heating system based on electric resistance with: 1. Inverter-driven ductless mini-split heat pump system installed in the largest zone in the dwelling or 2. With 2 kW or less total installed heating capacity per dwelling	2.0	0

^a See Section R401.1 and *residential building* in Section R202 for Group R-2 scope.

^b The gas back-up furnace will operate as fan-only when the heat pump is operating. The heat pump shall operate at all temperatures above 38°F (3.3°C) (or lower). Below that "changeover" temperature, the heat pump would not operate to provide space heating. The gas furnace provides heating below 38°F (3.3°C) (or lower).

^c Additional points for this HVAC system are included in Table R406.3.

TABLE R406.2 OPTION 2 (Post-TAG modifications to account for energy savings of other proposals to achieve the targeted energy reduction for the cycle)

System Type	Description of Primary Heating Source	Credits	
		All Other	Group R-2 ^a
(1)	Combustion heating equipment meeting minimum federal efficiency standards for the equipment listed in Table C403.3.2(4) or C403.3.2(5)	0	0
2	For an initial heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(1)C or C403.3.2(2) or Air to water heat pump units that are configured to provide both heating and cooling and are rated in accordance with AHRI 550/590	1.0	1.0
3	For heating system based on electric resistance only (either forced air or Zonal)	-1.0	-1.0
4	For heating system based on electric resistance with a ductless mini-split heat pump system in accordance with Section R403.7.1 including the exception	0.5	N/A
5	All other heating systems	-1	-0.5))

System Type	Description of Primary Heating Source	Credits	
		All Other	Group R-2 ^a
<u>1</u>	For combustion heating system using equipment meeting minimum federal efficiency standards for the equipment listed in Table C403.3.2(4) or C403.3.2(5)	0	0
<u>2</u>	For an initial heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(2) and secondary heating provided by a combustion furnace meeting minimum standards listed in Table C403.3.2(4) ^b	1.5	2.0
<u>3</u>	For heating system based on electric resistance only (either forced air or zonal)	0.5	0
<u>4^c</u>	For an initial heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(1)C or C403.3.2(2) or Air to water heat pump units that are configured to provide both heating and cooling and are rated in accordance with AHRI 550/590	-1.0	-0.5
<u>5</u>	For heating system based on electric resistance with: 1. Inverter-driven ductless mini-split heat pump system installed in the largest zone in the dwelling or 2. With 2 kW or less total installed heating capacity per dwelling	-3.0	0

^a See Section R401.1 and *residential building* in Section R202 for Group R-2 scope.

^b The gas back-up furnace will operate as fan-only when the heat pump is operating. The heat pump shall operate at all temperatures above 38°F (3.3°C) (or lower). Below that "changeover" temperature, the heat pump would not operate to provide space heating. The gas furnace provides heating below 38°F (3.3°C) (or lower).

^c Additional points for this HVAC system are included in Table R406.3.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40610, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-40610, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40610, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40620 Section R406.3—Additional energy efficiency requirements.

R406.3 Additional energy efficiency requirements. Each *dwelling unit* in a *residential building* shall comply with sufficient options from Table R406.2 and R406.3 so as to achieve the following minimum number of credits:

OPTION 1 (TAG Recommendation based on initial proposal to achieve targeted energy savings for the cycle)

- 1. Small Dwelling Unit: ((3-0)) 5.0
credits

Dwelling units less than 1500 square feet in conditioned floor area with less than 300 square feet of fenestration area. *Additions* to existing building that are greater than 500 square feet of heated floor area but less than 1500 square feet.

2. Medium Dwelling Unit: ((6.0)) 8.0
credits

All dwelling units that are not included in #1, #3, or #4.
3. Large Dwelling Unit: ((7.0)) 9.0
credits

Dwelling units exceeding 5000 square feet of conditioned floor area.
4. Dwelling units serving Group R-2 occupancies. See Section R401.1 and residential building in Section R202 for Group R-2 scope. ((4.5)) 6.5
credits
5. Additions ((less than or equal to)) 150 to 500 square feet: ((1.5)) 2.0
credits

OPTION 2 (Post-TAG modifications to account for energy savings of other proposals to achieve the targeted energy reduction for the cycle)

1. Small Dwelling Unit: ((3.0)) 2.5
credits

Dwelling units less than 1500 square feet in conditioned floor area with less than 300 square feet of fenestration area. Additions to existing building that are greater than 500 square feet of heated floor area but less than 1500 square feet.
2. Medium Dwelling Unit: ((6.0)) 5.0
credits

All dwelling units that are not included in #1, #3, or #4.
3. Large Dwelling Unit: ((7.0)) 6.0
credits

Dwelling units exceeding 5000 square feet of conditioned floor area.
4. Dwelling units serving Group R-2 occupancies. See Section R401.1 and residential building in Section R202 for Group R-2 scope. 4.5 credits
5. Additions ((less than or equal to)) 150 square feet to 500 square feet: ((1.5)) 2.0
credits

The drawings included with the building permit application shall identify which options have been selected and the point value of each option, regardless of whether separate mechanical, plumbing, electrical, or other permits are utilized for the project.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40620, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40620, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40620, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 22-10-094, filed 5/3/22, effective 6/3/22)

WAC 51-11R-40621 Table R406.3—Energy credits.

TABLE 406.3
ENERGY CREDITS

((OPTION	DESCRIPTION	CREDIT(S)	
		All-Other	Group R-2
1. EFFICIENT-BUILDING-ENVELOPE-OPTIONS			
Only one option from Items 1.1 through 1.7 may be selected in this category. Compliance with the conductive UA targets is demonstrated using Section R402.1.4, Total UA alternative, where [1-(Proposed UA/Target UA)] > the required %UA reduction			
1.1	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.24.	0.5	0.5
1.2	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.20.	1.0	1.0
1.3	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.28 Floor R-38 Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab OR Compliance based on Section R402.1.4: Reduce the Total conductive UA by 5%.	0.5	N/A
1.4	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.25 Wall R-21 plus R-4 ci Floor R-38 Basement wall R-21 int plus R-5 ci Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab OR Compliance based on Section R402.1.4: Reduce the Total conductive UA by 15%.	1.0	1.0
1.5	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.22 Ceiling and single-rafter or joist-vaulted R-49 advanced Wood frame wall R-21 int plus R-12 ci Floor R-38 Basement wall R-21 int plus R-12 ci Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab OR Compliance based on Section R402.1.4: Reduce the Total conductive UA by 30%.	2.0	1.5
1.6	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.18 Ceiling and single-rafter or joist-vaulted R-60 advanced Wood frame wall R-21 int plus R-16 ci Floor R-48 Basement wall R-21 int plus R-16 ci Slab on grade R-20 perimeter and under entire slab Below grade slab R-20 perimeter and under entire slab OR Compliance based on Section R402.1.4: Reduce the Total conductive UA by 40%.	3.0	2.0

((OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
1.7	Advanced framing and raised-heel trusses or rafters Vertical Glazing U-0.28 R-49 Advanced (U-0.020) as listed in Section A102.2.1, <i>Ceilings below a vented attic</i> and R-49 vaulted ceilings with full height of uncompressed insulation extending over the wall top plate at the eaves.	0.5	0.5
2. AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION OPTIONS Only one option from Items 2.1 through 2.4 may be selected in this category.			
2.1	Compliance based on R402.4.1.2: Reduce the tested air leakage to 3.0 air changes per hour maximum at 50 Pascals or For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.3 cfm/ft ² maximum at 50 Pascals and All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a high efficiency fan(s) (maximum 0.35 watts/cfm), not interlocked with the furnace fan (if present). Ventilation systems using a furnace including an ECM motor are allowed, provided that they are controlled to operate at low speed in ventilation only mode. To qualify to claim this credit, the building permit drawings shall specify the option being selected, the maximum tested building air leakage, and shall show the qualifying ventilation system and its control sequence of operation.	0.5	1.0
2.2	Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 2.0 air changes per hour maximum at 50 Pascals or For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.25 cfm/ft ² maximum at 50 Pascals and All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.65. To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.	1.0	1.5
2.3	Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 1.5 air changes per hour maximum at 50 Pascals or For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.20 cfm/ft ² maximum at 50 Pascals and All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.75. To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.	1.5	2.0

((OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
2.4	<p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.6 air changes per hour maximum at 50 Pascals</p> <p>or</p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.15 cfm/ft² maximum at 50 Pascals</p> <p>and</p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.80. Duct installation shall comply with Section R403.3.7.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p>	2.0	2.5
<p>3. HIGH EFFICIENCY HVAC EQUIPMENT OPTIONS Only one option from Items 3.1 through 3.6 may be selected in this category.</p>			
3.1 ^a	<p>Energy Star rated (U.S. North) Gas or propane furnace with minimum AFUE of 95%</p> <p>or</p> <p>Energy Star rated (U.S. North) Gas or propane boiler with minimum AFUE of 90%.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0	1.0
3.2 ^a	<p>Air source centrally ducted heat pump with minimum HSPF of 9.5.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0	N/A
3.3 ^a	<p>Closed loop ground source heat pump; with a minimum COP of 3.3</p> <p>or</p> <p>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	1.0
3.4	<p>Ductless mini-split heat pump system, zonal control: In homes where the primary space heating system is zonal electric heating, a ductless mini-split heat pump system with a minimum HSPF of 10.0 shall be installed and provide heating to the largest zone of the housing unit.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	2.0
3.5 ^a	<p>Air source, centrally ducted heat pump with minimum HSPF of 11.0.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	N/A
3.6 ^a	<p>Ductless split system heat pumps with no electric resistance heating in the primary living areas. A ductless heat pump system with a minimum HSPF of 10 shall be sized and installed to provide heat to entire dwelling unit at the design outdoor air temperature.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</p>	2.0	3.0
<p>4. HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM OPTIONS</p>			

((OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
4.1	<p>All supply and return ducts located in an unconditioned attic shall be deeply buried in ceiling insulation in accordance with Section R403.3.6.</p> <p>For mechanical equipment located outside the conditioned space, a maximum of 10 linear feet of return duct and 5 linear feet of supply duct connections to the equipment may be outside the deeply buried insulation. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices.</p> <p>Duct leakage shall be limited to 3 cfm per 100 square feet of conditioned floor area.</p> <p>Air handler(s) shall be located within the conditioned space.</p>	0.5	0.5
4.2	<p>HVAC equipment and associated duct system(s) installation shall comply with the requirements of Section R403.3.7.</p> <p>Locating system components in conditioned crawl spaces is not permitted under this option.</p> <p>Electric resistance heat and ductless heat pumps are not permitted under this option.</p> <p>Direct combustion heating equipment with AFUE less than 80% is not permitted under this option.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</p>	1.0	N/A
<p>5. EFFICIENT WATER HEATING OPTIONS Only one option from Items 5.2 through 5.6 may be selected in this category. Item 5.1 may be combined with any option.</p>			
5.1	<p>A drain water heat recovery unit(s) shall be installed, which captures waste water heat from all and only the showers, and has a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 54% if installed for unequal flow. Such units shall be rated in accordance with CSA B55.1 or IAPMO IGC 346-2017 and be so labeled.</p> <p>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it. Labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</p>	0.5	0.5
5.2	<p>Water heating system shall include one of the following: Energy Star rated gas or propane water heater with a minimum UEF of 0.80.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	0.5	0.5
5.3	<p>Water heating system shall include one of the following: Energy Star rated gas or propane water heater with a minimum UEF of 0.91 OR Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems OR Water heater heated by ground source heat pump meeting the requirements of Option 3.3.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</p>	1.0	1.0

((OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
5.4	<p>Water heating system shall include one of the following: Electric heat pump water heater meeting the standards for Tier I of NEEA's advanced water heating specification OR For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier I of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	1.5	2.0
5.5	<p>Water heating system shall include one of the following: Electric heat pump water heater meeting the standards for Tier III of NEEA's advanced water heating specification OR For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	2.0	2.5
5.6	<p>Water heating system shall include one of the following: Electric heat pump water heater with a minimum UEF of 2.9 and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors. Equipment shall meet Section 4, requirements for all units, of the NEEA standard <i>Advanced Water Heating Specification</i> with the UEF noted above OR For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	2.5	3.0
6. RENEWABLE ELECTRIC ENERGY OPTION			
6.1	<p>For each 1200 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 1.0 credit shall be allowed, up to 3 credits. Generation shall be calculated as follows: For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTS or approved alternate by the code official.</p> <p>Documentation noting solar access shall be included on the plans.</p> <p>For wind generation projects designs shall document annual power generation based on the following factors: The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</p>	1.0	1.0
7. APPLIANCE PACKAGE OPTION			

((OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
7.1	<p>All of the following appliances shall be new and installed in the dwelling unit and shall meet the following standards: Dishwasher – Energy Star rated Refrigerator (if provided) – Energy Star rated Washing machine – Energy Star rated Dryer – Energy Star rated, ventless dryer with a minimum CEF rating of 5.2.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the appliance type and provide documentation of Energy Star compliance. At the time of inspection, all appliances shall be installed and connected to utilities. Dryer ducts and exterior dryer vent caps are not permitted to be installed in the dwelling unit.</p>	0.5	1.5))

OPTION 1 (TAG Recommendation based on initial proposal to achieve targeted energy savings for the cycle)

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
<p>1. EFFICIENT BUILDING ENVELOPE OPTIONS Only one option from Items 1.1 through 1.6 may be selected in this category. Compliance with the conductive UA targets is demonstrated using Section R402.1.5, Total UA alternative, where [1- (Proposed UA/Target UA)] >; the required %UA reduction</p>				
1.1	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.24.</p>	0.5	0.5	0.5
1.2	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.20.</p>	1.0	1.0	1.0
1.3	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.28 Floor R-38 Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab</p> <p>or</p> <p>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 5%.</p>	0.5	N/A	N/A
1.4	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.24 Floor R-38 Basement wall R-21 int plus R-5 ci Ceiling and single-rafter or joist-vaulted R-60 advanced Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab</p> <p>or</p> <p>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 15%.</p>	1.0	0.5	1.0

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
1.5	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: <u>Vertical fenestration U = 0.18</u> <u>Ceiling and single-rafter or joist-vaulted R-60 advanced</u> <u>Floor R-38</u> <u>Basement wall R-21 int plus R-12 ci</u> <u>Slab on grade R-10 perimeter and under entire slab</u> <u>Below grade slab R-10 perimeter and under entire slab</u></p> <p>or</p> <p><u>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 22.5%.</u></p>	1.5	1.0	1.5
1.6	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: <u>Vertical fenestration U = 0.18</u> <u>Ceiling and single-rafter or joist-vaulted R-60 advanced</u> <u>Wood frame wall R-21 int plus R-16 ci</u> <u>Floor R-48</u> <u>Basement wall R-21 int plus R-16 ci</u> <u>Slab on grade R-20 perimeter and under entire slab</u> <u>Below grade slab R-20 perimeter and under entire slab</u></p> <p>or</p> <p><u>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 30%.</u></p>	2.5	1.5	2.0
<p>2. AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION OPTIONS <u>Only one option from Items 2.1 through 2.3 may be selected in this category.</u></p>				
2.1	<p><u>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 2.0 air changes per hour maximum at 50 Pascals</u></p> <p>or</p> <p><u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.25 cfm/ft² maximum at 50 Pascals</u></p> <p>and</p> <p><u>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.65.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u></p>	1.0	0.5	1.0

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
2.2	<p><u>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 1.5 air changes per hour maximum at 50 Pascals</u></p> <p>or</p> <p><u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.20 cfm/ft² maximum at 50 Pascals</u></p> <p>and</p> <p><u>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.75.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u></p>	1.5	1.0	1.5
2.3	<p><u>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.6 air changes per hour maximum at 50 Pascals</u></p> <p>or</p> <p><u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.15 cfm/ft² maximum at 50 Pascals</u></p> <p>and</p> <p><u>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.80. Duct installation shall comply with Section R403.3.7.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u></p>	2.0	1.5	2.0
<p>3. HIGH EFFICIENCY HVAC EQUIPMENT OPTIONS Only one option from Items 3.1 through 3.7 may be selected in this category.</p>				
3.1 ^a	<p><u>Energy Star rated (U.S. North) Gas or propane furnace with minimum AFUE of 95%</u></p> <p>or</p> <p><u>Energy Star rated (U.S. North) Gas or propane boiler with minimum AFUE of 90%.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.0	N/A	1.0

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
3.2 ^a	<p><u>Air-source centrally ducted heat pump with minimum HSPF of 9.5.</u></p> <p><u>In areas where the winter design temperature as specified in Appendix RC is 23°F or below, a cold climate heat pump found on the NEEP cc ASHP qualified product list shall be used.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	N/A	0.5	N/A
3.3 ^a	<p><u>Closed-loop ground source heat pump; with a minimum COP of 3.3</u></p> <p>or</p> <p><u>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	N/A	1.5	1.0
3.4	<p><u>Ductless mini-split heat pump system, zonal control: In homes where the primary space heating system is zonal electric heating, a ductless mini-split heat pump system with a minimum HSPF of 10.0 shall be installed and provide heating to the largest zone of the housing unit.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	N/A	1.5	2.0
3.5 ^a	<p><u>Air-source, centrally ducted heat pump with minimum HSPF of 11.0.</u></p> <p><u>A centrally ducted air source cold climate variable capacity heat pump (cc VHP) found on the NEEP cc VCHP qualified product list with a minimum of 10 HSPF may be used to satisfy this requirement.</u></p> <p><u>In areas where the winter design temperature as specified in Appendix RC is 23°F or below, an air source centrally ducted heat pump shall be a cold climate variable capacity heat pump as listed on the NEEP qualified product list.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	N/A	1.0	N/A

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
3.6 ^a	<p>Ductless split system heat pumps with no electric resistance heating in the primary living areas. A ductless heat pump system with a minimum HSPF of 10 shall be sized and installed to provide heat to entire dwelling unit at the design outdoor air temperature.</p> <p>Exception: In homes with total heating loads of 24,000 or less using multi-zone mini-split systems with nominal ratings of 24,000 or less, the minimum HSPF to claim this credit shall be 9 HSPF.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</p>	N/A	2.0	3.0
3.7 ^a	<p>Air-to-water heat pump with minimum COP of 3.2 at 47°F, rated in accordance with AHRI 550/590 by an accredited or certified testing lab.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</p>	N/A	1.0	N/A
3.8 ^c	<p>Connected thermostat meeting ENERGY STAR Certified Smart Thermostats/EPA ENERGY STAR specifications.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the thermostat model.</p>	0.5	0.5	0.5
4. HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM OPTIONS				
4.1	<p>All supply and return ducts located in an unconditioned attic shall be deeply buried in ceiling insulation in accordance with Section R403.3.3.</p> <p>For mechanical equipment located outside the conditioned space, a maximum of 10 linear feet of return duct and 5 linear feet of supply duct connections to the equipment may be outside the deeply buried insulation. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices.</p> <p>Duct leakage shall be limited to 3 cfm per 100 square feet of conditioned floor area.</p> <p>Air handler(s) shall be located within the conditioned space.</p>	1.0	0.5	0.5

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
4.2	<p>HVAC equipment and associated duct system(s) installation shall comply with the requirements of Section R403.3.2.</p> <p>Electric resistance heat and ductless heat pumps are not permitted under this option.</p> <p>Direct combustion heating equipment with AFUE less than 80% is not permitted under this option.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</p>	1.5	1.0	N/A
<p>5. EFFICIENT WATER HEATING OPTIONS Only one option from Items 5.3 through 5.6 may be selected in this category. Items 5.1 and 5.2 may be combined with any option.</p>				
5.1	<p>A drain water heat recovery unit(s) shall be installed, which captures wastewater heat from at least two showers, including tub/shower combinations. It is acceptable, but not required, for sink water to be connected. Unit shall have a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 54% if installed for unequal flow. Such units shall be rated in accordance with CSA B55.1 or IAPMO IGC 346-2017 and be so labeled.</p> <p>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it. Labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</p>	0.5	0.5	0.5
5.2	<p>For Compact Hot Water Distribution system credit, the volume shall store not more than 16 ounces of water between the nearest source of heated water and the termination of the fixture supply pipe where calculated using Section R403.5.2. <i>Construction documents</i> shall indicate the ounces of water in piping between the hot water source and the termination of the fixture supply. When the hot water source is the nearest primed plumbing loop or trunk, this must be primed with an On Demand recirculation pump and must run a dedicated ambient return line from the furthest fixture or end of loop to the water heater.</p> <p>To qualify for this credit, the dwelling must have a minimum of 1.5 bathrooms.</p>	0.5	0.5	0.5
5.3	<p>Water heating system shall include one of the following: Energy Star rated gas or propane water heater with a minimum UEF of 0.80.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	0.5	0.5	0.5

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
5.4	<p>Water heating system shall include one of the following: <u>Energy Star rated gas or propane water heater with a minimum UEF of 0.91</u></p> <p>or</p> <p><u>Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems</u></p> <p>or</p> <p><u>Water heater heated by ground source heat pump meeting the requirements of Option 3.3.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</u></p>	1.0	1.0	1.0
5.5	<p>Water heating system shall include one of the following: <u>Electric heat pump water heater meeting the standards for Tier III of NEEA's advanced water heating specification</u></p> <p>or</p> <p><u>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	2.0	2.0	2.5

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
5.6	<p>Water heating system shall include one of the following: Electric heat pump water heater with a minimum UEF of 2.9 and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors. Equipment shall meet Section 4, requirements for all units, of the NEEA standard <i>Advanced Water Heating Specification</i> with the UEF noted above</p> <p>OR</p> <p>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	2.5	2.5	3.0
6. RENEWABLE ELECTRIC ENERGY OPTION				
6.1	<p>For each 600 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 0.5 credit shall be allowed, up to 4.5 credits. Generation shall be calculated as follows: For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTs or approved alternate by the code official.</p> <p>Documentation noting solar access shall be included on the plans.</p> <p>For wind generation projects designs shall document annual power generation based on the following factors: The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</p>	0.5 – 4.5	0.5 – 4.5	0.5 – 4.5
7. APPLIANCE PACKAGE OPTION				

OPTION	DESCRIPTION	CREDIT(S)		
		All Other		Group R-2 ^b
		Table R406.2 System Type 1, 2, 3	Table R406.2 System Type 4, 5	Any
7.1	<p>All of the following appliances shall be new and installed in the dwelling unit and shall meet the following standards:</p> <ol style="list-style-type: none"> 1. Dishwasher, standard - Energy Star rated, Most Efficient 2021 or Dishwasher, compact – Energy Star rated (Version 6.0) 2. Refrigerator (if provided) - Energy Star rated (Version 5.1) 3. Washing machine (Residential) - Energy Star rated (Version 8.1) 4. Dryer - Energy Star rated, Most Efficient 2022 <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the appliance type and provide documentation of Energy Star compliance. At the time of inspection, all appliances shall be installed and connected to utilities. Dryer ducts and exterior dryer vent caps are not permitted to be installed in the dwelling unit.</p>	0.5	0.5	1.5

^a An alternative heating source sized at a maximum of 0.5 Watts/ft² (equivalent) of heated floor area or 500 Watts, whichever is bigger, may be installed in the dwelling unit.

^b See Section R401.1 and residential building in Section R202 for Group R-2 scope.

^c Option 3.8 can only be taken with Options 3.1 and 3.2.

OPTION 2 (Post-TAG modifications to account for energy savings of other proposals to achieve the targeted energy reduction for the cycle)

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 ^b
<p>1. EFFICIENT BUILDING ENVELOPE OPTIONS Only one option from Items 1.1 through 1.4 may be selected in this category. Compliance with the conductive UA targets is demonstrated using Section R402.1.5, Total UA alternative, where $[1 - (\text{Proposed UA} / \text{Target UA})] >$; the required %UA reduction</p>			
1.1	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.22.</p>	0.5	0.5
1.2	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.25 Floor R-38 Basement wall R-21 int plus R-5 ci Ceiling and single-rafter or joist-vaulted R-60 advanced Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab</p> <p>or Compliance based on Section R402.1.5: Reduce the Total conductive UA by 15%.</p>	0.5	1.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 ^b
1.3	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications:</p> <p><u>Vertical fenestration U = 0.18</u> <u>Ceiling and single-rafter or joist-vaulted R-60 advanced</u> <u>Floor R-38</u> <u>Basement wall R-21 int plus R-12 ci</u> <u>Slab on grade R-10 perimeter and under entire slab</u> <u>Below grade slab R-10 perimeter and under entire slab</u></p> <p>or</p> <p><u>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 22.5%.</u></p>	1.0	1.5
1.4	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications:</p> <p><u>Vertical fenestration U = 0.18</u> <u>Ceiling and single-rafter or joist-vaulted R-60 advanced</u> <u>Wood frame wall R-21 int plus R-16 ci</u> <u>Floor R-48</u> <u>Basement wall R-21 int plus R-16 ci</u> <u>Slab on grade R-20 perimeter and under entire slab</u> <u>Below grade slab R-20 perimeter and under entire slab</u></p> <p>or</p> <p><u>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 30%.</u></p>	1.5	2.0
<p>2. AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION OPTIONS <u>Only one option from Items 2.1 through 2.3 may be selected in this category.</u></p>			
2.1	<p><u>Compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 2.0 air changes per hour maximum at 50 Pascals</u></p> <p>or</p> <p><u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 0.25 cfm/ft² maximum at 50 Pascals</u></p> <p>and</p> <p><u>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.65.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u></p>	0.5	1.0
2.2	<p><u>Compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 1.5 air changes per hour maximum at 50 Pascals</u></p> <p>or</p> <p><u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 0.20 cfm/ft² maximum at 50 Pascals</u></p> <p>and</p> <p><u>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.75.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u></p>	1.0	1.5

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 ^b
2.3	<p><u>Compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 0.6 air changes per hour maximum at 50 Pascals</u></p> <p>or</p> <p><u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 0.15 cfm/ft² maximum at 50 Pascals</u></p> <p>and</p> <p><u>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.80. Duct installation shall comply with Section R403.3.7.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u></p>	1.5	2.0
<p>3. HIGH EFFICIENCY HVAC EQUIPMENT OPTIONS <u>Only one option from Items 3.1 through 3.8 may be selected in this category.</u></p>			
3.1 ^a	<p><u>For a System Type 1 in Table R406.2:</u> <u>Energy Star rated (U.S. North) gas or propane furnace with minimum AFUE of 95%.</u></p> <p>or</p> <p><u>Energy Star rated (U.S. North) gas or propane boiler with minimum AFUE of 90%</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.0	1.0
3.2 ^a	<p><u>For secondary heating system serving System Type 2 in Table R406.2:</u> <u>Energy Star rated (U.S. North) Gas or propane furnace with minimum AFUE of 95%</u></p> <p>or</p> <p><u>Energy Star rated (U.S. North) Gas or propane boiler with minimum AFUE of 90%.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	0.5	0.5
3.3 ^{a,d}	<p><u>Air-source centrally ducted heat pump with minimum HSPF of 9.5.</u></p> <p><u>In areas where the winter design temperature as specified in Appendix RC is 23°F or below, a cold climate heat pump found on the NEEP cc ASHP qualified product list shall be used.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	0.5	N/A
3.4 ^{a,d}	<p><u>Closed-loop ground source heat pump; with a minimum COP of 3.3</u></p> <p>or</p> <p><u>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.5	1.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 ^b
3.5 ^d	<p><u>Ductless mini-split heat pump system, zonal control: In homes where the primary space heating system is zonal electric heating, a ductless mini-split heat pump system with a minimum HSPF of 10.0 shall be installed and provide heating to the largest zone of the housing unit.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.5	2.0
3.6 ^{a,d}	<p><u>Air-source, centrally ducted heat pump with minimum HSPF of 11.0.</u></p> <p><u>A centrally ducted air source cold climate variable capacity heat pump (cc VHP) found on the NEEP cc VCHP qualified product list with a minimum of 10 HSPF may be used to satisfy this requirement.</u></p> <p><u>In areas where the winter design temperature as specified in Appendix RC is 23°F or below, an air source centrally ducted heat pump shall be a cold climate variable capacity heat pump as listed on the NEEP qualified product list.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.0	N/A
3.7 ^{a,d}	<p><u>Ductless split system heat pumps with no electric resistance heating in the primary living areas. A ductless heat pump system with a minimum HSPF of 10 shall be sized and installed to provide heat to entire dwelling unit at the design outdoor air temperature.</u></p> <p><u>Exception: In homes with total heating loads of 24,000 or less using multi-zone mini-split systems with nominal ratings of 24,000 or less, the minimum HSPF to claim this credit shall be 9 HSPF.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</u></p>	2.0	3.0
3.8 ^{a,d}	<p><u>Air-to-water heat pump with minimum COP of 3.2 at 47°F, rated in accordance with AHRI 550/590 by an accredited or certified testing lab.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</u></p>	1.0	N/A
3.9 ^c	<p><u>Connected thermostat meeting ENERGY STAR Certified Smart Thermostats/EPA ENERGY STAR specifications.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the thermostat model.</u></p>		
4. HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM OPTIONS			
4.1	<p><u>HVAC equipment and associated duct system(s) installation shall comply with the requirements of Section R403.3.2.</u></p> <p><u>Electric resistance heat, hydronic heating and ductless heat pumps are not permitted under this option.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</u></p>	0.5	N/A
5. EFFICIENT WATER HEATING OPTIONS			
<p><u>Only one option from Items 5.3 through 5.5 may be selected in this category. Items 5.1 and 5.2 may be combined with any option.</u></p>			

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 ^b
5.1	<p><u>A drain water heat recovery unit(s) shall be installed, which captures wastewater heat from at least two showers, including tub/shower combinations. It is acceptable, but not required, for sink water to be connected. Unit shall have a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 54% if installed for unequal flow. Such units shall be rated in accordance with CSA B55.1 or IAPMO IGC 346-2017 and be so labeled.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it. Labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</u></p>	0.5	0.5
5.2	<p><u>For Compact Hot Water Distribution system credit, the volume shall store not more than 16 ounces of water between the nearest source of heated water and the termination of the fixture supply pipe where calculated using Section R403.5.2. Construction documents shall indicate the ounces of water in piping between the hot water source and the termination of the fixture supply. When the hot water source is the nearest primed plumbing loop or trunk, this must be primed with an On Demand recirculation pump and must run a dedicated ambient return line from the furthest fixture or end of loop to the water heater.</u></p> <p><u>To qualify for this credit, the dwelling must have a minimum of 1.5 bathrooms.</u></p>	0.5	0.5
5.3	<p><u>Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems</u></p> <p>or</p> <p><u>Water heater heated by ground source heat pump meeting the requirements of Option 3.3.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</u></p>	1.0	1.0
5.4	<p><u>Water heating system shall include one of the following: Electric heat pump water heater meeting the standards for Tier III of NEEA's advanced water heating specification</u></p> <p>or</p> <p><u>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	2.0	2.5

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 ^b
5.5	<p>Water heating system shall include one of the following: <u>Electric heat pump water heater with a minimum UEF of 2.9 and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors. Equipment shall meet Section 4, requirements for all units, of the NEEA standard <i>Advanced Water Heating Specification</i> with the UEF noted above</u></p> <p>or</p> <p><u>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	2.5	3.0
6. RENEWABLE ELECTRIC ENERGY OPTION			
6.1	<p><u>For each 600 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 0.5 credit shall be allowed, up to 4.5 credits. Generation shall be calculated as follows:</u></p> <p><u>For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTs or approved alternate by the code official.</u></p> <p><u>Documentation noting solar access shall be included on the plans.</u></p> <p><u>For wind generation projects designs shall document annual power generation based on the following factors:</u></p> <p><u>The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</u></p>	0.5 – 4.5	0.5 – 4.5
7. APPLIANCE PACKAGE OPTION			
7.1	<p><u>All of the following appliances shall be new and installed in the dwelling unit and shall meet the following standards:</u></p> <ol style="list-style-type: none"> <u>1. Dishwasher, standard - Energy Star rated, Most Efficient 2021 or Dishwasher, compact – Energy Star rated (Version 6.0)</u> <u>2. Refrigerator (if provided) - Energy Star rated (Version 5.1)</u> <u>3. Washing machine (Residential) - Energy Star rated (Version 8.1)</u> <u>4. Dryer - Energy Star rated, Most Efficient 2022</u> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the appliance type and provide documentation of Energy Star compliance. At the time of inspection, all appliances shall be installed and connected to utilities. Dryer ducts and exterior dryer vent caps are not permitted to be installed in the <i>dwelling unit</i>.</u></p>	0.5	1.5

^a An alternative heating source sized at a maximum of 0.5 Watts/ft² (equivalent) of heated floor area or 500 Watts, whichever is bigger, may be installed in the dwelling unit.

^b See Section R401.1 and *residential building* in Section R202 for Group R-2 scope.

^c Option 3.9 can only be taken with Options 3.1 and 3.2.

^d This option may only be claimed if serving System Type 4 or 5 from Table R406.2.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 22-10-094, § 51-11R-40621, filed 5/3/22, effective 6/3/22. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40621, filed 12/9/19, effective 7/1/20.

Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-40621, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40621, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27.020, and 19.27.074. WSR 14-24-123, § 51-11R-40621, filed 12/3/14, effective 1/3/15. Statutory Authority: RCW 19.27A.025, 19.27A.045, and 19.27.074. WSR 13-20-121, § 51-11R-40621, filed 10/1/13, effective 11/1/13. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40621, filed 2/1/13, effective 7/1/13.]

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

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-50100 Section R501—General.

R501.1 Scope. The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing buildings and structures.

R501.1.1 (~~Additions, alterations, or repairs.~~ Additions, alterations, or repairs to an existing building, building system or portion thereof shall comply with Sections R502, R503 or R504.) General. Except as specified in this chapter, this code shall not be used to require the removal, alteration, or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this code. Unaltered portions of the existing building or building supply system shall not be required to comply with this code.

R501.1.2 Thermostats for accessory dwelling units. Where a separate *dwelling unit*, that provides independent facilities for living, sleeping, cooking, bathing and sanitation, is established within or attached to an existing *dwelling unit*, the heating and cooling for the newly-created *dwelling unit* shall be controllable with a separate programmable thermostat in accordance with Section R403.1.1.

R501.2 (~~Existing buildings.~~ Except as specified in this chapter, this code shall not be used to require the removal, alteration or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this code.) Compliance. *Additions, alterations, repairs or changes of occupancy to, or relocation of, an existing building, building system or portion thereof shall comply with Sections R502, R503, R504 or R505, respectively, in this code. Changes where unconditioned space is changed to conditioned space shall comply with Section R502.*

R501.3 Maintenance. Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices and systems that are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's authorized agent shall be responsible for the maintenance of buildings and structures. The requirements of this chapter shall not provide the

basis for removal or abrogation of energy conservation, fire protection and safety systems and devices in existing structures.

R501.4 Compliance. *Alterations, repairs, additions* and changes of occupancy to, or relocation of, existing buildings and structures shall comply with the provisions for *alterations, repairs, additions* and changes of occupancy or relocation, respectively, in this code and the *International Residential Code, International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, Uniform Plumbing Code, International Property Maintenance Code*, and NFPA 70.

R501.5 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for *repairs*, provided hazards to life, health or property are not created. Hazardous materials shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

R501.6 Historic buildings. The *code official* may modify the specific requirements of this code for *historic buildings* and require alternate provisions which will result in a reasonable degree of energy efficiency. This modification may be allowed for those buildings or structures that are listed in the state or national register of historic places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a national register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the national or state register of historic places either individually or as a contributing building to a historic district by the state historic preservation officer or the keeper of the *National Register of Historic Places*.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-50100, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-50100, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-50100, filed 1/6/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-50200 Section R502—Additions.

R502.1 General. *Additions* to an existing building, building system or portion thereof shall conform to the provisions of this code as those provisions relate to new construction without requiring the unaltered portion of the existing building or building system to comply with this code, except as specified in this chapter. *Additions* shall not create an unsafe or hazardous condition or overload existing building systems. An *addition* shall be deemed to comply with this code where the *addition* alone complies, where the existing building and *addition* comply with this code as a single building, or where the building with

the *addition* uses no more energy than the existing building. *Additions* shall be in accordance with Section R502.1.1 or R502.1.2.

R502.1.1 Small additions. *Additions* not greater than 150 square feet (13.9 m²) shall not be required to comply with Section R406.

R502.2 Change in space conditioning. Any nonconditioned or low-energy space that is altered to become *conditioned space* shall be required to be brought into full compliance with this code.

EXCEPTION: Where the total building performance option in Section R405 is used to comply with this section, the annual energy use of the *proposed design* is permitted to be 110 percent of the annual energy use otherwise allowed by Section R405.3.

R502.3 Prescriptive compliance. Additions shall comply with Sections ((R502.1.1.1)) R502.3.1 through ((R502.1.1.4)) R502.3.4.

((R502.1.1.1)) R502.3.1 Building envelope. New building envelope assemblies that are part of the *addition* shall comply with Sections R402.1, R402.2, R402.3.1 through R402.3.5, and R402.4.

EXCEPTION: Where nonconditioned space is changed to *conditioned space*, the building envelope of the *addition* shall comply where the UA, as determined in Section ((R402.1.4)) R402.1.5, of the existing building and the *addition*, and any *alterations* that are part of the project, is less than or equal to UA generated for the existing building.

((R502.1.1.2)) R502.3.1.1 Existing ceilings with attic spaces. Where an *addition* greater than 150 square feet (9.2 m²) adjoins existing ceilings with attic spaces, the existing attic spaces shall comply with Section R402.

R502.3.2 Heating and cooling systems. ((New heating, cooling and duct systems that are part of the)) HVAC ducts newly installed as part of an addition shall comply with Section R403.

EXCEPTION: The following need not comply with the testing requirements of Section R403.3.3:
 1. *Additions* of less than ((750)) 150 square feet.
 2. Duct systems that are documented to have been previously sealed as confirmed through field verification and diagnostic testing in accordance with procedures in WSU RS-33.
 3. ((Ducts with less than 40 linear feet in unconditioned spaces.
 4.)) Existing duct systems constructed, insulated or sealed with asbestos.

((R502.1.1.3)) R502.3.3 Service hot water systems. New service hot water systems that are part of the *addition* shall comply with Section R403.5.

((R502.1.1.4)) R502.3.4 Lighting. New lighting systems that are part of the *addition* shall comply with Section 404.1.

((R502.1.2)) R502.4 Existing plus addition compliance ((Simulated Performance Alternative)) Total Building Performance). Where nonconditioned space is changed to *conditioned space* the *addition* shall comply where the annual energy use of the *addition* and the existing building, and any *alterations* that are part of the project, is less than or equal to the annual energy use of the existing building when modeled in accordance with Section R405. The *addition* and any *alterations* that are part of the project shall comply with Section R405 in its entirety.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-50200, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-50200, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-50200, filed 1/6/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-21-081, filed 10/19/20, effective 2/1/21)

WAC 51-11R-50300 Section R503—Alterations.

R503.1 General. *Alterations* to any building or structure shall comply with the requirements of the code for new construction, without requiring the unaltered portions of the existing building or building system to comply with this code. *Alterations* shall be such that the existing building or structure is no less conforming to the provisions of this code than the existing building or structure was prior to the *alteration*.

~~((Alterations to an existing building, building system or portion thereof shall conform to the provisions of this code as they relate to new construction without requiring the unaltered portions of the existing building or building system to comply with this code.))~~ *Alterations* shall not create an unsafe or hazardous condition or overload existing building systems.

Alterations shall be such that the existing building or structure uses no more energy than the existing building or structure prior to the *alteration*. *Alterations* to existing buildings shall comply with Sections R503.1.1 through R503.2.

The *code official* may approve designs of *alterations* which do not fully conform to all of the requirements of this code where in the opinion of the *code official* full compliance is physically impossible and/or economically impractical and:

The *alteration* improves the energy efficiency of the building; or

The *alteration* is energy efficient and is necessary for the health, safety, and welfare of the general public.

R503.1.1 Building envelope. Building envelope assemblies that are part of the *alteration* shall comply with Section ~~((R402.1.1 or R402.1.4))~~ R402.1.3 or R402.1.5, Sections R402.2.1 through R402.2.11, R402.3.1, R402.3.2, R402.4.3, and R402.4.4.

EXCEPTION: The following *alterations* need not comply with the requirements for new construction provided the energy use of the building is not increased:

1. Storm windows installed over existing *fenestration*.
2. Existing ceiling, wall or floor cavities exposed during construction provided that these cavities are filled with insulation. 2 x 4 framed walls shall be insulated to a minimum of R-15 and 2 x 6 framed walls shall be insulated to a minimum of R-21.
3. Construction where the existing roof, wall or floor cavity is not exposed.
4. *Roof recover*.
5. Roofs without insulation in the cavity and where the sheathing or insulation is exposed during reroofing shall be insulated either above or below the sheathing.
6. Surface-applied window film installed on existing single pane *fenestration* assemblies to reduce solar heat gain provided the code does not require the glazing *fenestration* to be replaced.

R503.1.1.1 Replacement fenestration. Where some or all of an existing *fenestration* unit is replaced with a new *fenestration* product, including sash and glazing, the replacement *fenestration* unit shall meet the applicable requirements for *U*-factor and SHGC in Table ~~((R402.1.1))~~ R402.1.3. Where more than one replacement *fenestration* unit is being installed, an area-weighted average of the *U*-factor and SHGC of all replacement *fenestration* shall be permitted to be used to demonstrate compliance.

R503.1.2 Heating and cooling systems. New heating, cooling and duct systems that are part of the *alteration* shall comply with Section R403.

EXCEPTIONS:

1. Where ducts from an existing heating and cooling system are extended, duct systems with less than 40 linear feet in unconditioned spaces shall not be required to be tested in accordance with Section R403.2.2.
2. Existing duct systems constructed, insulated or sealed with asbestos.
3. Replacements of space heating equipment shall not be required to comply with Section R403.13 where the rated capacity of the new equipment does not exceed the rated capacity of the existing equipment.

R503.1.3 Service hot water systems. New service hot water systems that are part of the *alteration* shall comply with Section R403.5.

EXCEPTIONS: 1. Replacement of water heating equipment shall not be required to comply with Section R403.5.5.
2. Replacement of water heating equipment shall not be required to comply with Section R403.5.7 where the rated capacity of the new equipment does not exceed the rated capacity of the existing equipment.

R503.1.4 Lighting. New lighting systems that are part of the *alteration* shall comply with Section R404.1.

EXCEPTION: Alterations that replace less than ((50)) 10 percent of the luminaires in a space, provided that such alterations do not increase the installed interior lighting power.

~~((R503.2 Change in space conditioning. Any nonconditioned or low-energy space that is altered to become conditioned space shall be required to be brought into full compliance with this code.~~

EXCEPTION: Where the simulated performance option in Section R405 is used to comply with this section, the annual energy use of the proposed design is permitted to be 110 percent of the annual energy use otherwise allowed by Section R405.3.))

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 20-21-081, § 51-11R-50300, filed 10/19/20, effective 2/1/21. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-50300, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-50300, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-50300, filed 1/6/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-50500 Section R505—Change of occupancy or use.

R505.1 ((Change in occupancy or use.)) General. Any space not within the scope of Section R101.2 which is converted to space that is within the scope of Section R101.2 shall be brought into full compliance with this code.

Spaces undergoing a change in occupancy that would result in an increase in demand for either fossil fuel or electrical energy shall comply with this code.

Any space that is converted to a *dwelling unit* or portion thereof from another use or occupancy shall comply with this code.

EXCEPTION: Where the simulated performance option in Section R405 is used to comply with this section, the annual energy use of the proposed design is permitted to be 110 percent of the annual energy use otherwise allowed by Section R405.3.

R505.1.1 Unconditioned space. Any unconditioned or low-energy space that is altered to become a conditioned space shall comply with Section R502.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-50500, filed 1/6/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-51000 Chapter 6—Referenced standards. This chapter lists the standards that are referenced in various sections of this document. The standards are listed herein by the promulgating agency of the standard, the standard identification, the effective date and title, and the section or sections of this document that reference the standard. The application of the referenced standards shall be as specified in Section R106.

AAMA	American Architectural Manufacturers Association 1827 Walden Office Square Suite 550 Schaumburg, IL 60173-4268	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA 101/I.S.2/A C440-17	North American Fenestration Standard/Specifications for Windows, Doors and Unit Skylights	R402.4.3
ACCA	Air Conditioning Contractors of America 2800 Shirlington Road, Suite 300 Arlington, VA 22206	
Standard reference number	Title	Referenced in code section number
Manual J-16	Residential Load Calculation Eighth Edition	R403.7
Manual S-14	Residential Equipment	R403.7
ANSI	American National Standards Institute 25 West 43rd Street, 4th Floor New York, NY 10036	
Standard reference number	Title	Referenced in code section number
Z21.50-2016/CSA 2.22-2016	Vented Decorative Gas Appliances	R402.4.2.1, R403.1.3
Z21.88-2017/CSA 2.33-2017	Vented Gas Fireplace Heaters	R402.4.2.1
APSP	The Association of Pool and Spa Professionals 2111 Eisenhower Avenue, Suite 500 Alexandria, VA 22206	
Standard reference number	Title	Referenced in code section number
ANSI/APSP/ICC ((14-2014)) 14-2019	American National Standard for Portable Electric Spa Energy Efficiency	R403.11
ANSI/APSP/ICC 15a-2011	American National Standard for Residential Swimming Pool and Spa Energy Efficiency— Includes Addenda A approved January 9, 2013	R403.12
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. 1791 Tullie Circle, N.E. Atlanta, GA 30329-2305	
Standard reference number	Title	Referenced in code section number
((ASHRAE-2017)) ASHRAE-2021	ASHRAE Handbook of Fundamentals	((R402.1.4)) R402.1.5, Table R405.5.2(1)
ASHRAE 193-2010 (RA 2014)	Method of Test for Determining the Airtightness of HVAC Equipment	R403.3.2.1
ASTM	ASTM International 100 Barr Harbor Drive West Conshohocken, PA 19428-2859	
Standard reference number	Title	Referenced in code section number
C1363-11	Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus	R303.1.4.1
((E-283-04)) E 283-2004 (2012)	Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls and Doors Under Specified Pressure Differences Across the Specimen	R402.4.5

((E779-10)) <u>E779-2010 (2018)</u>	Standard Test Method for Determining Air Leakage Rate by Fan Pressurization	R402.4.1.2
<u>E1554/E1554M-E2013</u>	<u>Standard Test Method for Determining Air Leakage of Air Distribution Systems by Fan Pressurization</u>	<u>R403.3.5</u>
((E1827-11)) <u>E1827-2011 (2017)</u>	Standard Test Methods for Determining Airtightness of Building Using an Orifice Blower Door	R402.4.1.2
<u>E2178-2013</u>	<u>Standard Test Method for Air Permeance of Building Materials</u>	<u>R303.1.5</u>
<u>E3158-2018</u>	<u>Standard Test Method for Measuring the Air Leakage Rate of a Large or Multizone Building</u>	<u>R402.4.1.2</u>
CSA	Canadian Standards Association 5060 Spectrum Way Mississauga, Ontario, Canada L4W 5N6	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA 101/I.S.2/A440-17	North American Fenestration Standard/Specification for Windows, Doors and Unit Skylights	R402.4.3
CSA 55.1-2015	Test Method for Measuring Efficiency and Pressure Loss of Drain Water Heat Recovery Systems	R403.5.4, Table R406.2
CSA 55.2-2015	Drain Water Heat Recovery Units	R403.5.4
CSA P.4.1-15	Testing Method for Measuring Annual Fireplace Efficiency	R402.4.2.1
DASMA	Door and Access Systems Manufacturers Association 1300 Sumner Avenue Cleveland, OH 44115-2851	
((405-2016)) <u>105-2017</u>	Test Method for Thermal Transmittance and Air Infiltration of Garage Doors and Rolling Doors	R303.1.3
HVI	Home Ventilating Institute 1000 North Rand Road, Suite 214 Wauconda, IL 60084	
((916-09)) <u>916-18</u>	Airflow Test Procedure	R303.1.3
ICC	International Code Council, Inc. 500 New Jersey Avenue, N.W. 6th Floor Washington, DC 20001	
Standard reference number	Title	Referenced in code section number
<u>ANSI/APSP/ICC 14-2019</u>	<u>American National Standard for Portable Electric Spa Energy Efficiency</u>	<u>R403.11</u>
<u>ANSI/APSP/ICC 15a-2011</u>	<u>American National Standard for Residential Swimming Pool and Spa Energy Efficiency—Includes Addenda A approved January 9, 2013</u>	<u>R403.12</u>
<u>ANSI/RESNET/ICC 380—2019</u>	<u>Standard for Testing Airtightness of building, Dwelling Unit and Sleeping Unit Enclosures; Airtightness of Heating and Cooling Air Distribution Systems, and Airflow of Mechanical Ventilation Systems</u>	<u>R402.4.1.2</u>
((HBC-17)) <u>IBC-21</u>	International Building Code	R201.3, R303.2, R402.11, R4501.4
ICC 400-17	Standard on the Design and Construction of Log Structures	Table R402.1.1
<u>ICC 500-2020</u>	<u>ICC/NSSA Standard for the Design and Construction of Storm Shelters</u>	<u>R402.5</u>
((HFC-17)) <u>IFC-21</u>	International Fire Code	R201.3, R501.4
((HFGC-17)) <u>IFGC-21</u>	International Fuel Gas Code	R201.3, R501.4
((HFGC-17)) <u>IFGC-21</u>	International Mechanical Code	R201.3, R403.3.2, R403.6, R501.4
((IPMC-17)) <u>IPMC-21</u>	International Property Maintenance Code	R501.4
((IRC-17)) <u>IRC-21</u>	International Residential Code	R104.2.1, R201.3, R303.2, R401.2, R403.2.2, R403.5, R406.1, R406.2, Table R406.2
IEEE	The Institute of Electrical and Electronic Engineers, Inc. 3 Park Avenue	

	New York, NY 10016-5997	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
515.1-2012	IEEE Standard for the Testing, Design, Installation and Maintenance of Electrical Resistance Trace Heating for Commercial Applications	R403.5.1.2
ISO	<u>International Organization for Standardization</u> <u>1, rue de Varembe, Case postale 56, CH-1211</u> <u>Geneva, Switzerland</u>	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
<u>ISO/IEC 17024-212</u>	<u>Conformity Assessment: General requirements for bodies operating certification of persons</u>	<u>R402.4.1.2</u>
NEEA	Northwest Energy Efficiency Alliance 421 S.W. 6th Ave., Suite 600 Portland, OR 97204	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
NEEA-2011	Northern Climate Specification for Heat Pump Water Heaters, Vers. 4.0	Table R406.2
NEEP	<u>Northeast Energy Efficiency Partnership, Inc.</u> <u>24 School Street, 2nd Floor</u> <u>Boston, MA 02108-4314</u>	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
<u>ccASHP Version 3.1</u>	<u>Cold Climate Air Source Heat Pump (ccASHP) Product List and Specifications: https://neep.org/heating-electrification/ccashp-specification-product-list</u>	<u>Table R406.3</u>
NEMA	<u>National Electrical Manufacturers Association</u> <u>1300 17th Street N No. 900</u> <u>Arlington, VA 22209</u>	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
<u>OS4-2016</u>	<u>Requirements for Air-Sealed Boxes for Electrical and Communications Applications</u>	<u>R402.4.6</u>
NFPA	<u>National Fire Protection Association</u> <u>1 Batterymarch Park</u> <u>Quincy, MA 02169-7417</u>	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
<u>70-20</u>	<u>National Electrical Code</u>	<u>R501.4</u>
NFRC	National Fenestration Rating Council, Inc. 6305 Ivy Lane, Suite 140 Greenbelt, MD 20770	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
((100-2010)) <u>100-2020</u>	Procedure for Determining Fenestration Products U-factors	R303.1.3
((200-2010)) <u>200-2020</u>	Procedure for Determining Fenestration Product Solar Heat Gain Coefficients and Visible Transmittance at Normal Incidence	R303.1.3
((400-2010)) <u>400-2020</u>	Procedure for Determining Fenestration Product Air Leakage	R402.4.3
UL	Underwriters Laboratory 333 Pfingsten Road Northbrook, IL 60062	
<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
UL 127-11	Factory Built Fireplace	R402.4.2
UL 515-11	Electric Resistance Heat Tracing for Commercial and Industrial Applications	R403.5.1.2
UL 907-94	Fireplace Accessories (with revisions through April 2010)	R402.4.2
US-FTC	United States-Federal Trade Commission 600 Pennsylvania Avenue N.W. Washington, DC 20580	

Standard reference number	Title	Referenced in code section number
C.F.R. Title 16 ((May 31, 2005)) (2015)	R-value <u>Rule</u>	Rule R303.1.4
WDMA	Window and Door Manufacturers Association 1400 East Touhy Avenue, Suite 470 Des Plaines, IL 60018	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA (101/1.S.2/A440-14) 101/1.S.2/A440-17	North American Fenestration Standard/Specification for Windows, Doors and Unit Skylights	R402.4.3
WSU	Washington State University Energy Extension Program 905 Plum Street S.E., Bldg 3 P.O. Box 43165 Olympia, WA 98506-3166	
Standard reference number	Title	Referenced in code section number
WSU RS 33	Duct Testing Standard for New and Existing Construction Publication No. WSUEEP15-016	R403.3.3

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-51000, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-51000, filed 1/6/16, effective 7/1/16.]

WSR 22-17-150

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed August 23, 2022, 4:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-099.

Title of Rule and Other Identifying Information: Adoption and amendment of the 2021 Edition of the International Wildland-Urban Interface Code, as required by RCW 19.27.031 and 19.27.560.

Hearing Location(s): On September 30, 2022, at 10:00 a.m., at 129 North 2nd Street, Yakima, WA 98901; or on October 14, 2022, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person, or via Zoom or conference call. The Zoom link and phone are provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: November 4, 2022.

Submit Written Comments to: State Building Code Council (SBCC), P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by October 14, 2022.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, email sbcc@des.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adopts the 2021 edition of the International Urban Wildland Interface Code, published by the International Code Council (ICC), with state amendments to incorporate proposed changes as adopted by SBCC. The proposed rule will also take the International Urban Wildland Urban Interface Code out of chapter 51-54A WAC and produce a new chapter 51-55 WAC. This will in turn make the International Urban Wildland Urban Interface Code a standalone code under chapter 51-55 WAC.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074, and 19.27.560.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074, and 19.27.560.

Statute Being Implemented: RCW 19.27.031, 19.27.074, and 19.27.560.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; Enforcement: Local jurisdictions.

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 content of the proposed rule is explicitly and specifically dictated by statute (RCW 19.27.560).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry

standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

August 23, 2022

Tony Doan

Council Chair

OTS-4050.1

Chapter 51-55 WAC

STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE 2021 EDITION OF THE WILDLAND-URBAN INTERFACE CODE

NEW SECTION

WAC 51-55-001 Authority. These rules are adopted under the authority of chapter 19.27 RCW.

[]

NEW SECTION

WAC 51-55-002 Purpose. The purpose of these rules is to implement the provisions of chapter 19.27 RCW, which provides that the state building code council shall maintain the state building code in a status which is consistent with the purpose as set forth in RCW 19.27.020. In maintaining the codes the council shall regularly review updated versions of the codes adopted under the act, and other pertinent information, and shall amend the codes as deemed appropriate by the council.

[]

NEW SECTION

WAC 51-55-003 International Wildland-Urban Interface Code. The 2021 edition of the *International Urban-Interface Code*, published by the International Code Council, is hereby adopted by reference with the following additions, deletions, and exceptions.

[]

NEW SECTION

WAC 51-55-008 Implementation. The International Wildland-Urban Interface Code adopted by this chapter shall become effective in all counties and cities of this state on July 1, 2023.

[]

NEW SECTION**WAC 51-55-0100 Scope and administration.****101 Scope and general requirements.**

101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, repair, maintenance and use of any building, structure, or premises within the wildland-urban interface areas in this jurisdiction.

Buildings or conditions in existence at the time of the adoption of this code are allowed to have their use or occupancy continued, if such condition, use or occupancy was legal at the time of the adoption of this code, provided that such continued use does not constitute an egregious danger to life or property.

Buildings or structures moved into or within the jurisdiction shall comply with the provisions of this code for new buildings or structures.

101.4 Retroactivity. The provisions of the code shall apply to conditions arising after the adoption thereof, conditions not legally in existence at the adoption of this code and conditions that, as determined by the code official, constitute an egregious hazard to life or property.

EXCEPTION: Provisions of this code that specifically apply to existing conditions are retroactive.

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NEW SECTION**WAC 51-55-0200 Chapter 2—Definitions.****202 Definitions.**

ACCESSORY STRUCTURE. A building or structure used to shelter or support any material, equipment, chattel or occupancy other than a habitable building, or a habitable building or structure that is accessory to and incidental to that of the dwelling(s) and that is located on the same lot.

BUILDING OFFICIAL. Not adopted.

EGREGIOUS DANGER. A danger that if left unmitigated, places the occupants or property in immediate danger.

FUEL, HEAVY. Vegetation consisting of round wood 3 to 8 inches (76 to 203 mm) in diameter. See Fuel Models G, I, J, K, and U described in Chapter 9.

FUEL, LIGHT. Vegetation consisting of herbaceous plants and round wood less than 1/4-inch (6.4 mm) in diameter. See Fuel Models A, C, E, L, N, P, R, and S described in Chapter 9.

FUEL, MEDIUM. Vegetation consisting of round wood 1/4 to 3 inches (6.4 mm to 76 mm) in diameter. See Fuel Models B, D, F, H, O, Q, and T described in Chapter 9.

WILDLAND-URBAN INTERFACE/INTERMIX AREA. That geographical area where structures and other human development meets or intermingles with wildland or vegetative fuels.

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NEW SECTION

WAC 51-55-0300 Wildland-urban interface areas.

302 Wildland-urban interface area designations.

302.1 Declaration. The *wildland-urban interface areas* shall be based on the findings of fact. The *wildland-urban interface area* boundary shall correspond to natural or man-made features.

302.2 Findings of fact. The *wildland-urban interface areas* findings of fact are permitted to follow table/worksheet 302.2.

302.2.1 Department of natural resources mapping. The wildland-urban interface area is divided into several hazard zones for the purpose of determining construction requirements. The different zones correlate with the zones on the department of natural resources (DNR) map per RCW 19.27.560.

Table 302.2.1

Hazard Determination and Construction Correlation Table

DNR Map Zone	Red	Yellow	Green
Structure density per 40ac	120 + structures	8-120 structures	0-8 structures
Vegetative density (%)	<50%	50-75%	75% +
Distance from 75% vegetative area	<=1.5 mi (2.414 km)	NA	NA

Where all items in a column apply the required construction shall be based on the corresponding hazard in Table 503.1.
 Where not all items in a column apply the required construction shall be based on the next lower hazard in Table 503.1.
 If you do not meet the table criteria-not in the WUI.

Table 302.2.1 (b)
 Required Construction

	RED	YELLOW	GREEN
Ignition Resistant Construction	Class 3	Class 2	Class 1

Option 2
TABLE/WORKSHEET 302.2

1. Determine structure density.

STRUCTURE DENSITY within ≤ 40 acres =	UNINHABITED	VERY LOW	LOW	MEDIUM	HIGH
	0	> 0 - ≤ 1	≥ 1 - < 8	> 8 - < 120	> 120

2. Determine vegetation density.

PARCEL VEGETATION DENSITY ≤ 40 acres	NONVEGETATED	VEGETATED
	< 50% vegetated and ≥ 1.5 mi (2.414 km) that is ≥ 75% vegetated and not overlap water	≥ 50% vegetated and have structure density of uninhabited or very low

3. Use structure density and vegetation density from above to determine if WUIC applies.

WUIC APPLIES ≤ 40 acres	YES	NO
	Structure density of very low – high and ≥ 50% vegetated	Structure density of uninhabited and not within an identified WUI area
	Structure density of very low – high and ≥ 50% vegetated and ≤ 1.5 mi (2.414 km) that is ≥ 75% vegetated and not overlap water	Structure density of uninhabited and < 50% vegetated and not overlap water
	Structure density of very low – high and ≤ 1.5 mi (2.414 km) that is ≥ 75% vegetated and not overlap water	Structure density of uninhabited – high and < 50% vegetated and > 1.5 mi (2.414 km) that is ≥ 75% vegetated and not overlap water

4. When WIUC applies, the area shall be designated as Intermix or Interface.

INTERMIX DESIGNATION ≤ 40 acres	STRUCTURE DENSITY	PARCEL VEGETATION DENSITY
	Very low - High	≥ 50% vegetated

INTERFACE DESIGNATION ≤ 40 acres	STRUCTURE DENSITY	PARCEL VEGETATION DENSITY
	Very low - High	≤ 1.5 mi (2.414 km) that is ≥ 75% vegetated and not overlap water

302.3 Mapping. Washington *wildland-urban interface areas* shall be recorded on maps developed by Washington department of natural resources (WADNR), be located online at <https://wadnr.maps>, and be available for inspection by the public.

302.4 Review of wildland-urban interface areas. The *code official* shall review for approval evaluated areas for new or modified findings of fact. Where a new or modified findings of fact are *approved*, the *code official* shall recommend to WADNR a modification to the *wildland-urban interface areas* mapping.

[]

NEW SECTION

WAC 51-55-0400 Wildland-urban interface area requirements.

401 General.

401.1 Scope. *Wildland-urban interface areas* shall be provided with emergency vehicle access and water supply in accordance with this chapter.

401.2 Objective. This section is not adopted.

401.3 General safety precautions. This section is not adopted.

402 Applicability.

402.1 Subdivisions. Subdivisions shall comply with locally adopted standards.

402.1.1 Access. This section is not adopted.

402.1.2 Water supply. This section is not adopted.

402.2 Individual structures. Individual structures shall comply with Sections 402.2.1 and 402.2.2.

402.2.1 Access. Individual structures hereafter constructed or relocated into or within *wildland-urban interface areas* shall be provided with driveways in accordance with Section 403.2 and locally adopted standards. Marking of fire protection equipment shall be provided in accordance with Section 403.5 and address markers shall be provided in accordance with Section 403.6.

402.2.2 Water supply. Individual structures hereafter constructed or relocated into or within *wildland-urban interface areas* shall be provided with a conforming water supply in accordance with locally adopted standards.

EXCEPTION: Not adopted.

402.3 Existing conditions. This section is not adopted.

403 Access.

403.2.1 Dimensions. This section is not adopted.

403.2.2 Length. This section is not adopted.

403.2.3 Service limitations. This section is not adopted.

403.2.4 Turnarounds and turnouts. *Driveways* in excess of three hundred feet in length shall be provided with turnarounds. *Driveways* in excess of five hundred feet in length and less than twenty feet in width shall be provided with turnouts and turnarounds. Turnarounds and turnouts shall be designed as required by locally adopted standards.

403.2.5 Turnouts. This section is not adopted.

403.3 Fire apparatus access road. Where required, fire apparatus access roads shall be provided and maintained as required by locally adopted street, road, and access standards.

403.4 Marking of roads. This section is not adopted.

403.4.1 Sign construction. This section is not adopted.

404 Water supply.

404.1 General. Water supply shall be provided and maintained as required by locally adopted standards.

404.2 Water sources. This section is not adopted.

404.3 Draft sites. This section is not adopted.

404.3.1 Access. This section is not adopted.

404.3.2 Pumper access points. This section is not adopted.

404.4 Hydrants. This section is not adopted.

404.5 Adequate water supply. This section is not adopted.

404.6 Fire department. This section is not adopted.

404.7 Obstructions. This section is not adopted.

404.8 Identification. This section is not adopted.

404.9 Testing and maintenance. This section is not adopted.

404.10 Reliability. This section is not adopted.

404.10.1 Objective. This section is not adopted.

404.10.2 Clearance of fuel. This section is not adopted.

404.10.3 Standby power. This section is not adopted.

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NEW SECTION

WAC 51-55-0500 Special building construction regulations.

Section 501 General.

501.1 General. Buildings and structures hereafter constructed, modified, or relocated into or within the *wildland-urban interface area* shall meet the construction requirements of Sections 501.4 through 501.8.

EXCEPTIONS:

1. Buildings and structures with fire hazard severity determined in Section 502 and with ignition-resistant construction classification determined in Section 503.
2. Accessory structures not exceeding 200 square feet (11 m²) in floor area and where located not less than 50 feet (15,240 mm) from buildings or structures containing habitable spaces.
3. Agricultural buildings located not less than 50 feet (15,240 mm) from buildings or structures containing habitable spaces.

501.2 Objective. This section is not adopted.

501.4 Roof covering. Roofs shall have a roof assembly that complies with a Class A rating when tested in accordance with ASTM E108 or UL 790. For roof assemblies where the profile allows a space between the roof covering and roof deck, the space at the eave ends shall be fire-stopped to preclude entry of flames or embers, or have one layer of 72-pound (32.4 kg) mineral-surfaced, nonperforated cap sheet complying with ASTM D3909 installed over the combustible roof deck.

EXCEPTIONS:

1. Class A roof assemblies including those with coverings of brick, masonry, or an exposed concrete roof deck.
2. Class A roof assemblies also include ferrous or copper shingles or sheets, metal sheets and shingles, clay or concrete roof tile or slate installed on noncombustible decks or ferrous, copper or metal sheets installed without a roof deck on noncombustible framing.
3. Class A roof assemblies include minimum 16 oz/sq. ft. (0.0416 kg/m²) copper sheets installed over combustible roof decks.

501.4.1 Roof valleys. Where provided, valley flashings shall be not less than 0.019 inch (0.48 mm) (No. 26 galvanized sheet gage) corrosion-resistant metal installed over a minimum 36-inch-wide (914 mm) underlayment consisting of one layer of 72-pound (32.4 kg) mineral-surfaced, nonperforated cap sheet complying with ASTM D3909 running the full length of the valley.

501.5 Exterior walls and projections other than decks. Exterior walls and projections other than decks, of buildings, or structures, or *accessory structures* attached to buildings or structures with habitable spaces, shall be constructed with one of the following methods, with materials extending from the top of the foundation to the underside of the roof sheathing:

1. Materials approved for not less than one hour fire-resistance rated construction on the exterior side;

2. Approved noncombustible materials;
3. Heavy timber or log wall construction;
4. Fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the International Building Code; or
5. Ignition-resistant materials, complying with Section 503.2 on the exterior side.

EXCEPTION: Unenclosed accessory structures attached to buildings with habitable spaces and projections, such as decks, attached to the first floor of a building, if when the structure is built with building materials at least two inches nominal depth and the area below the unenclosed accessory structure is screened with material with openings no greater than 1/4-inch maximum to prevent accumulation of combustibles and to prevent embers from coming in underneath.

501.6 Decks and appendages. The material of decks, porches, balconies, and stairs shall be constructed with any of the following materials:

1. Ignition-resistant material that complies with the minimum performance requirement of Section 503.2.
2. Exterior fire-retardant-treated wood.
3. Noncombustible material.
4. Any material that complies with the minimum performance requirements of Section 503.2 when attached exterior wall covering is also either noncombustible or ignition-resistant material.
5. Heavy timber construction consisting of the following:
 - 5.1. Posts shall be a minimum of 6 inches x 6 inches nominal dimension.
 - 5.2. Beams shall be a minimum of 6 inches x 8 inches nominal dimension.
 - 5.3. Joists shall be a minimum of 4 inches x 8 inches nominal dimension spaced at no greater than 24 inches on center.

501.6.1 Clearance. Decks with less than 48 inches of clearance from finished grade to deck joists shall be enclosed with screen material with openings no greater than 1/4-inch maximum to prevent accumulation of combustibles and to prevent embers from coming in underneath.

501.6.2 Walking surfaces. The walking surface material of decks, porches, balconies, and stairs shall be constructed with one of the following materials:

1. Ignition-resistant material that complies with the performance requirements of Section 503.2.
2. Exterior fire-retardant-treated wood.
3. Noncombustible material.
4. Where the deck, porch, balcony, or stairs are constructed of heavy timber in accordance with Section 501.6, natural wood decking products shall be:
 - 4.1. 2-inch nominal dimension lumber; or
 - 4.2. 5/4-inch nominal hardwood (i.e., teak, mahogany, or other approved hardwood).
5. Material that complies with the performance requirements of Section 501.6.2.1 when tested in accordance with ASTM E2632 and when attached exterior wall covering is also composed of only noncombustible or ignition-resistant materials.

EXCEPTION: Wall material shall be permitted to be of any material that otherwise complies with Section 501.5 when the decking surface material complies with the performance requirements of ASTM E84 with a Class B flame spread index.

501.6.2.1 Material in Section 501.6.2, Item 5. The walking surface material shall be tested in accordance with ASTM E2632 and shall comply with the following condition of acceptance. The ASTM E2632 test shall be conducted on a minimum of three test specimens and the peak heat release rate shall be less than or equal to 25 kW/ft² (269 kW/m²). If

any one of the three tests does not meet the conditions of acceptance, three additional tests shall be run. All the additional tests shall meet the condition of acceptance.

501.7 Exterior glazing. Exterior windows, window walls and glazed doors, windows within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block, or have a fire protection rating of not less than 20 minutes.

501.8 Vents. Attic ventilation openings, foundation or underfloor vents, or other ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches (0.0929 m²) each. Such vents shall be covered with noncombustible corrosion-resistant mesh with openings not to exceed 1/4 inch (6.4 mm), or shall be designed and approved to prevent flame or ember penetration into the structure.

1. Attic ventilation openings shall not be located in soffits, in eave overhands, between rafters at eaves, or in other overhang areas. Gable end and dormer vents shall be located not less than 10 feet (3048 mm) from lot lines. Underfloor ventilation openings shall be located as close to grade as possible.

502 Fire hazard severity.

502.1 General. The fire hazard severity of building sites for buildings hereafter constructed, modified, or relocated into *wildland-urban interface areas* shall be established in accordance with Table 502.1. See also Chapter 8.

502.2 Fire hazard severity reduction. The fire hazard severity identified in Table 502.1 is allowed to be reduced by implementing a vegetation management plan in accordance with Chapter 7.

TABLE 502.1

FIRE HAZARD SEVERITY

(No change to the table)

504 Class 1 ignition-resistant construction.

504.7 Appendages and projections. *Accessory structures* attached to buildings with habitable spaces and projections other than decks, porches, balconies, or stairs, shall be not less than 1-hour fire-resistance-rated construction, *heavy timber construction*, or constructed of one of the following:

1. *Approved noncombustible materials.*
2. Fire-retardant-treated wood identified for exterior use and meeting the requirements of Section 2303.2 of the *International Building Code.*
3. Ignition-resistant building materials in accordance with Section 503.2.

EXCEPTION: Not adopted.

504.8 Decks and appendages. The material of decks, porches, balconies, and stairs shall be constructed with any of the following materials:

1. Ignition-resistant material that complies with the minimum performance requirement of Section 503.2.
2. Exterior fire-retardant-treated wood.
3. Noncombustible material.
4. Any material that complies with the minimum performance requirements of Section 503.2 when attached exterior wall covering is also either noncombustible or ignition-resistant material.

5. Heavy timber construction consisting of the following:

5.1. Posts shall be a minimum of 6 inches x 6 inches nominal dimension.

5.2. Beams shall be a minimum of 6 inches x 8 inches nominal dimension.

5.3. Joists shall be a minimum of 4 inches x 8 inches nominal dimension spaced at no greater than 24 inches on center.

504.8.1 Clearance. Decks with less than 48 inches of clearance from finished grade to deck joists shall be enclosed with screen material with openings no greater than 1/4-inch maximum to prevent accumulation of combustibles and to prevent embers from coming in underneath.

504.8.2 Walking surfaces. The walking surface material of decks, porches, balconies, and stairs shall be constructed with one of the following materials:

1. Ignition-resistant material that complies with the performance requirements of Section 503.2.

2. Exterior fire-retardant-treated wood.

3. Noncombustible material.

4. Where the deck, porch, balcony, or stairs are constructed of heavy timber in accordance with Section 501.6, natural wood decking products shall be:

4.1. 2-inch nominal dimension lumber; or

4.2. 5/4-inch nominal hardwood (i.e., teak, mahogany, or other approved hardwood).

5. Material that complies with the performance requirements of Section 504.8.2.1 when tested in accordance with ASTM E2632 and when attached exterior wall covering is also composed of only noncombustible or ignition-resistant materials.

EXCEPTION: Wall material shall be permitted to be of any material that otherwise complies with Section 501.5 when the decking surface material complies with the performance requirements of ASTM E84 with a Class B flame spread index.

504.8.2.1 Material in Section 504.8.1, Item 5. The walking surface material shall be tested in accordance with ASTM E2632 and shall comply with the following condition of acceptance. The ASTM E2632 test shall be conducted on a minimum of three test specimens and the peak heat release rate shall be less than or equal to 25 kW/ft² (269 kW/m²). If any one of the three tests does not meet the conditions of acceptance, three additional tests shall be run. All the additional tests shall meet the condition of acceptance.

504.9 Exterior glazing. Exterior windows, window walls and glazed doors, windows within exterior doors, and skylights shall be tempered glass, *multilayered glazed panels*, glass block or have a fire protection rating of not less than 20 minutes.

504.10 Exterior doors. Exterior doors shall be *approved* noncombustible construction, solid core wood not less than 1 3/4 inches thick (44 mm), or have a fire protection rating of not less than 20 minutes. Windows within doors and glazed doors shall be in accordance with Section 504.8.

EXCEPTION: Vehicle access doors.

504.11 Vents. Attic ventilation openings, foundation or underfloor vents, or other ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches (0.0929 m²) each. Such vents shall be covered with *noncombustible* corrosion-resistant mesh with openings not to exceed 1/4 inch (6.4 mm), or shall

be designed and *approved* to prevent flame or ember penetration into the structure.

504.11.1 Vent locations. Attic ventilation openings shall not be located in soffits, in eave overhangs, between rafters at eaves, or in other overhang areas. Gable end and dormer vents shall be located not less than 10 feet (3048 mm) from lot lines. Underfloor ventilation openings shall be located as close to grade as practical.

504.12 Detached accessory structures. Detached accessory structures located less than 50 feet (15,240 mm) from a building containing habitable space shall have exterior walls constructed with materials *approved* for not less than 1-hour *fire-resistance-rated construction*, heavy timber, *log wall construction*, or constructed with *approved non-combustible* materials or fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the *International Building Code*.

504.12.1 Underfloor areas. Where the detached structure is located and constructed so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have underfloor areas enclosed to within 6 inches (152 mm) of the ground, with exterior wall construction in accordance with Section 504.5 or underfloor protection in accordance with Section 504.6.

EXCEPTION: The enclosure shall not be required where the underside of exposed floors and exposed structural columns, beams and supporting walls are protected as required for exterior 1-hour *fire-resistance-rated construction* or *heavy timber construction* or fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the *International Building Code*.

505 Class 2 ignition-resistant construction.

505.7 Appendages and projections. *Accessory structures* attached to buildings with habitable spaces and projections, other than decks, porches, balconies, or stairs, shall be not less than 1-hour *fire-resistance-rated construction*, *heavy timber construction* or constructed of one of the following:

1. *Approved noncombustible* materials.
2. Fire-retardant-treated wood identified for exterior use and meeting the requirements of Section 2303.2 of the *International Building Code*.
3. Ignition-resistant building materials in accordance with Section 503.2.

EXCEPTION: Not adopted.

505.8 Decks and appendages. The material of decks, porches, balconies, and stairs shall be constructed with any of the following materials:

1. Ignition-resistant material that complies with the minimum performance requirement of Section 503.2.
2. Exterior fire-retardant-treated wood.
3. Noncombustible material.
4. Any material that complies with the minimum performance requirements of Section 503.2 when attached exterior wall covering is also either noncombustible or ignition-resistant material.
5. Heavy timber construction consisting of the following:
 - 5.1. Posts shall be a minimum of 6 inches x 6 inches nominal dimension.
 - 5.2. Beams shall be a minimum of 6 inches x 8 inches nominal dimension.

5.3. Joists shall be a minimum of 4 inches x 8 inches nominal dimension spaced at no greater than 24 inches on center.

505.8.1 Clearance. Decks with less than 48 inches of clearance from finished grade to deck joists shall be enclosed with screen material with openings no greater than 1/4-inch maximum to prevent accumulation of combustibles and to prevent embers from coming in underneath.

505.8.2 Walking surfaces. The walking surface material of decks, porches, balconies, and stairs shall be constructed with one of the following materials:

1. Ignition-resistant material that complies with the performance requirements of Section 503.2.

2. Exterior fire-retardant-treated wood.

3. Noncombustible material.

4. Where the deck, porch, balcony, or stairs are constructed of heavy timber in accordance with Section 501.6, natural wood decking products shall be:

4.1. 2-inch nominal dimension lumber; or

4.2. 5/4-inch nominal hardwood (i.e., teak, mahogany, or other approved hardwood).

5. Material that complies with the performance requirements of Section 505.8.1.1 when tested in accordance with ASTM E2632 and when attached exterior wall covering is also composed of only noncombustible or ignition-resistant materials.

EXCEPTION: Wall material shall be permitted to be of any material that otherwise complies with Section 501.5 when the decking surface material complies with the performance requirements of ASTM E84 with a Class B flame spread index.

505.8.2.1 Material in Section 505.8.1, Item 5. The walking surface material shall be tested in accordance with ASTM E2632 and shall comply with the following condition of acceptance. The ASTM E2632 test shall be conducted on a minimum of three test specimens and the peak heat release rate shall be less than or equal to 25 kW/ft² (269 kW/m²). If any one of the three tests does not meet the conditions of acceptance, three additional tests shall be run. All the additional tests shall meet the condition of acceptance.

505.9 Exterior glazing. Exterior windows, window walls and glazed doors, windows within exterior doors, and skylights shall be tempered glass, *multilayered glazed panels*, glass block or have a fire protection rating of not less than 20 minutes.

505.10 Exterior doors. Exterior doors shall be *approved noncombustible* construction, solid core wood not less than 1 3/4 inches thick (45 mm), or have a fire protection rating of not less than 20 minutes. Windows within doors and glazed doors shall be in accordance with Section 505.8.

EXCEPTION: Vehicle access doors.

505.11 Vents. Attic ventilation openings, foundation or underfloor vents or other ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches (0.0929 m²) each. Such vents shall be covered with *noncombustible* corrosion-resistant mesh with openings not to exceed 1/4 inch (6.4 mm) or shall be designed and *approved* to prevent flame or ember penetration into the structure.

505.11.1 Vent locations. Attic ventilation openings shall not be located in soffits, in eave overhangs, between rafters at eaves, or in

other overhang areas. Gable end and dormer vents shall be located not less than 10 feet (3048 mm) from lot lines. Underfloor ventilation openings shall be located as close to grade as practical.

505.12 Detached accessory structures. Detached accessory structures located less than 50 feet (15,240 mm) from a building containing habitable space shall have exterior walls constructed with materials *approved* for not less than 1-hour *fire-resistance-rated construction*, heavy timber, *log wall construction*, or constructed with *approved non-combustible* materials or fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the *International Building Code*.

505.12.1 Underfloor areas. Where the detached *accessory structure* is located and constructed so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have underfloor areas enclosed to within 6 inches (152 mm) of the ground, with exterior wall construction in accordance with Section 505.5 or underfloor protection in accordance with Section 505.6.

EXCEPTION: The enclosure shall not be required where the underside of exposed floors and exposed structural columns, beams and supporting walls are protected as required for exterior 1-hour *fire-resistance-rated construction* or heavy-timber construction or fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the *International Building Code*.

507 Replacement or repair of roof coverings.

507.1 General. The *roof covering* on buildings or structures in existence prior to the adoption of this code that are replaced or have 50 percent or more replaced in a 12-month period shall be replaced with a *roof covering* required by Section 501.4 or based on the type of ignition-resistant construction as determined by Section 501.1 Exception 1.

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NEW SECTION

WAC 51-55-0600 Fire protection requirements.

602 Automatic sprinkler systems.

602.1 General. An *approved* automatic sprinkler system shall be installed when required by the authority having jurisdiction.

[]

NEW SECTION

WAC 51-55-0700 Chapter 7—Vegetation management plan.

User note: *About this chapter: The purpose of this chapter is to provide criteria for submitting vegetation management plans, specifying their content and establishing a criterion for considering vegetation management as being a fuel modification.*

701 General.

701.1 Scope. Vegetation management plans shall be submitted to the *code official where required* for review and approval as part of the plans required for a permit.

701.2 Plan content. Vegetation management plans shall describe all actions that will be taken to prevent a fire from being carried toward or away from the building. A vegetation management plan shall include the following information:

1. A copy of the site plan.
2. Methods and timetables for controlling, changing or modifying areas on the property. Elements of the plan shall include removal of slash, snags, vegetation that may grow into overhead electrical lines, other ground fuels, ladder fuels and dead trees, and the thinning of live trees.
3. A plan for maintaining the proposed fuel-reduction measures.

701.3 Fuel modification. To be considered a *fuel modification* for purposes of this code, continuous maintenance of the clearance is required.

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NEW SECTION**WAC 51-55-0800 Chapter 8—Fire hazard severity form.**

User note: *About this chapter: The purpose of this chapter is to provide an alternative methodology to using Table 502.1 for analyzing the fire hazard severity of building sites using a preassigned value/scoring system for each feature that impacts the hazard level of a building site. Included in the evaluation are site access, types and management of vegetation, percentage of defensible space on the site, site topography, class of roofing and other construction materials used on the building (existing or to be constructed on the site), fire protection water supply, and whether utilities are installed above or below ground.*

801 Fire hazard severity form. Where adopted, Table 801.1 is permitted to be used as an alternative to Table 502.1 for analyzing the fire hazard severity of building sites.

**TABLE 801.1
FIRE HAZARD SEVERITY FORM
(No change to the table)**

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NEW SECTION**WAC 51-55-0900 Chapter 9—Fire danger rating system.**

User note: *About this chapter: The fuel models included in Chapter 9 are only general descriptions because they represent all wildfire fuels from Florida to Alaska and from the East Coast to California.*

The National Fire Danger Rating System (NFDRS) is a set of computer programs and algorithms that allows land management agencies to estimate today's or tomorrow's fire danger for a given rating area. NFDRS characterizes fire danger by evaluating the approximate upper limit of fire behavior in a fire danger rating area during a 24-hour period based on fuels, topography and weather, or what is commonly called the fire triangle. Fire danger ratings are guides for initiating presuppression activities and selecting the appropriate level of initial response to a reported wildfire in lieu of detailed, site- and time-specific information.

Predicting the potential behavior and effects of wildland fire are essential tasks in fire management. Surface fire behavior and fire effects models and prediction systems are driven in part by fuelbed inputs such as load, bulk density, fuel particle size, heat content and moisture content. To facilitate use in models and systems, fuelbed inputs have been formulated into fuel models. A fuel model is a set of fuelbed inputs needed by a particular fire behavior or fire effects model. Different kinds of fuel models are used in fire spread models in a variety of fire behavior modeling systems. The fuel models in this appendix correlate with the light, medium, and heavy fuel definitions found in Chapter 2 of the code.

901 Fuel models.

901.1 General. The Fuel Model Key is provided in Table 901.1. Fuel Models are described in Sections 901.1.1 through 901.1.20.

TABLE 901.1

FUEL MODEL KEY

(No change to the table)

901.1.1	FUEL MODEL A.	(No change to the text)
901.1.2	FUEL MODEL B.	(No change to the text)
901.1.3	FUEL MODEL C.	(No change to the text)
901.1.4	FUEL MODEL D.	(No change to the text)
901.1.5	FUEL MODEL E.	(No change to the text)
901.1.6	FUEL MODEL F.	(No change to the text)
901.1.7	FUEL MODEL G.	(No change to the text)
901.1.8	FUEL MODEL H.	(No change to the text)
901.1.9	FUEL MODEL I.	(No change to the text)
901.1.10	FUEL MODEL J.	(No change to the text)
901.1.11	FUEL MODEL K.	(No change to the text)
901.1.12	FUEL MODEL L.	(No change to the text)
901.1.13	FUEL MODEL N.	(No change to the text)
901.1.14	FUEL MODEL O.	(No change to the text)
901.1.15	FUEL MODEL P.	(No change to the text)
901.1.16	FUEL MODEL Q.	(No change to the text)
901.1.17	FUEL MODEL R.	(No change to the text)
901.1.18	FUEL MODEL S.	(No change to the text)
901.1.19	FUEL MODEL T.	(No change to the text)

901.1.20 FUEL MODEL U. (No change to the text)

[]

NEW SECTION

WAC 51-55-1000 Chapter 10—Referenced standards.

ASTM

E2632-2020: Standard Test Method for Evaluating the Under-Deck Fire Test Response of Deck Materials

501.6

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WSR 22-17-151
PROPOSED RULES
BUILDING CODE COUNCIL
 [Filed August 23, 2022, 4:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-032 and 22-03-033.

Title of Rule and Other Identifying Information: Chapter 51-50 WAC, Adoption and amendment of the 2021 International Building Code (Structural Provisions) and 2021 International Existing Building Code.

Hearing Location(s): On September 30, 2022, at 10:00 a.m., at 129 North 2nd Street, Yakima, WA 98901; or on October 14, 2022, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person, or via Zoom or Conference call. The Zoom link and phone are provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: November 4, 2022.

Submit Written Comments to: State Building Code Council (SBCC), P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by October 14, 2022.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, email sbcc@des.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adopts the 2021 edition of the International Building Code (IBC) (Structural Provisions) and the 2021 edition of the International Existing Building Code (IEBC), published by the International Code Council (ICC), with state amendments to incorporate proposed changes as adopted by SBCC. The rules will provide increased clarity and life safety measures for building construction in Washington state.

SUMMARY OF PROPOSED CHANGES

2021 IBC/2021 IEBC Amendments to Chapter 51-50 WAC

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-50-107	107.2	New section; replaces Section 107.2.8 with 107.2.9.	Provides the necessary reference to the newly proposed Section 107.2.9.
	107.2.9	New section in WAC; adds language to the model code related to nonstructural components.	Clarifies nonstructural components that require an importance factor of 1.5 and require designated seismic restraint systems per ASCE 7 need to be identified on permit drawing sets. These may be mechanical and electrical components as such as smoke control systems, stairways, emergency generators, etc.
WAC 51-50-1604	Table 1604.5	Removes the state amendment and reserves WAC 51-50-1604.	The existing amendment is no longer needed; it is addressed in the model code.

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-50-1613	1613.4	Replaces the reference to Section 1613.4.2 with a reference to Section 1613.4.6.	Provides the necessary references to the newly proposed Sections 1613.4.3 through 1613.4.6.
	1613.4.1	Deletes Item 5 of Section 12.2.5.4.	The 2021 IBC includes changes in a reference standard that duplicate changes made by an amendment to the Washington state building code. These changes relate to the construction of concrete special structural walls which are seismic force resisting elements of a building structural system and are common in commercial and multi-family residential construction. The amendment to the Washington state building code Section 1613.4.1 part 5 was previously needed in the building code as similar requirements weren't included in the reference standards. The 2018 IBC reference standard ACI 318-19 has added similar requirements to those of the amendment. The amendment to the Washington state building code should be removed for clarity. By removing Amendment Section 1613.4.1 part 5, an engineer will be clear that the provisions and ACI 318-19 should be used directly. Without the removal of Item 5, it is unclear if the factors referenced by the amendment and the factor of the reference standards should be used together, which could result in an overestimation of design forces by a factor of 2.5. This would result in an increase in the size of special concrete walls used in new construction. See detailed rationale here: 21-GP2-028.
	1613.4.3 through 1613.4.6	New sections in WAC; intended to provide a simplified method to develop seismic design parameters for seismic design of buildings.	The current method in ASCE 7-16 for developing seismic design response spectra is very complex, and it requires additional ground motion hazard analyses for many more building sites than required in previous versions of the code. The same amendment was adopted as an emergency rule (WSR 22-11-010) and it is effective until July 1, 2023. If adopted, this proposal will adopt the rule permanently. (See WSR 22-11-010 and detailed rationale for adopting it)
WAC 51-50-1615	1615.1 1615.2.4 1615.2.5 1615.2.6 1615.2.7 1615.2.8 1615.2.9 1615.2.10 1615.2.12 1615.2.13 1615.2.14 1615.2.15		The proposed amendment in Section 1615 adopts the latest Washington Department of Natural Resources tsunami design zone maps into the 2021 IBC. In addition, it brings forward the latest published tsunami design zone requirements contained in American Society of Civil Engineers Standard 7-22, which would otherwise be adopted as part of the 2024 IBC. Some editorial modifications are also proposed.
WAC 51-50-1702	1702	Remove the state amendment and save WAC 51-50-1702 as reserved.	The defined terms are deleted to match the model code format.
WAC 51-50-1705	1705.5.3 1705.11.1 1705.12. 1705.19	Remove the state amendment and save WAC 51-50-1705 as reserved.	The existing amendments are no longer needed; all are addressed in the model code.
	1705.12.6	Rename to 1705.13.6; modify item 6.2.	Incorporates renumbering in the model code.

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-50-17090	1709.5	Incorporates model code language.	This existing amendment was adopted in 2006. The amendment provides an exception to the load testing requirement for small business manufacturers (Exception 2). The exception was readopted in 2009, 2012, 2015, and 2018 IBC, but the model code language was not updated. The proposed amendment contains Exception 2 and incorporates the model code language.
WAC 51-50-2103	2103.2.4	New section added to WAC.	A common mode of failure of adhered veneer is the debonding of the units from the wall. Requiring a modified dry-set bond coat mortar capable of developing higher bond strength is warranted. ANSI A118.15, for example, requires a 28-day shear bond strength near 400 psi for an improved-modified dry-set mortar, which is significantly higher than the current TMS 402 requirement of 50 psi. The latest draft for the next TMS reference code edition contains a similar amendment. This new amendment is an early adoption of this beneficial code provision in Washington state. Additionally, the method of installation prescribed in the TMS specification was developed in the 1950s but is not used today for the installation of adhered veneer. (See detailed rationale here: 21-GP1-65 (MOD))
WAC 51-50-21070	2107.1	Delete existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
WAC 51-50-2111	2111.8	Reference sections renumbering.	Section 2111.8 is an existing amendment, modified to incorporate section renumbering in the model code.
WAC 51-50-2303	2303.1.1.3	New section in WAC addressing used solid-sawn lumber.	Similar proposal was approved by the SBCC and published as a 2018 amendment in the IRC (Section R602.1.1). This amendment will put the IBC and the IRC in alignment with respect to the reuse of salvaged dimensional sawn lumber. When constructing to the requirements of the IBC, quality, salvaged solid-sawn lumber that is ungraded or does not have a certificate of inspection cannot currently be reused in a structural capacity unless allowed by the building official. The intent of this proposal is to assume conservative material base values that reflect past construction methods which will expand the use of salvaged lumber without compromising safety. This proposal provides clear directive to the engineer/designer, removes potential liability from the building official while maintaining safety, and will result in the increased and economical use of salvaged lumber for those wishing to reuse quality material. (See detailed rationale here: 21-GP1-62 (MOD))
	2303.1.4	Delete Section 2303.1.4.	The existing amendment is no longer needed; it is addressed in the model code.

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-50-2304	2304.10	Delete existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	2304.10.8	Delete existing amendment.	The existing amendment is no longer needed; it is addressed in the model code Section 2304.10.1.
	2304.11.2.1 2304.11.2.2 2304.11.3.1 2304.11.4.1	New sections in WAC.	<p>The proposed amendments address prescriptive thickness requirements of cross-laminated timber in Chapter 23, originally added in the 2018 IBC model code. With the addition of Type IV-A/B/C construction types in Section 6 of the 2021 IBC model code, Section 602.4 combines the new performance-based requirements of Type IV-A/B/C with the existing prescriptive requirements of Type IV-HT in Chapter 2304.11.</p> <p>The proposed amendments to 2304.11.2.1, 2304.11.2.2, and 2304.11.4.1, simply add consistency and specificity in language (actual thicknesses rather than mix of actual, nominal, or not defined) without modification of prescribed CLT thickness. Nominal dimensions are not used by CLT manufacturers, architects, engineers, or contractors. The proposed amendment to 2304.11.3.1 proposes a change from 4" actual thickness to 3.5" actual thickness with proposed justification of equivalency to or exceedance of allowable prescriptive nominal thicknesses in 2304.11.3.2. The benefit of the proposed prescriptive thickness change to CLT floors adds consistency and flexibility in specification between CLT, GLT, NLT, DLT and is inclusive of standardized metric CLT sizes of 90mm and 100mm. The additional performance requirements in Section 602.4 Type IV remain unchanged.</p> <p>21-GP1-63 (MOD)</p>
WAC 51-50-2400	2405.3	Remove existing amendment	The existing amendment is relocated to WAC 51-50-2405.
WAC 51-50-2405	2405.3	Relocation.	The existing amendment, currently in WAC 51-50-2400, is renumbered to WAC 51-50-2405 to align with the WAC format. The existing amendment is in exception 5, deleting R-2, R-3, and R-4 occupancies from the text. The text in 2405.3 is modified to incorporate changes to the model code. The proposed modifications have no intended change in regulatory effect.
WAC 51-50-3500	Chapter 35	Add new referenced standards.	<p>Adds new standards referenced in the body of the code. The purpose of amending ASCE 7 is to adopt the Supplements to 2016 edition of ASCE 7, Minimum Design Loads and Associated Criteria for Buildings and Other Structures (ASCE 7-16), developed by the ASCE 7 Standard Committee to address important issues in between cycles of development. Some of the noted deficiencies in the ASCE 7-16 standard affect high seismic hazard locations such as Washington state and could potentially result in unconservative structural design. Hence, we request that this be adopted under the 2021 IBC reference standards.</p> <p>The ASCE 7-16 standard now has three published supplements - Supplement No. 1 was published on December 11, 2018, Supplement No. 2 was published on October 19, 2021, and Supplement No. 3 was published on November 3, 2021. Supplement No. 1 was adopted into the 2021 International Building Code, but Supplement No. 2 and Supplement No. 3 were not included as they have just been recently published.</p>
International Existing Building Code			

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-50-480200	Chapter 2	Add new definitions: SUBSTANTIAL DAMAGE SUBSTANTIAL IMPROVEMENT	When a flood occurs that damages a building, there are oftentimes many structures that are damaged. Securing a real estate professional to determine market value can take up valuable time that would be better served getting the building repaired quickly. ICC publishes building valuation data that should represent the cost to rebuild the building as if it was new. While this may potentially over-value an existing building, it offers a way for building officials to quickly determine a building value that does not include the land value. As the ICC valuation data is maintained and updated regularly by ICC, there is no need for building officials to maintain another way of determining market value. In addition, it is a table available to both public and building departments, so the ability to quickly calculate a value and know if you exceed the substantial threshold is easily determined without the input from a real estate professional.
WAC 51-50-480302	302.2	Renumbering	Incorporates model code renumbering.
WAC 51-50-480306	306.6	Add new sections pertaining to LULA elevators.	The code change proposals in Sections 306.6 and 306.7.8 will allow use of a LULA as part of the accessible route in additions. This is a new provision and provides greater flexibility to designers to provide a level of accessibility to a mezzanine, story or occupied roof. A separate code change proposal will allow a LULA in both a change of occupancy and in alterations. This code change would allow a LULA, and would not allow a platform lift permitted in additions to existing buildings. See the detailed rationale here: 21-GP2-054R
	306.7.8		
	306.7.1	New section	The current language in Section 306.7.1 related to the need to provide an accessible route of travel, accessible toilet facilities and drinking fountains for primary function areas being altered has been the source of confusion for many. The current language, which attempts to combine a mandate to improve the accessible route to primary function areas, which is already addressed in the first sentence of this section, with improvements to existing restrooms and drinking fountains, is the source of this confusion. This proposal replaces the last sentence and slightly modifies Exception 1. This helps the code users to understand the intent of this provision: (1) Provide an accessible route to the primary function area. (2) Make accessibility improvements to existing restrooms and drinking fountains serving the area of primary function. Replacing the current with a separate and distinct sentence addressing the need to update restrooms and drinking fountains is eliminating the ambiguity of the current code. Exception 1 has also been modified to make it clear that the cumulative cost of these improvements are not required to exceed 20 percent of the construction budget.
306.7.1	New section	This is another proposal addressing the same issue. It adds a new sentence clarifying that priority shall be given to the improvements affecting the accessible route to the primary function area.	

WAC	Section	Changes in 2021	Rationale/Discussion
	306.7.8	New section addressing lifts.	The ASME A18.1 Standard, referenced in IEBC Section 305.8.3, recognizes two types of platform lifts: vertical and inclined. The proposed language adds clarity for the reader as to what types of conveyances are allowed by ASME A18.1. It also reduces potential confusion resulting from a conflict that the current provision has with IBC Section 1003.3.3 related to horizontal projections into the circulation path. Stating that this provision applies to both vertical and inclined conveyances will eliminate any confusion that it may only apply to vertical conveyances.
WAC 51-50-480401	401.2 401.4	New sections	<p>The proposal does three things:</p> <ul style="list-style-type: none"> • Clarifies that the work needed to facilitate repairs should not be considered an alteration (401.2) The sentence being added to the end of 401.2 was dropped during the 2018 code cycle when the repair provisions were consolidated in Chapter 4 in the IEBC. This allowance was originally in the 2015 IEBC prescriptive and work area methods sections. It provides clarity to the code official about how to deal with existing undamaged components when repairs on a structure are needed. It is a common situation that should be addressed by the code. • Ensures that when a building has been effectively demolished it must be replaced with a new building subject to new code requirements (401.4). The IEBC allows the use of "like materials" for repairs, but these provisions should not apply where the building has been destroyed and the repair needed is a total replacement of the building. The same rules should apply whether the damage is caused directly by the destructive event or if the demolition and subsequent replacement of the building is the owner's choice for correcting the damage. In both cases, owners would have to rebuild using currently adopted codes. • Allows for reuse of the existing foundation with approval by the code official. <p>This proposal is being heard at the ICC hearings for the 2024 code cycle in March/April 2022. Further correlation may be needed in the future if the ICC proposal is approved "as is" or with changes.</p>
WAC 51-50-480405	405.1 405.1.1	New sections	The proposed amendment adds ACI 562 (Code Requirements for Assessment, Repair, and Rehabilitation of Existing Concrete Structures) to establish minimum requirements for the evaluation, design, construction, repair, and rehabilitation of concrete structural elements in buildings for various levels of desired performance as deemed appropriate for the project. This proposal is intended as a modification where the code is based on the 2021 edition of the ICC IEBC. (See the detailed rationale here: 21-GP2-002R.)

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-50-480503	503.19 503.19.1 503.19.2 503.19.3 503.19.4	New sections	The proposals in Sections 503.19 and 805.4 (adding an exception to Item 2) will make it clear that new lateral systems are permitted to be of any type, even of a type that normally would not be allowed in new construction, based on the seismic design category and height, as long as all the other conditions of sections 503.13 and 805.4 are met. The original intent of this code section remains the same, the proposed design shall not weaken the existing lateral resistance of the building or affect the behavior of the building in a severe way. In addition, this proposal will help with cost reduction and most importantly performance since less ductile "Ordinary" or "Intermediate" systems may be closer to matching an existing building's deformation limits. See the detailed rationale here: 21-GP2-056.
WAC 51-50-480603	603.1	New section	It is oftentimes difficult to determine if 50 percent of the building area is exceeded for a substantial remodel and using ICC valuation could be an easier way to determine if the amount of work in a building is substantial. ICC building valuations can be easily calculated and compared to the proposed value of the remodel; whereas, it can be very difficult to determine if an alteration is exceeding the 50 percent threshold when only portions of rooms are altered. This offers an alternative method to determine if an alteration is Level 3 using ICC building valuation and comparing the valuation to the contract value of the proposed work.
WAC 51-50-480604	604.1		See WAC 51-50-480603
WAC 51-50-480702	702.7	Renumbering	The existing amendment is modified to align with the model code section renumbering.
WAC 51-50-480805	805.4 805.5 through 805.5.4		See WAC 51-50-480503 Buildings with unreinforced masonry and hollow clay in Seismic Design Category C, D, E or F represent an increased risk to life safety, and jurisdictions need to be able to require seismic upgrades where occupant loads are increased during alterations. Currently the seismic retrofits for URM or hollow clay tile buildings are triggered for the following alteration scenarios: 1. Level 3 remodel triggers parapet bracing, installation of floor/wall anchors, and wall/partition bracing within alteration area. 2. Roof replacement more than 25 percent triggers parapet bracing. 3. Substantial structural alteration triggering upgrading the lateral load resisting system with reduced seismic forces. 4. Change in risk category per IBC Table 1604.5. This proposal captures the situations where the alteration is using either the prescriptive requirements of the code or is falling under the Level 2 remodel that is not triggering any roof replacement requirements. Level 3 alterations require compliance with all Level 2 requirements, and thus must meet the large building provisions as required in that section. See detailed rationale here: 21-GP2-018R
WAC 51-50-480809	809.1	Delete existing amendment; add a new section with the same number.	The existing amendment is no longer needed because Section 809.1 Minimum fixtures is no longer in the model code. The existing amendment in Section 810.1 is relocated to WAC 51-50-480809 to align with the model code renumbering.

WAC	Section	Changes in 2021	Rationale/Discussion
WAC 51-50-480810	810.1	Relocation	The existing amendment in Section 810.1 is relocated to WAC 51-50-480809 to align with the model code renumbering.
WAC 51-50-481002	1002.1 1002.3	Delete 1002.1; modify the model code section 1002.3 by incorporating language from the existing amendment in Section 1002.1.	Merging the existing amendment into the new model code language.
WAC 51-50-481201	1201.1	Incorporates model code changes.	The existing amendment adds the second sentence to the model code language. The proposed modification incorporate changes to the model code, not related to the existing amendment.
WAC 51-50-481301	1301.1 1301.2	Delete existing amendments.	The existing amendment in Section 1301.1 is no longer needed; it repeats the model code language in Section 1401.1. The existing amendment in Section 1301.2 is renumbered and relocated to WAC 51-50-481401 to match the model code numbering.
WAC 51-50-481302			The existing amendment is relocated to WAC 51-50-481402 to match the model code numbering.
WAC 51-50-481401	1401.2	New section.	The existing amendment currently in Section 1301.2 is renumbered and relocated to match the model code numbering.
WAC 51-50-481402			This is an existing amendment, currently in Section 1302. It is relocated to match the model code numbering.
WAC 51-50-481500	1501.7		The existing amendment replaces the International Plumbing Code with the Uniform Plumbing Code. The proposed renumbering aligns the existing amendment with the model code renumbering.
WAC 51-50-490000	Appendix N	Delete existing amendment.	The existing amendment is proposed to be deleted due to a conflict with Section C411 of the Washington state energy code—Commercial.

Note: Those not listed on the table above remain as adopted in 2018 IBC.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074, and 19.27.540.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074, and 19.27.540.

Statute Being Implemented: RCW 19.27.031, 19.27.074, and 19.27.540.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; Enforcement: Local jurisdictions.

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 Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277, email sbcc@des.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of

other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The proposed rule adopts by reference the 2021 IBC and 2021 IEBC with new and existing amendments. Many of the existing amendments are modified to incorporate changes to the model codes or to clarify language. There are 23 significant changes to the model code with economic impact. However, the model code changes are exempt under RCW 19.85.025(3) and 34.05.310 (4)(c), and are not part of this report.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The proposed rule adopts by reference the 2021 IBC and 2021 IEBC with new and existing amendments. Many of the existing amendments are modified to incorporate changes to the model codes or to clarify language. There are 23 significant changes to the model code with economic impact. However, the model code changes are exempt under RCW 19.85.025(3) and 34.05.310 (4)(c), and are not part of this report.

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

Small Business Economic Impact Statement

There are costs imposed by the proposed rule, but the costs do not fall disproportionately on small businesses. The rule will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rule does not affect employment, reporting or record keeping.

Description: SBCC is filing a proposed rule to adopt the 2021 edition of the IBC, structural provisions and the 2021 edition of the IEBC (chapter 51-50 WAC). Since 1985, SBCC has been responsible to update to new editions of the building code per RCW 19.27.074. The IBC is updated every three years by ICC. The code development process conducted by the model code organization is open to all interest groups within the design and construction industry and from governmental organizations. See www.iccsafe.org for more information about the model code development process.

The administrative compliance requirements are under the authority of the local governments (RCW 19.27.050). Enforcement activities, including permit issuance, plan review/approval, and inspections occur at the local level. Requirements for construction documents submittal and other reporting mandates are determined by the local jurisdiction and are consistent with previously established policies. The proposed amendments to chapter 51-50 WAC include specific technical requirements for building construction to be consistent with national standards.

Professional Services: Washington has had a statewide building code in effect since 1974. The local enforcement authority having ju-

jurisdiction administers the codes through the building and/or fire departments. Administrative procedures for state building code compliance are established and will not be changed by the adoption of the 2021 building codes. Small businesses will employ the same types of professional services for the design and construction of buildings and systems to comply with the state building code. The proposed rule updates the state building code and does not require additional equipment, supplies, labor, or other services. Services needed to comply with the building code are existing within the construction industry as required by the local authority having jurisdiction.

Costs of Compliance for Businesses: The council is required to adopt and maintain the state building code, as provided in chapters 19.27, 19.27A, and 70.92 RCW, and the state legislature. The primary objective of the council is to encourage consistency in the building code throughout the state of Washington and to maintain the building code consistent with the state's interest as provided in RCW 19.27.020. An objective of statewide adoption is to minimize state amendments to the model codes. The council accepts statewide code amendment proposal from stakeholders to amend the IBC to meet the legislative goals. The statewide code adoption process is defined in chapter 51-04 WAC and the council bylaws. All proposals must be submitted in writing on the appropriate form with the indicated supporting documentation. Each proponent must identify where a proposed amendment has an economic impact, and estimate the costs and savings of the proposal on construction practices, users and/or the public, the enforcement community, and operation and maintenance.

The cost of compliance incurred by Washington businesses includes training and educational materials. The new 2021 IBC, 2021 IEBC, 2021 IBC significant changes and 2021 IBC study pack cost \$215 + tax shipping and handling. The 2021 IBC and 2021 IEBC are also available online at <https://shop.iccsafe.org>.

For the 2021 code adoption cycle, the council received 18 proposals. The IBC technical advisory group (TAG) recommended approval of 15 proposals as submitted or as modified, one proposal was withdrawn by the proponent. Three proposals were approved with Group 1 codes. Two proposals were identified by TAG as having a cost (increase) for compliance on businesses. The council recommended filing the proposed rule to allow input through the public hearing process.

1. **Section 503.19; 805.5** (21-GP2-018R): The proposals in Sections 503.19 and 805.4 will make it clear that new lateral systems are permitted to be of any type, even of a type that normally would not be allowed in new construction, based on the seismic design category and height, as long as all the other conditions of Sections 503.13 and 805.4 are met. The original intent of this code section remains the same, the proposed design shall not weaken the existing lateral resistance of the building or affect the behavior of the building in a severe way. In addition, this proposal will help with cost reduction and most importantly performance since less ductile "Ordinary" or "Intermediate" systems may be closer to matching an existing building's deformation limits. See the detailed rationale here: 21-GP2-056.

This proposal will increase construction cost. For URM or HCT buildings that trigger the occupant load threshold, there will be a cost of installing seismic supports to include parapet bracing, wall/roof ties, and wall/partition bracing for nonstructural walls. These costs are estimated at \$40-\$90 per square foot. For large buildings triggering the analysis of the lateral force resisting system, there may be much larger costs such as putting in a moment frame or second-

dary load transfer for seismic loads. There is no reliable information pertaining to cost as it is very dependent on the design of the specific structure.

2. **Chapter 35, Referenced Standards** (21-GP2-017). The purpose of amending ASCE 7 is to adopt the supplements to 2016 edition of ASCE 7, Minimum Design Loads and Associated Criteria for Buildings and Other Structures (ASCE 7-16), developed by the ASCE 7 Standard Committee to address important issues in between cycles of development. Some of the noted deficiencies in the ASCE 7-16 standard affect high seismic hazard locations such as Washington state and could potentially result in unconservative structural design. Hence, we request that this be adopted under the 2021 IBC reference standards. The ASCE 7-16 standard now has three published supplements: Supplement No. 1 was published on December 11, 2018, Supplement No. 2 was published on October 19, 2021, and Supplement No. 3 was published on November 3, 2021. Supplement No. 1 was adopted into the 2021 IBC, but Supplement No. 2 and Supplement No. 3 were not included as they have just been recently published.

The adoption of ASCE 7-16 Supplements shouldn't impact the cost of construction for most building structures. However, since some of the changes address the deficiencies for specific structures, such as in buildings with extreme torsional irregularities (Supplement No. 2) and seismic design of liquid storage tanks (Supplement No. 3), the design for these buildings and structures could result in increase in structural design loads than designs proportioned by applying just the originally published standard. It is difficult to quantify the construction cost increase for the noted specific structures because the potential increase in seismic loads depends on several factors and seismic demands is only a fraction of the overall loading. This potential amplification of structural loading for the noted building types is a necessary correction in order to meet the life safety criteria of the structure.

Loss of Sales or Revenue: The proposed rules make the state code for building construction consistent with national standards. Businesses with new products or updated test or design standards are recognized in the updated building code. The update will result in some cost outlay for some small businesses for specific building projects, for a transition period. Other small businesses would see an increase in revenue. The amendments to the building codes affect over 25,000 small businesses in the state, where construction activity occurs. The primary intent of the amendments is to improve the safety features in buildings and provide consistency and fairness across the state, for a predictable business environment. The amendments should result in enhanced safety and value in buildings.

Cost of Compliance for Small Businesses: (Determine whether the proposed rule will have a disproportionate cost impact on small businesses, compare the cost of compliance for small business with the cost of compliance for the 10 percent of businesses that are the largest businesses.)

Most businesses affected by the updates to the building codes are small businesses; over 95 percent of those listed in the construction and related industries have under 50 employees. The costs per employee are comparable between the largest businesses and the majority of small businesses. The cost to comply with the updated codes is not a disproportionate impact on small businesses. Where the council found the cost of compliance for small businesses to be disproportionate, the proposed rule mitigates the cost. The proposed rules include a

definition of small business and provide exceptions for compliance with the updated rule.

Reducing the Costs of the Rule on Small Businesses: SBCC conducted a detailed review process, including participation at the national code development hearings, to document significant economic impacts of the proposed code amendments.

List of Industries: Below is a list of industries required to comply with the building code:

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
236115	New Single-Family Housing Construction (except For-Sale Builders)	\$2,508.04	\$1,919.03 2020 Dataset pulled from USBLS	\$2,508.04 2020 Dataset pulled from DOR
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$32,067.43	\$17,160.94 2020 Dataset pulled from USBLS	\$32,067.43 2020 Dataset pulled from DOR
236118	Residential Remodelers	\$1,457.74	\$1,457.74 2020 Dataset pulled from USBLS	\$901.20 2020 Dataset pulled from DOR
236210	Industrial Building Construction	\$59,169.45	\$59,169.45 2020 Dataset pulled from ESD	\$53,925.71 2020 Dataset pulled from DOR
236220	Commercial and Institutional Building Construction	\$41,552.81	\$18,126.81 2020 Dataset pulled from ESD	\$41,552.81 2020 Dataset pulled from DOR
238110	Poured Concrete Foundation and Structure Contractors	\$3,442.28	\$5,027.07 2019 Dataset pulled from CBP	\$3,442.28 2020 Dataset pulled from DOR
238120	Structural Steel and Precast Concrete Contractors	\$15,401.97	\$20,212.19 2019 Dataset pulled from CBP	\$15,401.97 2020 Dataset pulled from DOR
238130	Framing Contractors	\$2,234.30	\$3,139.71 2019 Dataset pulled from CBP	\$2,234.30 2020 Dataset pulled from DOR
238140	Masonry Contractors	\$1,900.60	\$3,582.13 2019 Dataset pulled from CBP	\$1,900.60 2020 Dataset pulled from DOR
238150	Glass and Glazing Contractors	5,255.36	\$9,574.95 2019 Dataset pulled from CBP	\$5,255.36 2020 Dataset pulled from DOR
238160	Roofing Contractors	\$3,589.99	\$5,007.86 2019 Dataset pulled from CBP	\$3,589.99 2020 Dataset pulled from DOR
238170	Siding Contractors	\$1,905.61	\$2,485.86 2019 Dataset pulled from CBP	\$1,905.61 2020 Dataset pulled from DOR
238190	Other Foundation; Structure; and Building Exterior Contractors	\$4,622.07	\$4,141.38 2019 Dataset pulled from CBP	\$4,622.07 2020 Dataset pulled from DOR
238210	Electrical Contractors and Other Wiring Installation Contractors	\$5,941.60	\$9,599.33 2019 Dataset pulled from CBP	\$5,941.60 2020 Dataset pulled from DOR
238220	Plumbing; Heating; and Air-Conditioning Contractors	\$5,353.76	\$11,047.00 2019 Dataset pulled from CBP	\$5,353.76 2020 Dataset pulled from DOR

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
238290	Other Building Equipment Contractors	\$4,335.21	\$16,142.07 2019 Dataset pulled from CBP	\$4,335.21 2020 Dataset pulled from DOR
238310	Drywall and Insulation Contractors	\$3,725.66	\$9,461.67 2019 Dataset pulled from CBP	\$3,725.66 2020 Dataset pulled from DOR
238990	All Other Specialty Trade Contractors	\$3,585.74	\$3,677.28 2019 Dataset pulled from CBP	\$3,585.74 2020 Dataset pulled from DOR
321213	Engineered Wood Member (except Truss) Manufacturing	\$44,480.76	\$44,480.76 2020 Dataset pulled from ESD	\$41,772.84 2020 Dataset pulled from DOR
321214	Truss Manufacturing	\$28,620.35	\$23,341.04 2020 Dataset pulled from ESD	\$28,620.35 2020 Dataset pulled from DOR
321219	Reconstituted Wood Product Manufacturing	\$30,305.17	\$10,139.90 2020 Dataset pulled from USBLS	\$30,305.17 2020 Dataset pulled from DOR
321911	Wood Window and Door Manufacturing	\$45,151.12	\$18,811.08 2020 Dataset pulled from ESD	\$45,151.12 2020 Dataset pulled from DOR
321992	Prefabricated Wood Building Manufacturing	\$5,391.09	\$5,391.09 2020 Dataset pulled from ESD	\$4,888.53 2020 Dataset pulled from DOR
327310	Cement Manufacturing	\$50,878.29	\$44,741.20 2020 Dataset pulled from ESD	\$50,878.29 2020 Dataset pulled from DOR
327320	Ready-Mix Concrete Manufacturing	\$64,317.30	\$46,126.21 2020 Dataset pulled from ESD	\$64,317.30 2020 Dataset pulled from DOR
327331	Concrete Block and Brick Manufacturing	\$15,030.60	\$15,030.60 2020 Dataset pulled from ESD	\$10,431.02 2020 Dataset pulled from DOR
332312	Fabricated Structural Metal Manufacturing	\$22,220.31	\$16,337.10 2020 Dataset pulled from USBLS	\$22,220.31 2020 Dataset pulled from DOR
332321	Metal Window and Door Manufacturing	\$26,369.28	\$14,505.40 2020 Dataset pulled from ESD	\$26,369.28 2020 Dataset pulled from DOR
332322	Sheet Metal Work Manufacturing	\$23,337.23	\$23,337.23 2020 Dataset pulled from ESD	\$16,556.52 2020 Dataset pulled from DOR
335121	Residential Electric Lighting Fixture Manufacturing	\$2,011.37	\$2,011.37 2020 Dataset pulled from USBLS	\$1,502.01 2020 Dataset pulled from DOR
335122	Commercial; Industrial; and Institutional Electric Lighting Fixture Manufacturing	\$6,357.34	Redacted 2020 Dataset pulled from USBLS	\$6,357.34 2020 Dataset pulled from DOR
335129	Other Lighting Equipment Manufacturing	\$6,281.32	\$6,281.32 2020 Dataset pulled from ESD	\$2,494.40 2020 Dataset pulled from DOR
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$24,486.53	\$16,589.10 2020 Dataset pulled from ESD	\$24,486.53 2020 Dataset pulled from DOR

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
541310	Architectural Services	\$9,221.65	\$9,221.65 2020 Dataset pulled from ESD	\$3,738.99 2020 Dataset pulled from DOR
541330	Engineering Services	\$14,801.92	\$14,801.92 2020 Dataset pulled from USBLS	\$7,177.43 2020 Dataset pulled from DOR
541350	Building Inspection Services	\$1,868.52	\$1,868.52 2020 Dataset pulled from ESD	\$475.93 2020 Dataset pulled from DOR
561621	Security Systems Services (except Locksmiths)	\$9,759.28	\$9,759.28 2020 Dataset pulled from ESD	\$6,117.04 2020 Dataset pulled from DOR

Estimate of the Number of Jobs That Will Be Created or Lost: The adoption of the latest code edition is not expected to significantly impact the number of jobs in the construction industry. These rules are likely to be job neutral overall, i.e., they will not result in any job gains or losses. The scheduled effective date of the new edition is July 1, 2021. Building permits issued prior to that date will be vested under the 2018 building code. Permits issued for projects under the 2021 code edition will generally start with the 2024 construction season.

A copy of the statement may be obtained by contacting Stoyan Bum-balov, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email sbcc@des.wa.gov.

August 23, 2022
Tony Doan
Council Chair

OTS-4036.2

NEW SECTION

WAC 51-50-0107 Section 107—Construction documents.

107.2 Construction documents. Construction documents shall be in accordance with Sections 107.2.1 through 107.2.9.

107.2.9 Nonstructural components. Construction documents shall indicate if structural support and anchoring documentation for nonstructural components is part of the design submittal or a deferred submittal. The construction documents for nonstructural components shall at a minimum identify the following:

1. All nonstructural components required by ASCE 7 Section 13.1.3 to have an importance factor of, I_p , of 1.5.
2. All mechanical equipment, fire sprinkler equipment, electrical equipment, and other nonstructural components required by ASCE 7 Section 13.1.3 Item 1 to be operational following a seismic event that require designated seismic systems per ASCE 7 Section 13.2.2 and special inspections per Section 1705.13.4.

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AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1604 (~~(Section 1604 General design requirements.)~~)
Reserved.

~~(Table 1604.5
 Risk Category of Buildings and Other
 Structures~~

RISK CATEGORY	NATURE OF OCCUPANCY
I	Buildings and other structures that represent a low hazard to human life in the event of failure including, but not limited to: <ul style="list-style-type: none"> • Agricultural facilities. • Certain temporary facilities. • Minor storage facilities.
II	Buildings and other structures except those listed in Risk Categories I, III, and IV.
III	Buildings and other structures that represent a substantial hazard to human life in the event of failure including, but not limited to: <ul style="list-style-type: none"> • Buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300. • Buildings and other structures containing Group E or Group I-4 occupancies with an occupant load greater than 250. • Buildings and other structures containing educational occupancies for students above the 12th grade with an occupant load greater than 500. • Group I-2 occupancies with an occupant load of 50 or more resident care recipients but not having surgery or emergency treatment facilities. • Group I-3 occupancies. • Any other occupancy with an occupant load greater than 5,000.^a • Power-generating stations, water treatment facilities for potable water, wastewater treatment facilities and other public utility facilities not included in Risk Category IV. • Buildings and other structures not included in Risk Category IV containing quantities of toxic or explosive materials that:

RISK CATEGORY	NATURE OF OCCUPANCY
	<p>Exceed maximum allowable quantities per control area as given in Table 307.1(1) or 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i>; and</p> <p>Are sufficient to pose a threat to the public if released.^b</p>
IV	<p>Buildings and other structures designated as essential facilities including, but not limited to:</p> <ul style="list-style-type: none"> • Group I-2 occupancies having surgery or emergency treatment facilities. • Structures that house private emergency power generation, medical gas systems, HVAC systems or related infrastructure systems that support emergency surgery or emergency treatment. • Fire, rescue, ambulance and police stations, and emergency vehicle garages. • Designated earthquake, hurricane, or other emergency shelters. • Designated emergency preparedness, communications and operations centers, and other facilities required for emergency response. • Power-generating stations and other public utility facilities required as emergency backup facilities for Risk Category IV structures. • Buildings and other structures containing quantities of highly toxic materials that: <p style="margin-left: 40px;">Exceed maximum allowable quantities per control area as given in Table 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i>; and</p> <p style="margin-left: 40px;">Are sufficient to pose a threat to the public if released.^b</p> • Aviation control towers, air traffic control centers, and emergency aircraft hangars. • Buildings and other structures having critical national defense functions. • Water storage facilities and pump structures required to maintain water pressure for fire suppression.

^a For purposes of occupant load calculation, occupancies required by Table 1004.1.2 to use gross floor area calculations shall be permitted to use net floor areas to determine the total occupant load.

^b Where approved by the building official, the classification of buildings and other structures as Risk Category III or IV based on their quantities of toxic, highly toxic or explosive materials is permitted to be reduced to Risk Category II, provided it can be demonstrated by a hazard assessment in accordance with Section 1.5.3 of ASCE 7 that a release of the toxic, highly toxic or explosive materials is not sufficient to pose a threat to the public.))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1604, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-1604, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-1613 Section 1613—Earthquake loads.

1613.4 Amendments to ASCE 7. The provisions of Section 1613.4 shall be permitted as an amendment to the relevant provisions of ASCE 7. The text of ASCE 7 shall be amended as indicated in Sections 1613.4.1 through ((1613.4.2)) 1613.4.6.

1613.4.1 ASCE 7 Section 12.2.5.4. Amend ASCE 7 Section 12.2.5.4 as follows:

12.2.5.4 Increased structural height limit for steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls, and special reinforced concrete shear walls. The limits on height, h_n , in Table 12.2-1 are permitted to be increased from 160 ft (50 m) to 240 ft (75 m) for structures assigned to Seismic Design Categories D or E and from 100 ft (30 m) to 160 ft (50 m) for structures assigned to Seismic Design Category F, provided that the seismic force-resisting systems are limited to steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls, or special reinforced concrete cast-in-place shear walls and all of the following requirements are met:

1. The structure shall not have an extreme torsional irregularity as defined in Table 12.3-1 (horizontal structural irregularity Type 1b).

2. The steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls or special reinforced concrete shear walls in any one plane shall resist no more than 60 percent of the total seismic forces in each direction, neglecting accidental torsional effects.

3. Where floor and roof diaphragms transfer forces from the vertical seismic force-resisting elements above the diaphragm to other vertical force-resisting elements below the diaphragm, these in-plane transfer forces shall be amplified by the overstrength factor, Ω_o for the design of the diaphragm flexure, shear, and collectors.

4. The earthquake force demands in foundation mat slabs, grade beams, and pile caps supporting braced frames and/or walls arranged to form a shear-resisting core shall be amplified by 2 for shear and 1.5 for flexure. The redundancy factor, ρ , applies and shall be the same as that used for the structure in accordance with Section 12.3.4.

((5. The earthquake shear force demands in special reinforced concrete shear walls shall be amplified by the over-strength factor, Ω_o .)

1613.4.2 ASCE 7 Section 12.6. Amend ASCE 7 Section 12.6 and Table 12.6-1 to read as follows:

12.6 ANALYSIS PROCEDURE SELECTION

12.6.1 Analysis procedure. The structural analysis required by Chapter 12 shall consist of one of the types permitted in Table 12.6-1, based on the structure's seismic design category, structural system, dynamic properties, and regularity, or with the approval of the authority having jurisdiction, an alternative generally accepted procedure is permitted to be used. The analysis procedure selected shall be completed in accordance with the requirements of the corresponding section referenced in Table 12.6-1.

**Table 12.6-1
Permitted Analytical Procedures**

Seismic Design Category	Structural Characteristics	Equivalent Lateral Force Procedure, Section 12.8^a	Modal Response Spectrum Analysis, Section 12.9.1, or Linear Response History Analysis, Section 12.9.2	Nonlinear Response History Procedures, Chapter 16^a
B, C	All structures	P	P	P
D, E, F	Risk Category I or II buildings not exceeding two stories above the base	P	P	P
	Structures of light frame construction	P	P	P
	Structures with no structural irregularities and not exceeding 160 ft in structural height	P	P	P
	Structures exceeding 160 ft in structural height with no structural irregularities and with $T < 3.5T_s$	P	P	P
	Structures not exceeding 160 ft in structural height and having only horizontal irregularities of Type 2, 3, 4, or 5 in Table 12.3-1 or vertical irregularities of Type 4, 5a, or 5b in Table 12.3-2	P	P	P
	All other structures \leq 240 ft in height	NP	P	P
	All structures $>$ 240 ft in height	NP	NP	p ^c

^a P: Permitted; NP: Not Permitted; $T_s = S_{D1}/S_{D5}$.

1613.4.3 ASCE 7 Section 11.2. Amend ASCE 7 Section 11.2 to include the following definition:

USGS SEISMIC DESIGN GEODATABASE: A U.S. Geological Survey (USGS) database of geocoded values of seismic design parameters and geocoded sets of multiperiod 5%-damped risk-targeted maximum considered earthquake (MCE) response spectra. The parameters obtained from this database may only be used where referenced by Section 11.4.8.1.

User Note: The USGS Seismic Design Geodatabase is intended to be accessed through a USGS Seismic Design web service that allows the user to specify the site location, by latitude and longitude, and the site class to obtain the seismic design data. The USGS web service spatially interpolates between the gridded data of the USGS geodatabase. Both the USGS geodatabase and the USGS web service can be accessed at

<https://doi.org/10.5066/F7NK3C76>. The USGS Seismic Design Geodatabase is available at the ASCE 7 Hazard Tool <https://asce7hazardtool.online/> or an approved equivalent.

1613.4.4 ASCE 7 Section 11.4.8. Amend ASCE 7 Section 11.4.8 to include the following section:

11.4.8.1 Multiperiod design response spectrum. As an alternative to the ground motion hazard analysis requirements of Section 11.4.8, and suitable for all structures other than those designated Site Class F (unless exempted in accordance with Section 20.3.1), a multiperiod design response spectrum may be developed as follows:

1. For exclusive use with the USGS Seismic Design Geodatabase in accordance with this section, the site class shall be determined per Section 20.6.

2. Where a multiperiod design response spectrum is developed in accordance with this section, the parameters S_M , S_{M1} , S_D , S_{D1} , and T_L as obtained by the USGS Seismic Design Geodatabase shall be used for all applications of these parameters in this standard.

3. The S_S and S_1 parameters obtained by the USGS Seismic Design Geodatabase are only permitted to be used in development of the multiperiod design response spectrum and are not permitted to be used in other applications in this standard. The mapped parameters S_S and S_1 as determined by Section 11.4.2 and peak ground acceleration parameter PGA_M as determined by Section 11.8.3 shall be used for all other applications in this standard.

4. At discrete values of period, T , equal to 0.0s, 0.01s, 0.02s, 0.03s, 0.05s, 0.075s, 0.1s, 0.15s, 0.2s, 0.25s, 0.3s, 0.4s, 0.5s, 0.75s, 1.0s, 1.5s, 2.0s, 3.0s, 4.0s, 5.0s, 7.5s, and 10.0s, the 5%-damped design spectral response acceleration parameter, S_a , shall be taken as 2/3 of the multiperiod 5%-damped MCER response spectrum from the USGS Seismic Design Geodatabase for the applicable site class.

5. At each response period, T , less than 10.0s and not equal to one of the discrete values of period, T , listed in Item 4 above, S_a shall be determined by linear interpolation between values of S_a of Item 4 above.

6. At each response period, T , greater than 10.0s, S_a shall be taken as the value of S_a at the period of 10.0s, factored by $10/T$, where the value of T is less than or equal to that of the long-period transition period, T_L , and shall be taken as the value of S_a at the period of 10.0s factored by $10T_L/T^2$, where the value of T is greater than that of the long-period transition period, T_L .

7. Where an MCER response spectrum is required, it shall be determined by multiplying the multiperiod design response spectrum by 1.5.

8. For use with the equivalent lateral force procedure, the spectral acceleration S_a at T shall be permitted to replace S_{D1}/T in Equation (12.8-3) and $S_{D1} T_L/T^2$ in Equation (12.8-4).

1613.4.5 ASCE 7 Section 20.6. Amend ASCE 7 Chapter 20 to include the following section:

Section 20.6 Site classification procedure for use with Section

11.4.8.1. For exclusive use in determining the multiperiod design response spectrum and associated spectral parameters in accordance with Section 11.4.8.1, the site class shall be determined in accordance

with this section. For all other applications in this standard the site class shall be determined per Section 20.1.

20.6.1 Site classification. The site soil shall be classified in accordance with Table 20.6-1 and Section 20.6.2 based on the average shear wave velocity parameter, \bar{v}_s , which is derived from the measured shear wave velocity profile from the ground surface to a depth of 100 ft (30 m). Where shear wave velocity is not measured, appropriate generalized correlations between shear wave velocity and standard penetration test (SPT) blow counts, cone penetration test (CPT) tip resistance, shear strength, or other geotechnical parameters shall be used to obtain an estimated shear wave velocity profile, as described in Section 20.6.3. Where site-specific data (measured shear wave velocities or other geotechnical data that can be used to estimate shear wave velocity) are available only to a maximum depth less than 100 ft (30 m), \bar{v}_s shall be estimated as described in Section 20.6.3.

Where the soil properties are not known in sufficient detail to determine the site class, the most critical site conditions of Site Class C, Site Class CD and Site Class D, as defined in Section 20.6.2, shall be used unless the authority having jurisdiction or geotechnical data determine that Site Class DE, E or F soils are present at the site. Site Classes A and B shall not be assigned to a site if there is more than 10 ft (3.1 m) of soil between the rock surface and the bottom of the spread footing or mat foundation.

20.6.2 Site class definitions. Site class types shall be assigned in accordance with the definitions provided in Table 20.6.2-1 and this section.

20.6.2.1 Soft clay Site Class E. Where a site does not qualify under the criteria for Site Class F per Section 20.3.1 and there is a total thickness of soft clay greater than 10 ft (3 m), where a soft clay layer is defined by $s_u < 500 \text{ psf}$ ($s_u < 25 \text{ kPa}$), $w \geq 40\%$, and $PI > 20$, it shall be classified as Site Class E. This classification is made regardless of \bar{v}_s , as computed in Section 20.4.

20.6.2.2 Site Classes C, CD, D, DE and E. The assignment of Site Class C, CD, D, DE and E soils shall be made based on the average shear wave velocity, which is derived from the site shear wave velocity profile from the ground surface to a depth of 100 ft (30 m), as described in Section 20.4.

20.6.2.3 Site Classes B and BC (medium hard and soft rock). Site Class B can only be assigned to a site on the basis of shear wave velocity measured on site. If shear wave velocity data are not available and the site condition is estimated by a geotechnical engineer, engineering geologist, or seismologist as Site Class B or BC on the basis of site geology, consisting of competent rock with moderate fracturing and weathering, the site shall be classified as Site Class BC. Softer and more highly fractured and weathered rock shall either be measured on site for shear wave velocity or classified as Site Class C.

20.6.2.4 Site Class A (hard rock). The hard rock, Site Class A, category shall be supported by shear wave velocity measurement, either on site or on profiles of the same rock type in the same formation with an equal or greater degree of weathering and fracturing. Where hard rock conditions are known to be continuous to a depth of 100 ft (30

m), surficial shear wave velocity measurements to maximum depths less than 100 ft are permitted to be extrapolated to assess \bar{v}_s .

Table 20.6.2-1 Site Classification

<u>Site Class</u>	<u>\bar{v}_s Calculated Using Measured or Estimated Shear Wave Velocity Profile (ft/s)</u>
<u>A. Hard Rock</u>	<u>> 5,000</u>
<u>B. Medium Hard Rock</u>	<u>> 3,000 to 5,000</u>
<u>BC. Soft Rock</u>	<u>> 2,100 to 3,000</u>
<u>C. Very Dense Sand or Hard Clay</u>	<u>> 1,450 to 2,100</u>
<u>CD. Dense Sand or Very Stiff Clay</u>	<u>> 1,000 to 1,450</u>
<u>D. Medium Dense Sand or Stiff Clay</u>	<u>> 700 to 1,000</u>
<u>DE. Loose Sand or Medium Stiff Clay</u>	<u>> 500 to 700</u>
<u>E. Very Loose Sand or Soft Clay</u>	<u>≤ 500</u>

20.6.3 Estimation of shear wave velocity profiles. Where measured shear wave velocity data are not available, shear wave velocity shall be estimated as a function of depth using correlations with suitable geotechnical parameters, including standard penetration test (SPT) blow counts, shear strength, overburden pressure, void ratio, or cone penetration test (CPT) tip resistance, measured at the site.

Site class based on estimated values of \bar{v}_s shall be derived using \bar{v}_s , $\bar{v}_s/1.3$, and $1.3\bar{v}_s$ when correlation models are used to derive shear wave velocities. Where correlations derived for specific local regions can be demonstrated to have greater accuracy, factors less than 1.3 can be used if approved by the authority having jurisdiction. If the different average velocities result in different site classes per Table 20.6.2-1, the most critical of the site classes for ground motion analysis at each period shall be used.

Where the available data used to establish the shear wave velocity profile extends to depths less than 100 ft (30 m) but more than 50 ft (15 m), and the site geology is such that soft layers are unlikely to be encountered between 50 and 100 ft, the shear wave velocity of the last layer in the profile shall be extended to 100 ft for the calculation of \bar{v}_s in Equation (20.4-1). Where the data does not extend to depths of 50 ft (15 m), default site classes, as described in Section 20.6.1, shall be used unless another site class can be justified on the basis of the site geology.

1613.4.6 ASCE 7 Section 21.3.1. Amend ASCE 7 Section 21.3 to include the following section:

Section 21.3.1 Alternate minimum design spectral response accelerations. As an alternate approach to Section 21.3, the lower limit of S_a is permitted to be determined according to this section. The design spectral response acceleration at any period shall not be taken less than 80% of the multiperiod design response spectrum as determined by Section 11.4.8.1.

For sites classified as Site Class F requiring site-specific analysis in accordance with Section 11.4.8, the design spectral response acceleration at any period shall not be less than 80% of S_a determined for Site Class E.

EXCEPTION: Where a different site class can be justified using the site-specific classification procedures in accordance with Section 20.6.2.2, a lower limit of 80% of S_a for the justified site class shall be permitted to be used.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-1613, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-1613, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-1613, filed 12/26/18, effective 7/1/19; WSR 10-03-097, § 51-50-1613, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-1613, filed 12/18/07, effective 4/1/08.]

AMENDATORY SECTION (Amending WSR 21-12-075, filed 5/28/21, effective 6/28/21)

WAC 51-50-1615 Tsunami loads.

1615.1 General. The design and construction of Risk Category III and IV buildings and structures located in the Tsunami Design Zones shall be in accordance with Chapter 6 of ASCE ((7)) 7-22, except as modified by this code.

USER NOTE: The intent of the Washington state amendments to ASCE 7 Chapter 6 (Tsunami Loads and Effects) is to require use of the Washington Tsunami Design maps to determine inundation limits, i.e., when a site is within a tsunami design zone, where those maps are available. If they are not available for a given site, ASCE 7 maps are to be used. For sites where the Washington state department of natural resources has parameters for tsunami inundation depth and flow velocity available, those parameters are required to be used in ((the energy grade line analysis methodology)) lieu of ASCE 7 methodology, and as a basis for comparison in the probabilistic tsunami hazard analysis in this chapter.

1615.2 Modifications to ASCE 7. The text of Chapter 6 of ASCE 7 shall be modified as indicated in this section.

1615.2.1 ASCE 7 Section 6.1.1. Modify the third paragraph and its exception in ASCE 7 Section 6.1.1 to read as follows:

The Tsunami Design Zone shall be determined using the Washington Tsunami Design Zone maps (WA-TDZ). The WA-TDZ maps are available at <https://www.dnr.wa.gov/wa-tdz>. For areas not covered by the extent of the WA-TDZ maps, the Tsunami Design Zone shall be determined using the ASCE Tsunami Design Geodatabase of geocoded reference points shown in Fig. 6.1-1. The ASCE Tsunami Design Geodatabase of geocoded reference points of runup and associated inundation Limits of the Tsunami Design Zone is available at <http://asce7tsunami.online>.

EXCEPTION: For coastal regions subject to tsunami inundation and not covered by WA-TDZ maps or Fig. 6.1-1, Tsunami Design Zone, inundation limits, and runup elevations shall be determined using the site-specific procedures of Section 6.7, or for Tsunami Risk Category II or III structures, determined in accordance with the procedures of Section 6.5.1.1 using Fig. 6.7-1.

1615.2.2 ASCE 7 Section 6.1.1. Add new fifth paragraph and user note to ASCE 7 Section 6.1.1 to read as follows:

Whenever a Tsunami Design Zone or Fig. 6.1-1 is referenced in ASCE 7 Chapter 6, it shall include the WA-TDZ maps, within the extent of those maps.

USER NOTE: Tsunami inundation depths and flow velocities may be obtained from the Washington state department of natural resources. See <https://www.dnr.wa.gov/wa-tdz>.

1615.2.3 ASCE 7 Section 6.2. Modify ASCE 7 Section 6.2 definitions to read as follows:

MAXIMUM CONSIDERED TSUNAMI: A probabilistic tsunami having a 2% probability of being exceeded in a 50-year period or a 2,475-year mean recurrence, or a deterministic assessment considering the maximum tsunami that can reasonably be expected to affect a site.

TSUNAMI DESIGN ZONE MAP: The Washington Tsunami Design Zone maps (WA-TDZ) designating the potential horizontal inundation limit of the

Maximum Considered Tsunami, or outside of the extent of WA-TDZ maps, the map given in Fig. 6.1-1.

1615.2.4 ASCE 7 Section 6.2. Add new definitions to ASCE 7 Section 6.2 to read as follows:

SHORELINE AMPLITUDE: The Maximum Considered Tsunami amplitude at the shoreline, where the shoreline is determined by vertical datum in North American Vertical Datum (NAVD 88).

WASHINGTON TSUNAMI DESIGN ZONE MAP (WA-TDZ): The Washington department of natural resources maps of potential tsunami inundation limits for the Maximum Considered Tsunami, designated as follows:

Anacortes Bellingham area	MS 2018-02 Anacortes Bellingham
<u>Columbia River</u>	<u>DOGAMI SP-51 (L1 scenario) adopted by WA DNR</u>
Elliott Bay Seattle	OFR 2003-14
Everett area	OFR 2014-03
<u>Port Angeles</u>	<u>MS 2022-01</u>
((Port Angeles and)) Port Townsend area	MS 2018-03 ((Port Angeles and Port Townsend))
<u>Port Townsend</u>	<u>MS 2018-03 (Partially superseded by MS 2022-01)</u>
<u>Puget Sound</u>	<u>MS 2021-01</u>
San Juan Islands	MS 2016-01 <u>(Partially superseded on its eastern edge by MS 2021-01)</u>
Southern Washington Coast	MS 2018-01
Tacoma area	OFR 2009-9

The Washington state department of natural resources geodatabase of design parameters for tsunami inundation depth and flow velocity for a maximum considered tsunami from select published sources is available at the Washington TDZ website <https://www.dnr.wa.gov/wa-tdz>.

1615.2.5 ASCE 7 Section 6.5.1. Add new second paragraph to ASCE 7 Section 6.5.1 to read as follows:

6.5.1 Tsunami Risk Category II and III buildings and other structures. The Maximum Considered Tsunami inundation depth and tsunami flow velocity characteristics at a Tsunami Risk Category II or III building or other structure shall be determined by ~~((using the Energy Grade Line Analysis of Section 6.6 using the inundation limit and run-up elevation of the Maximum Considered Tsunami given in Fig. 6.1-1.~~

~~Where tsunami inundation depth and flow velocity characteristics are available from the Washington state department of natural resources, those parameters shall be used to determine design forces in the Energy Grade Line Analysis in Section 6.6.)) the WA-TDZ maps. Those parameters shall be used as the Maximum Considered Tsunami inundation depth and tsunami flow velocity characteristics in lieu of the Energy Grade Line Analysis in Section 6.6. Where WA-TDZ maps are not available the tsunami inundation depth and tsunami flow velocity characteristics shall be determined using the Energy Grade Line Analysis of Section 6.6 using the inundation limit and runup elevation of the Maximum Considered Tsunami given in Fig. 6.1-1.~~

1615.2.6 ASCE 7 Section 6.5.1.1. Modify the first paragraph of ASCE 7 Section 6.5.1.1 to read as follows:

6.5.1.1 Runup evaluation for areas where no map values are given.

For Tsunami Risk Category II and III buildings and other structures where no mapped inundation limit is shown in the Tsunami Design Zone map, the ratio of tsunami runup elevation above Mean High Water Level to *Offshore Tsunami Amplitude*, R/H_T , shall be permitted to be determined using the surf similarity parameter ξ_{100} , according to Eqs. (6.5-2a, b, c, d, or e) and Fig. 6.5-1.

1615.2.7 ASCE 7 Section 6.5.2. Add new second exception to the first paragraph (~~(to)~~) of ASCE 7 Section 6.5.2 to read as follows:

6.5.2 Tsunami Risk Category IV buildings and other structures.

The Energy Grade Line Analysis of Section 6.6 shall be performed for Tsunami Risk Category IV buildings and other structures, and the site-specific Probabilistic Tsunami Hazard Analysis (PTHA) of Section 6.7 shall also be performed. Site-specific velocities determined by site-specific PTHA determined to be less than the Energy Grade Line Analysis shall be subject to the limitation in Section 6.7.6.8. Site-specific velocities determined to be greater than the Energy Grade Line Analysis shall be used.

EXCEPTIONS: For structures other than Tsunami Vertical Evacuation Refuge Structures, a site-specific Probabilistic Tsunami Hazard Analysis need not be performed where the inundation depth resulting from the Energy Grade Line Analysis is determined to be less than 12 ft (3.66 m) at any point within the location of the Tsunami Risk Category IV structure.
Where (~~tsunami inundation depths and~~) design flow velocities are available (~~(for a site from the Washington state department of natural resources, those parameters shall be used as the basis of comparison for the PTHA above and to determine whether the exception applies, in lieu of the Energy Grade Line Analysis))~~ from WA-TDZ maps, those parameters shall be used, in lieu of the Energy Grade Line Analysis, as the basis of comparison with the site-specific velocities determined by site-specific PTHA.

1615.2.8 ASCE 7 Section 6.6.1. Add new (~~(third paragraph)~~) user note to ASCE 7 Section 6.6.1 to read as follows:

6.6.1 Maximum inundation depth and flow velocities based on run-up. The maximum inundation depths and flow velocities associated with the stages of tsunami flooding shall be determined in accordance with Section 6.6.2. Calculated flow velocity shall not be taken as less than 10 ft/s (3.0 m/s) and need not be taken as greater than the lesser of $1.5(g h_{\max})^{1/2}$ and 50 ft/s (15.2 m/s).

Where the maximum topographic elevation along the topographic transect between the shoreline and the inundation limit is greater than the runup elevation, one of the following methods shall be used:

1. The site-specific procedure of Section 6.7.6 shall be used to determine inundation depth and flow velocities at the site, subject to the (~~(above)~~) range of calculated velocities defined in the first paragraph of this section.

2. For determination of the inundation depth and flow velocity at the site, the procedure of Section 6.6.2, Energy Grade Line Analysis, shall be used, assuming a runup elevation and horizontal inundation limit that has at least 100% of the maximum topographic elevation along the topographic transect.

(~~(Where tsunami inundation depths and flow velocities are available from Washington state department of natural resources, those parameters shall be used to determine design forces in the Energy Grade Line Analysis in Section 6.6.2.)~~)

3. Where the site lies within a completely overwashed area for which inundation depth points are provided in the ASCE Tsunami Design Geodatabase, the inundation elevation profiles shall be determined using the Energy Grade Line Analysis with the following modifications.

a. The Energy Grade Line Analysis shall be initiated from the inland edge of the overwashed land with an inundation elevation equal to the maximum topographic elevation of the overwashed portion of the transect.

b. The Froude number shall be 1 at the inland edge of the overwashed land and shall vary linearly with distance to match the value of the Froude number determined at the shoreline per the coefficient α .

c. The Energy Grade Line Analysis flow elevation profile shall be uniformly adjusted with a vertical offset such that the computed inundation depth at the inundation depth point is at least the depth specified by the ASCE Tsunami Design Geodatabase, but the flow elevation profile shall not be adjusted lower than the topographic elevations of the overwashed land transect.

USER NOTE: Where tsunami inundation depths and flow velocities are available from the WA-TDZ maps, those parameters shall be used as the Maximum Considered Tsunami inundation depth and tsunami flow velocity in lieu of the Energy Grade Line Analysis in Section 6.6.2.

1615.2.9 ASCE 7 Section 6.7. Modify ASCE 7 Section 6.7 and add a user note to read as follows:

When required by Section 6.5, the inundation depths and flow velocities shall be determined by site-specific inundation studies complying with the requirements of this section. Site-specific analyses shall use an integrated generation, propagation, and inundation model that replicates the given offshore tsunami waveform amplitude and period from the seismic sources given in Section 6.7.2.

USER NOTE: ((Washington Tsunami Design Zone maps and inundation depths and flow velocities from Washington state department of natural resources)) WA-TDZ maps are based on an integrated generation, propagation, and inundation model replicating waveforms from the seismic sources specific to Washington state. ((Model data can be obtained by contacting Washington state department of natural resources:)) See <https://www.dnr.wa.gov/wa-tdz>.

1615.2.10 ASCE 7 Section 6.7.5.1((~~Item 4~~)). ((Modify)) Add new exceptions to ASCE 7 Section 6.7.5.1, Item 4, Item 5, and Item 6, to read as follows:

6.7.5.1 Offshore tsunami amplitude for distant seismic sources. Offshore tsunami amplitude shall be probabilistically determined in accordance with the following:

4. ((The value of tsunami wave amplitude shall be not less than 80% of the shoreline amplitude value associated with the Washington state inundation models as measured in the direction of the incoming wave propagation.)) The extent of offshore tsunami amplitude points considered for the site shall include the following:

a. For sites within Washington, Oregon, California, and Hawaii, the extent shall include points within at least 40 mi (64.4 km) but not exceeding 50 mi (80.5 km) of projected length along the coastline, centered on the site within a tolerance of plus or minus 6 mi (9.7 km);

b. For sites within Alaska, the extent shall include points within at least 100 mi (161 km) but not exceeding 125 mi (201 km), centered on the site within a tolerance of plus or minus 15 mi (24.1 km);

c. For sites within bays, the designated center of the computed offshore tsunami amplitude points shall be taken either offshore of the mouth of the bay or centered in accordance with criteria a. or b. above, whichever produces the more severe flow conditions at the site.

d. For island locations where the projected width of the island is less than 40 mi (64.4 km), it shall be permitted to consider the extent of offshore tsunami amplitude points corresponding to the projected width of the island. Shorter extents of offshore tsunami amplitude points shall be permitted for island locations, but shall not be

less than 10 mi (16.1 km). In addition, the tsunami source development and inundation modeling are subject to an independent peer review by a tsunami modeler approved by the authority having jurisdiction, who shall present a written report to the authority having jurisdiction as to the hazard consistency of the modeling with the requirements of Section 6.7.

EXCEPTION: Where tsunami inundation depths are available from the WA-TDZ maps, the shoreline tsunami amplitudes shall be used as the basis of comparison, in lieu of the offshore tsunami amplitudes. The extents of shoreline tsunami amplitude points considered for the site shall be determined along the coastline, in the same manner as those of offshore tsunami amplitude points, but without projecting from the coastline toward the offshore.

5. The mean value of the computed offshore tsunami wave amplitudes shall be not less than 100% of the mean value for the coinciding offshore tsunami amplitude data given by the ASCE Tsunami Design Geodatabase.

EXCEPTION: Where tsunami inundation depths are available from the WA-TDZ maps, the computed shoreline tsunami amplitudes shall be used as the basis of comparison, in lieu of the computed offshore tsunami amplitudes, with the coinciding shoreline tsunami inundation data associated with the WA-TDZ maps as measured in the direction of the incoming wave propagation.

6. The individual values of the computed offshore tsunami wave amplitude shall be not less than 80% of the coinciding offshore tsunami amplitude values given by the ASCE Tsunami Design Geodatabase.

EXCEPTION: Where tsunami inundation depths are available from the WA-TDZ maps, the computed shoreline tsunami amplitudes shall be used as the basis of comparison, in lieu of the computed offshore tsunami amplitudes, with the coinciding shoreline tsunami inundation data associated with the WA-TDZ maps as measured in the direction of the incoming wave propagation.

1615.2.11 ASCE 7 Table 6.7-2. Modify ASCE 7 Table 6.7-2 to read as follows:

**Table 6.7-2
Maximum Moment Magnitude**

Subduction Zone	Moment Magnitude M_{Wmax}
Alaskan-Aleutian	9.2
Cascadia	9.0
Chile-Peru	9.5
Izu-Bonin-Mariana	9.0
Kamchatka-Kurile and Japan Trench	9.4

1615.2.12 ASCE 7 Section 6.7.5.2. ((Modify)) Add new exception to the first paragraph of ASCE 7 Section 6.7.5.2 to read as follows:

6.7.5.2 Direct computation of probabilistic inundation and runup. It shall be permitted to compute probabilistic inundation and runup directly from a probabilistic set of sources, source characterizations, and uncertainties consistent with Section 6.7.2, Section 6.7.4, and the computing conditions set out in Section 6.7.6. ~~((The shoreline amplitude values computed shall not be lower than 80% of the shoreline amplitude value associated with the Washington state inundation models as measured in the direction of the incoming wave propagation.~~

1615.2.13)) The offshore wave amplitudes computed shall comply with the requirements of Sections 6.7.5.1.4, 6.7.5.1.5, and 6.7.5.1.6.

EXCEPTION: Where tsunami inundation depths are available from the WA-TDZ maps, the computed shoreline tsunami amplitudes shall be used as the basis of comparison, in lieu of the computed offshore tsunami amplitudes for complying with the requirements of Sections 6.7.5.1.4, 6.7.5.1.5, and 6.7.5.1.6.

1615.2.13 ASCE 7 Section 6.7.5.3. Add new exceptions to ASCE 7 Section 6.7.5. 3.1(b) and (c) to read as follows:

b. The mean value of the computed offshore tsunami amplitudes is at least 85% of the mean value for the coinciding offshore tsunami amplitude data of the ASCE Tsunami Design Geodatabase.

EXCEPTION: Where tsunami inundation depths are available from the WA-TDZ maps, the computed shoreline tsunami amplitudes shall be used as the basis of comparison, in lieu of the computed offshore tsunami amplitudes, with the coinciding shoreline tsunami inundation data associated with the WA-TDZ maps as measured in the direction of the incoming wave propagation.

c. The values of the computed offshore tsunami wave amplitude are not less than 75% of the coinciding offshore tsunami amplitude values of the ASCE Tsunami Design Geodatabase.

EXCEPTION: Where tsunami inundation depths are available from the WA-TDZ maps, the computed shoreline tsunami amplitudes shall be used as the basis of comparison, in lieu of the computed offshore tsunami amplitudes, with the coinciding shoreline tsunami inundation data associated with the WA-TDZ maps as measured in the direction of the incoming wave propagation.

1615.2.14 ASCE 7 Section 6.7.6.2. Modify ASCE 7 Section 6.7.6.2 and add a user note to read as follows:

6.7.6.2 Seismic subsidence before tsunami arrival. Where the seismic source is a local earthquake event, the Maximum Considered Tsunami inundation shall be determined for an overall elevation subsidence value shown in Fig. 6.7-3(a) and 6.7-3(b) or shall be directly computed for the seismic source mechanism. The GIS digital map layers of subsidence are available in the ASCE Tsunami Design Geodatabase at <http://asce7tsunami.online>.

USER NOTE: The WA-TDZ maps include computed subsidence and uplift (where applicable) in the inundation results. Subsidence data may be obtained from the Washington state department of natural resources. See <https://www.dnr.wa.gov/wa-tdz>.

~~((1615.2.14))~~ **1615.2.15 ASCE 7 Section 6.8.9.** Modify the first sentence of ASCE 7 Section 6.8.9 to read as follows:

6.8.9 Seismic effects on the foundations preceding maximum considered tsunami. Where designated in the Tsunami Design Zone map as a site subject to a tsunami from a local earthquake, the structure shall be designed for the preceding coseismic effects.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-12-075, § 51-50-1615, filed 5/28/21, effective 6/28/21.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1702 ((Section 1702-Definitions.)) Reserved.

~~((1702.1 Definitions. The following terms are defined in Chapter 2:~~

~~Approved agency~~

~~Approved fabricator~~

~~Certificate of compliance~~

~~Designated seismic system~~

~~Fabricated item~~

~~Intumescent fire-resistant coatings~~

~~Main wind-force resisting system~~

~~Mastic fire-resistant coatings~~

~~SMALL BUSINESS:~~

~~Special inspection~~

~~Continuous special inspection~~

~~Periodic special inspection~~

~~Special inspector~~

~~Sprayed fire-resistant materials~~

~~Structural observation))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1702, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1702, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1702, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-1702, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1705 Section 1705—Required special inspections and tests.

~~((1705.5.3 Mass timber construction. Special inspections of mass timber elements in Types IV-A, IV-B and IV-C construction shall be in accordance with Table 1705.5.3.~~

~~**Table 1705.5.3
Required Special Inspections of Mass
Timber Construction**~~

Type	Continuous Special Inspection	Periodic Special Inspection
1. Inspection of anchorage and connections of mass timber construction to timber deep foundation systems.		X
2. Inspect erection and sequence of mass timber construction.		X
3. Inspection of connections where installation methods are required to meet design loads.		
3.1. Threaded fasteners.		
3.1.1. Verify use of proper installation equipment.		X
3.1.2. Verify use of predrilled holes where required.		X
3.1.3. Inspect screws, including diameter, length, head type, spacing, installation angle, and depth.		X
3.2. Adhesive anchors installed in horizontal or upwardly inclined orientation to resist sustained tension loads.	X	

Type	Continuous Special Inspection	Periodic Special Inspection
3.3. Adhesive anchors not defined in 3.2		X
3.4. Bolted connections.		X
3.5. Concealed connections.		X

~~1705.11.1 Structural wood. Continuous special inspection is required during field gluing operations of elements of the main windforce-resisting system. Periodic special inspection is required for nailing, bolting, anchoring and other fastening of elements of the main windforce-resisting system, including wood shear walls, wood diaphragms, drag struts, braces and hold-downs.~~

EXCEPTION: *Special inspections are not required for wood shear walls, shear panels and diaphragms, including nailing, bolting, anchoring and other fastening to other elements of the main windforce-resisting system, where the lateral resistance is provided by sheathing of wood structural panels, and the fastener spacing of the sheathing is more than 4 inches (102 mm) on center.*

~~1705.12.2 Structural wood. For the seismic force-resisting systems of structures assigned to Seismic Design Category C, D, E, or F:~~

~~1. Continuous special inspection shall be required during field gluing operations of elements of the seismic force-resisting system.~~

~~2. Periodic special inspection shall be required for nailing, bolting, anchoring and other fastening of elements of the seismic force-resisting system, including wood shear walls, wood diaphragms, drag struts, braces, shear panels and hold-downs.~~

EXCEPTION: *Special inspections are not required for wood shear walls, shear panels and diaphragms, including nailing, bolting, anchoring and other fastening to other elements of the seismic force-resisting system, where the lateral resistance is provided by sheathing of wood structural panels, and the fastener spacing of the sheathing is more than 4 inches (102 mm) on center.*

~~1705.12.6)~~ **1705.13.6 Plumbing, mechanical and electrical components.**

Periodic special inspection of plumbing, mechanical and electrical components shall be required for the following:

1. Anchorage of electrical equipment for emergency and standby power systems in structures assigned to Seismic Design Category C, D, E or F.
2. Anchorage of other electrical equipment in structures assigned to Seismic Design Category E or F.
3. Installation and anchorage of piping systems designed to carry hazardous materials and their associated mechanical units in structures assigned to Seismic Design Category C, D, E or F.
4. Installation and anchorage of ductwork designed to carry hazardous materials in structures assigned to Seismic Design Category C, D, E or F.
5. Installation and anchorage of vibration isolation systems in structures assigned to Seismic Design Category C, D, E or F where the approved construction documents require a nominal clearance of .25 inch (6.4 mm) or less between the equipment support frame and restraint.
6. Installation of mechanical and electrical equipment, including ductwork, piping systems and their structural supports, where automatic fire sprinkler systems are installed in Risk Category IV structures assigned to Seismic Design Category C, D, E or F to verify one of the following:
 - 6.1. Minimum clearances have been provided as required by Section 13.2.3 ASCE/SEI 7.

6.2. A nominal clearance of not less than 3 inches (76 mm) has been provided between ~~((fire protection))~~ automatic sprinkler system drops and sprigs and: Structural members not used collectively or independently to support the sprinklers; equipment attached to the building structure; and other systems' piping.

Where flexible sprinkler hose fittings are used, special inspection of minimum clearances is not required.

~~((1705.19 Sealing of mass timber. Periodic special inspections of sealants or adhesives shall be conducted where sealant or adhesive required by Section 703.9 is applied to mass timber building elements as designated in the approved construction documents.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1705, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-1705, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-1705, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1705, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-17090 Preconstruction load tests.

1709.5 Exterior window and door assemblies. The design pressure rating of exterior windows and doors in buildings shall be determined in accordance with Section 1709.5.1 or 1709.5.2. For ~~((the purposes of this section, the required design pressure shall be determined using the allowable stress design load combinations of Section 1605.3))~~ exterior windows and doors tested in accordance with Section 1709.5.1 or 1709.5.2, required design wind pressures determined from ASCE 7 shall be permitted to be converted to allowable stress design by multiplying by 0.6.

EXCEPTIONS:

1. Structural wind load design pressures for window ~~((units smaller than the size tested in accordance with Section 1709.5.1 or 1709.5.2 shall be permitted to be higher than the design value of the tested unit provided such higher pressures are determined by accepted engineering analysis. All components of the small unit shall be the same as the tested unit. Where such calculated design pressures are used, they shall be validated by an additional test of the window unit having the highest allowable design pressure))~~ or door assemblies other than the size tested in accordance with Section 1709.5.1 or 1709.5.2 shall be permitted to be different than the design value of the tested assembly, provided that such pressures are determined by accepted engineering analysis or validated by an additional test of the window or door assembly to the alternative allowable design pressure in accordance with Section 1709.5.2. Components of the alternate size assembly shall be the same as the tested or labeled assembly. Where engineering analysis is used, it shall be performed in accordance with the analysis procedures of AAMA 2502.
2. Custom exterior windows and doors manufactured by a small business shall be exempt from all testing requirements in Section 1709 of the *International Building Code* provided they meet the applicable provisions of Chapter 24 of the *International Building Code*.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-17090, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1710 ((Section 1710—)) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1710, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW

19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1710, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-1715 ((Section 1715—) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1715, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, amended and re-codified as § 51-50-1715, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1714, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1901 ((Section 1901—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1901, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1901, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1903 ((Section 1903—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1903, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1903, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1904 ((Section 1904—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1904, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1904, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1905 ((Section 1905—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1905, filed 1/19/16, effective 7/1/16; WSR 13-20-119, § 51-50-1905, filed 10/1/13, effective 11/1/13. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1905, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1908 ((Section 1908—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1908, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1908, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1909 ((Section 1909—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1909, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1909, filed 2/1/13, effective 7/1/13.]

NEW SECTION

WAC 51-50-2103 Section 2103—Mortar.

2103.2.4 Mortar for adhered masonry veneer. Mortar for use with adhered masonry veneer shall conform to ASTM C270 for Type N or S, or shall comply with ANSI A118.4 or A118.15 for modified dry-set cement mortar. The cementitious bond coat shall comply with ANSI A118.4 or A118.15.

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AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-2104 ((Section 2104—) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-2104, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-2104, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-21070 Section 2107—Allowable stress design.

~~((2107.1 General. The design of masonry structures using allowable stress design shall comply with Sections 2106 and the requirements of Chapters 1 through 8 of TMS 402/ACI 530/ASCE 5 except as modified by Sections 2107.2 through 2107.3.))~~

2107.2 TMS 402/ACI 530/ASCE 5, Section 2.1.8.7.1.1, lap splices. In lieu of Section 2.1.8.7.1.1, it shall be permitted to design lap splices in accordance with Section 2107.2.1.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-21070, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-21070, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-21070, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-21070, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-21070, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-2111 Section 2111—Masonry fireplaces.

2111.8 Fireplaces. Fireplaces shall be provided with each of the following:

1. Tightly fitting flue dampers, operated by a readily accessible manual or approved automatic control.

EXCEPTION: Fireplaces with gas logs shall be installed in accordance with the International Mechanical Code Section 901, except that the standards for liquefied petroleum gas installations shall be NFPA 58 (Liquefied Petroleum Gas Code) and NFPA 54 (National Fuel Gas Code).

2. An outside source for combustion air ducted into the firebox. The duct shall be at least 6 square inches, and shall be provided with an operable outside air duct damper.

EXCEPTION: Washington certified fireplaces shall be installed with the combustion air systems necessary for their safe and efficient combustion and specified by the manufacturer in accordance with IBC Section ((2114 (WAC 51-50-2114))) 2115 (WAC 51-50-2115).

3. Site built fireplaces shall have tight fitting glass or metal doors, or a flue draft induction fan or as approved for minimizing back-drafting. Factory built fireplaces shall use doors listed for the installed appliance.

2111.8.1 Lintel and throat. Masonry over a fireplace opening shall be supported by a lintel of noncombustible material. The minimum required bearing length on each end of the fireplace opening shall be 4 inches

(102 mm). The fireplace throat or damper shall be located a minimum of 8 inches (203 mm) above the top of the fireplace opening.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-2111, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-2111, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-2111, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-2303 Section 2303—Minimum standards and quality.

~~((2303.1.4 Structural glued cross-laminated timber. Cross-laminated timbers shall be manufactured and identified in accordance with ANSI/APA PRG 320. Cross-laminated timbers in Construction Types IV-A, IV-B, and IV-C shall be manufactured and identified in accordance with ANSI/APA PRG 320 — 18.))~~ **2303.1.1.3 Used solid-sawn lumber.** Used solid-sawn dimensional lumber in good condition and devoid of areas of decay, not meeting the requirements of Section 2303.1.1, 2303.1.1.1, or 2303.1.1.2, that has a nominal thickness of 2 inches with a nominal width of 6 inches or less, shall be assumed to be spruce-pine-fir stud grade and shall have structural properties assigned in accordance with current adopted standards. All other dimensional lumber shall be assumed to be hem-fir No. 2 grade and shall have structural properties assigned in accordance with current adopted standards.

2303.6 Nails and staples. Nails and staples shall conform to requirements of ASTM F1667, including Supplement 1. Nails used for framing and sheathing connections shall have minimum average bending yield strengths as follows: 80 kips per square inch (ksi) (551 MPa) for shank diameters larger than 0.177 inch (4.50 mm) but not larger than 0.254 inch (6.45 mm), 90 ksi (620 MPa) for shank diameters larger than 0.142 inch (3.61 mm) but not larger than 0.177 inch (4.50 mm) and 100 ksi (689 MPa) for shank diameters of not less than 0.099 inch (2.51 mm) but not larger than 0.142 inch (3.61 mm). Staples used for framing and sheathing connections shall have minimum average bending moments as follows: 3.6 in.-lbs (0.41 N-m) for No. 16 gage staples, 4.0 in.-lbs (0.45 N-m) for No. 15 gage staples, and 4.3 in.-lbs (0.49 N-m) for No. 14 gage staples. Staples allowable bending moments shall be listed on the construction documents.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-2303, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-2303, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-2304 Section 2304—General construction requirements.

~~((2304.10 Connectors and fasteners. Connectors and fasteners shall comply with the applicable provisions of Sections 2304.10.1 through 2304.10.8.~~

~~**2304.10.8 Connection fire-resistance rating.** Fire-resistance ratings for connections in Type IV-A, IV-B, or IV-C construction shall be determined by one of the following:~~

~~1. Testing in accordance with Section 703.2 where the connection is part of the fire-resistance test.~~

~~2. Engineering analysis that demonstrates that the temperature rise at any portion of the connection is limited to an average temperature rise of 250°F (139°C), and a maximum temperature rise of 325°F (181°C), for a time corresponding to the required fire-resistance rating of the structural element being connected. For the purposes of this analysis, the connection includes connectors, fasteners, and portions of wood members included in the structural design of the connection.))~~

2304.11.2.1 Exterior walls. *Exterior walls* shall be permitted to be *cross-laminated timber* not less than 3.5 inches (88 mm) in actual thickness meeting the requirements of Section 2303.1.4.

2304.11.2.2 Interior walls and partitions. Interior walls and partitions shall be of solid wood construction formed by not less than two layers of 1-inch (25 mm) matched boards or laminated construction 3.5 inches (88 mm) in actual thickness, or of 1-hour fire-resistance-rated construction.

2304.11.3.1 Cross-laminated timber floors. *Cross-laminated timber* shall be not less than 3.5 inches (88 mm) in actual thickness. *Cross-laminated timber* shall be continuous from support to support and mechanically fastened to one another. *Cross-laminated timber* shall be permitted to be connected to walls without a shrinkage gap providing swelling or shrinking is considered in the design. Corbelling of masonry walls under the floor shall be permitted to be used. Discussion at committee level.

2304.11.4.1 Cross-laminated timber roofs. *Cross-laminated timber roofs* shall be not less than 2.5 inches (63 mm) in actual thickness and shall be continuous from support to support and mechanically fastened to one another.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-2304, filed 10/9/20, effective 11/9/20.]

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-2400 ((Chapter 24 Glass and glazing.)) Reserved.

~~((Section 2405 Sloped glazing and skylights.~~

~~**2405.3 Screening.** Where used in monolithic glazing systems, heat-strengthened glass and fully tempered glass shall have screens installed below the glazing material. The screens and their fastenings shall:~~

~~(1) Be capable of supporting twice the weight of the glazing;~~

~~(2) Be firmly and substantially fastened to the framing members; and~~

~~(3) Be installed within 4 inches (102 mm) of the glass. The screens shall be constructed of a noncombustible material not thinner than No. 12 B&S gage (0.0808 inch) with mesh not larger than 1 inch by 1 inch (25 mm by 25 mm). In a corrosive atmosphere, structurally equivalent noncorrosive screen materials shall be used. Heat strengthened glass, fully tempered glass and wired glass, when used in multiple-layer glazing systems as the bottom glass layer over the walking surface, shall be equipped with screening that conforms to the requirements for monolithic glazing systems.~~

EXCEPTIONS:

In monolithic and multiple-layer sloped glazing systems, the following applies:

1. Fully tempered glass installed without protective screens where glazed between intervening floors at a slope of 30 degrees (0.52 rad) or less from the vertical plane shall have the highest point of the glass 10 feet (3048 mm) or less above the walking surface.
2. Screens are not required below any glazing material, including annealed glass, where the walking surface below the glazing material is permanently protected from the risk of falling glass or the area below the glazing material is not a walking surface.
3. Any glazing material, including annealed glass, is permitted to be installed without screens in the sloped glazing systems of commercial or detached noncombustible greenhouses used exclusively for growing plants and not open to the public, provided that the height of the greenhouse at the ridge does not exceed 30 feet (9144 mm) above grade.
4. Screens shall not be required within individual dwelling units in Groups R-2, R-3 and R-4 where fully tempered glass is used as single glazing or as both panes in an insulating glass unit, and the following conditions are met:
 - 4.1. Each pane of the glass is 16 square feet (1.5 m²) or less in area.
 - 4.2. The highest point of the glass is 12 feet (3658 mm) or less above any walking surface or other accessible area.
 - 4.3. The glass thickness is 3/16 inch (4.8 mm) or less.
5. Screens shall not be required for laminated glass with a 15 mil (0.38 mm) polyvinyl butyral (or equivalent) interlayer within the following limits:
 - 5.1. Each pane of glass is 16 square feet (1.5 m²) or less in area.
 - 5.2. The highest point of the glass is 12 feet (3658 mm) or less above a walking surface or other accessible area.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-2400, filed 1/20/10, effective 7/1/10.]

NEW SECTION**WAC 51-50-2405 Section 2405—Sloped glazing and skylights.**

2405.3 Screening. Where used in monolithic glazing systems, annealed, heat strengthened, fully tempered and wired glass shall have broken glass retention screens installed below the glazing material. The screens and their fastenings shall be:

1. Capable of supporting twice the weight of the glazing;
2. Firmly and substantially fastened to the framing members; and
3. Installed within 4 inches (102 mm) of the glass.

The screens shall be constructed of a noncombustible material not thinner than No. 12 B&S gage (0.0808 inch) with mesh not larger than 1 inch by 1 inch (25 mm by 25 mm). In a corrosive atmosphere, structurally equivalent noncorrosive screen materials shall be used. Annealed, heat strengthened, fully tempered and wired glass, when used in multiple-layer glazing systems as the bottom glass layer over the walking surface, shall be equipped with screening that conforms to the requirements for monolithic glazing systems.

EXCEPTION:

In monolithic and multiple-layer sloped glazing systems, the following applies:

1. Fully tempered glass installed without protective screens where glazed between intervening floors at a slope of 30 degrees (0.52 rad) or less from the vertical plane shall have the highest point of the glass 10 feet (3048 mm) or less above the walking surface.
2. Screens are not required below any glazing material, including annealed glass, where the walking surface below the glazing material is permanently protected from the risk of falling glass or the area below the glazing material is not a walking surface.
3. Any glazing material, including annealed glass, is permitted to be installed without screens in the sloped glazing systems of commercial or detached noncombustible greenhouses used exclusively for growing plants and not open to the public, provided that the height of the greenhouse at the ridge does not exceed 30 feet (9144 mm) above grade.
4. Screens shall not be required within individual dwelling units in Groups R-2, R-3, and R-4 where fully tempered glass is used as single glazing or as both panes in an insulating glass unit, and the following conditions are met:
 - 4.1. Each pane of the glass is 16 square feet (1.5 m²) or less in area.
 - 4.2. The highest point of the glass is 12 feet (3658 mm) or less above any walking surface or other accessible area.
 - 4.3. The glass thickness is 3/16 inch (4.8 mm) or less.

- 5. Screens shall not be required for laminated glass with a 15 mil (0.38 mm) polyvinyl butyral (or equivalent) interlayer within the following limits:
 - 5.1. Each pane of glass is 16 square feet (1.5 m²) or less in area.
 - 5.2. The highest point of the glass is 12 feet (3658 mm) or less above a walking surface or other accessible area.

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AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-3500 Chapter 35—Referenced standards. Add the reference standards as follows:

Standard reference number	Title	Referenced in code section number
<u>ACI 561-21</u>	<u>Assessment, Repair, and Rehabilitation of Existing Concrete Structures</u>	<u>405.1.1</u>
<u>ASCE/SEI 7-16</u>	<u>Minimum Design Loads and Associated Criteria for Buildings and Other Structures with Supplement No. 1, Supplement No. 2, and Supplement No. 3</u>	
<u>ASCE/SEI 7-22</u>	<u>Minimum Design Loads and Associated Criteria for Buildings and Other Structures</u>	<u>1615</u>
NFPA 130-20	Standard for Fixed Guideway Transit and Passenger Rail Systems	3101.1, 3116
<u>NFPA 13-16</u>	<u>Standard for the Installation of Sprinkler Systems (except 8.15.5.3(5))</u>	<u>403.3.3, 712.1.3.1, 903.3.1.1, 903.2, 903.3.8.2, 903.8.5, 904.13, 905.3.4, 907.6.4, 1019.3</u>

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-3500, filed 6/14/22, effective 7/1/23; WSR 20-21-021, § 51-50-3500, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-3500, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-3500, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-3500, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-3500, filed 2/1/13, effective 7/1/13.]

**INTERNATIONAL EXISTING BUILDING CODE
((2018)) 2021 EDITION**

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-480102 ((Section 102—)Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-480102, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-480102, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-480102, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-480102, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 21-12-103, filed 6/2/21, effective 7/3/21)

WAC 51-50-480200 Section 201.3—Definitions.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the other International Codes and the Uniform Plumbing Code, such terms shall have the meanings ascribed to them in those codes.

202 General definitions.

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

SUBSTANTIAL DAMAGE. For the purpose of determining compliance with the flood provisions of this code, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the value determined using the latest building valuation data published by the International Code Council. If ICC building valuation data is not applicable to this building or structure, the value may be established using an approved market valuation of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. For the purpose of determining compliance with the flood provisions of this code, any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the value determined using the latest building valuation data published by the International Code Council. If ICC building valuation data is not applicable to this building or structure, the value may be established using an approved market valuation of the structure, before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either of the following:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the

code official and that is the minimum necessary to ensure safe living conditions.

2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-12-103, § 51-50-480200, filed 6/2/21, effective 7/3/21; WSR 20-21-021, § 51-50-480200, filed 10/9/20, effective 11/9/20.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-480302 Section 302—General provisions.

((302.3)) 302.2 Additional codes. Alterations, repairs, additions and changes of occupancy to, or relocation of, existing buildings and structures shall comply with the provisions for alterations, repairs, additions and changes of occupancy or relocation, respectively, in this code and the Washington State Energy Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, Uniform Plumbing Code, and International Residential Code. Where provisions of the other codes conflict with provisions of this code, the provisions of this code shall take precedence.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-480302, filed 10/9/20, effective 11/9/20; WSR 10-03-097, § 51-50-480302, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-480302, filed 12/19/06, effective 7/1/07.]

NEW SECTION

WAC 51-50-480306 Section 306—Structural.

306.6 Additions. Provisions for new construction shall apply to additions. An addition that affects the accessibility to, or contains an area of, a primary function shall comply with the requirements in Section 306.7.1. Limited-use/limited-application elevators installed in accordance with ASME A17.1 shall be permitted as a component of an accessible route connecting the existing construction to the addition.

Option 1

306.7.1 Alterations affecting an area containing a primary function.

Where an alteration affects the accessibility to, or contains an area of primary function, the route to the primary function area shall be accessible. The accessible route to the primary function area shall include toilet facilities and drinking fountains serving the area of primary function. Priority shall be given to the improvements affecting the accessible route to the primary function area.

EXCEPTIONS:

1. The costs of providing the accessible route are not required to exceed 20 percent of the costs of the alterations affecting the area of primary function.
2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets and signs.
3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems, installation or alteration of fire protection systems and abatement of hazardous materials.

4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of a facility.
5. This provision does not apply to altered areas limited to Type B dwelling and sleeping units.

Option 2

306.7.1 Alterations affecting an area containing a primary function.

Where an alteration affects the accessibility to or contains an area of primary function, the route to the primary function area shall be accessible. Toilet facilities and drinking fountains serving the area of primary function, including the route from the area of primary function to these facilities, shall be accessible.

- EXCEPTIONS:
1. The cumulative costs of providing the accessible route of travel, toilet facilities, and drinking fountains are not required to exceed 20 percent of the costs of the alterations affecting the area of primary function.
 2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets, and signs.
 3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems, installation or alteration of fire protection systems, and abatement of hazardous materials.
 4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of a facility.
 5. This provision does not apply to altered areas limited to Type B dwelling and sleeping units.

306.7.8 Platform lifts and limited-use/limited-application elevators.

Vertical and inclined platform (wheelchair) lifts complying with ICC A117.1 and installed in accordance with ASME A18.1 shall be permitted as a component of an accessible route.

Limited-use/Limited-application elevators installed in accordance with ASME A17.1 shall be permitted as a component of an accessible route.

[]

NEW SECTION

WAC 51-50-480401 Section 401—General.

401.2 Compliance. The work shall not make the building less complying than it was before the repair was undertaken. Work on nondamaged components that is necessary for the required repair of damaged components shall be considered part of the repair and shall not be subject to requirements for alterations.

401.4 Demolition and replacement. Where a building is effectively demolished by damage or where the intended method of repair is demolition and replacement, the replaced building, including its replaced foundation, or remaining foundation as approved by the code official, shall comply with requirements for new construction in the *International Building Code*.

[]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-480405 Section 405—((Reserved)) Structural.

405.1 General. Structural repairs shall be in compliance with this section and Section 401.2.

405.1.1 Structural concrete repairs. Repair of structural concrete is permitted to comply with ACI 562 Section 1.7, except where Section 405.2.2, 405.2.3, or 405.2.4.1 requires compliance with Section 304.3.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-480405, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-480405, filed 12/19/06, effective 7/1/07.]

NEW SECTION

WAC 51-50-480503 Section 503—Alterations.

503.13 Voluntary lateral force-resisting system alterations. Structural alterations that are intended exclusively to improve the lateral force resisting system and are not required by other sections of this code, shall not be required to meet the requirements of Section 1609 or 1613 of the *International Building Code*, provided that all of the following apply:

1. The capacity of existing structural systems to resist forces is not reduced.
2. New structural elements are detailed and connected to existing or new structural elements as required by the *International Building Code* for new construction.

EXCEPTION: New lateral force-resisting systems designed in accordance with the *International Building Code* are permitted to be of a type designated as "ordinary" or "intermediate" where ASCE 7 Table 12.2-1 states these types of systems are not permitted.

3. New or relocated nonstructural elements are detailed and connected to existing or new structural elements as required by the *International Building Code* for new construction.
4. The alterations do not create a structural irregularity as defined in ASCE 7 or make an existing structural irregularity more severe.

503.19 Seismic requirements for alterations with increased occupant load of unreinforced masonry or hollow clay tile buildings. In addition to the requirements in Sections 503.4 through 503.11, alterations meeting all of the following conditions shall comply with the applicable requirements in Sections 503.19.1 through 503.19.4.

1. The occupant load of a building increases by more than 20 percent for occupancy groups A, I, E, R, M, B, H, or S used for storage of hazardous materials.
2. Buildings assigned to Seismic Design Category C, D, E, or F.
3. The building's structural system includes unreinforced masonry and hollow clay tile bearing walls.

Where there is a change of occupancy with the alteration, the most restrictive seismic requirements in accordance with Section 506 and this section shall apply. The cumulative effect of alterations compared with the original occupant load that have an increase in occupant load over time exceeding 20 percent shall comply with these provisions.

- EXCEPTIONS:
1. A cumulative increase in the occupant load of less than 50 for occupancy categories A or I.
 2. A cumulative increase in the occupant load of less than 25 for E occupancies.
 3. R-3 occupancies, and all other R occupancies with an increase of 5 dwelling or sleeping units or less.
 4. A cumulative increase in occupant load of less than 100 for occupancy categories M or B.
 5. A cumulative increase in the occupant load of less than 10 for H occupancies or S occupancies using hazardous materials.

503.19.1 Large buildings. Buildings four or more stories or buildings more than 12,000 square feet shall be required to perform seismic evaluation in accordance with IEBC 304.3. Any lateral resisting elements shall be required to comply with design requirements for reduced seismic forces in accordance with Section 304.3.2 where found to be deficient.

503.19.2 Parapet bracing. Buildings with parapets constructed of unreinforced masonry where the parapet height to thickness ratio exceeds 1.5:1 shall be required to have parapets anchored, removed, or altered to resist out-of-plane seismic forces unless an evaluation demonstrates compliance of such items. Use of reduced seismic forces in accordance with Section 304.3.2 shall be permitted.

503.19.3 Floor and roof wall anchors. The alteration work shall include the installation of wall anchors at the floor and roof lines unless an evaluation demonstrates compliance of existing wall anchorage. Use of reduced seismic forces in accordance with Section 304.3.2 shall be permitted.

503.19.4 Bracing of partitions and nonstructural walls. Unreinforced masonry partitions and nonstructural walls within the alteration area and adjacent to egress paths from the alteration area shall be anchored, removed, or altered to resist out-of-plane seismic forces unless an evaluation demonstrates compliance of such items. Use of reduced seismic forces in accordance with Section 304.3.2 shall be permitted.

[]

NEW SECTION

WAC 51-50-480603 Section 603—Alteration-Level 2.

603.1 Scope. Level 2 alterations include the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment, and shall apply where the work is below the threshold of a Level 3 alteration.

EXCEPTION: The movement or addition of nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height shall not be considered a Level 2 alteration.

[]

NEW SECTION

WAC 51-50-480604 Section 604—Alteration-Level 3.

604.1 Scope. Level 3 alterations apply where one of the criteria is exceeded:

1. The work meets or exceeds the threshold of either substantial improvement or substantial damage; or
2. The alteration area exceeds 50 percent of the building area.

[]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-480702 Section 702—Building elements and materials.

((702.6)) 702.7 Materials and methods. New work shall comply with the materials and methods requirements in the *International Building Code*, Washington State Energy Code, *International Mechanical Code*, and Uniform Plumbing Code, as applicable, that specify material standards, detail of installation and connection, joints, penetrations, and continuity of any element, component, or system in the building.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-480702, filed 10/9/20, effective 11/9/20.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-480704 ((Section 704—)) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-480704, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-480704, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-480711 ((Section 711—)) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-480711, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-480711, filed 1/20/10, effective 7/1/10.]

NEW SECTION

WAC 51-50-480805 Section 805—Structural.

805.4 Voluntary lateral force-resisting system alterations. Structural alterations that are intended exclusively to improve the lateral force resisting system and are not required by other sections of this code shall not be required to meet the requirements of Section 1609 or Section 1613 of the *International Building Code*, provided that the following conditions are met:

1. The capacity of existing structural systems to resist forces is not reduced.
2. New structural elements are detailed and connected to existing or new structural elements as required by the *International Building Code* for new construction.

EXCEPTION: New lateral force-resisting systems designed in accordance with the *International Building Code* are permitted to be of a type designated as "ordinary" or "intermediate" where ASCE 7 Table 12.2-1 states these types of systems are not permitted.

3. New or relocated nonstructural elements are detailed and connected to existing or new structural elements as required by the *International Building Code* for new construction.

4. The alterations do not create a structural irregularity as defined in ASCE 7 or make an existing structural irregularity more severe.

805.5 Seismic requirements for Level 2 alterations with increased occupant load of unreinforced masonry or hollow clay tile buildings. In addition to the requirements in IEBC 805.3, Level 2 alterations meeting all of the following conditions shall comply with the applicable requirements in Sections 805.5.1 through 805.5.4.

1. The occupant load of a building increases by more than 20 percent for occupancy groups A, I, E, R, M, B, H, or S used for storage of hazardous materials.

2. Buildings assigned to Seismic Design Category C, D, E or F.

3. The building's structural system includes unreinforced masonry and hollow clay tile bearing walls.

Where there is a change of occupancy with the alteration, the most restrictive seismic requirements in accordance with IEBC 1006 and this section shall apply. The cumulative effect of alterations compared with the original occupant load that have an increase in occupant load over time exceeding 20 percent shall comply with these provisions.

EXCEPTIONS:

1. An increase in the occupant load of less than 50 for occupancy categories A or I.
2. An increase in the occupant load of less than 25 for E occupancies.
3. R-3 occupancies, and all other R occupancies with an increase of 5 dwelling or sleeping units or less.
4. An increase in occupant load of less than 100 for occupancy categories M or B.
5. A cumulative increase in the occupant load of less than 10 for H occupancies or S occupancies using hazardous materials.

805.5.1 Large buildings. Buildings four or more stories or buildings more than 12,000 square feet shall be required to perform seismic evaluation in accordance with IEBC 304.3. Any lateral resisting elements shall be required to comply with design requirements for reduced seismic forces in accordance with Section 304.3.2 where found to be deficient.

805.5.2 Parapet bracing. Buildings with parapets constructed of unreinforced masonry where the parapet height to thickness ratio exceeds 1.5:1 shall be required to have parapets anchored, removed or altered to resist out-of-plane seismic forces, unless an evaluation demonstrates compliance of such items. Use of reduced seismic forces in accordance with Section 304.3.2 shall be permitted.

805.5.3 Floor and roof wall anchors. The alteration shall include the installation of wall anchors at the floor and roof lines, unless an evaluation demonstrates compliance of existing wall anchorage. Use of reduced seismic forces in accordance with IEBC 304.3.2 shall be permitted.

805.5.4 Bracing of partitions and nonstructural walls. Unreinforced masonry partitions and nonstructural walls within the work area and adjacent to egress paths from the alteration area shall be anchored, removed or altered to resist out-of-plane seismic forces, unless an evaluation demonstrates compliance of such items. Use of reduced seismic forces in accordance with Section 304.3.2 shall be permitted.

[]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-480807 ((Section 807—)) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-480807, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-480807, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-480807, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-480808 ((Section 808—)) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-480808, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-480808, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-480809 Section 809—((Plumbing)) Energy conservation.

809.1 Minimum ((fixtures. Where the occupant load of the story is increased by more than 20 percent, plumbing fixtures for the story shall be provided in quantities specified in the International Building Code based on the increased occupant load.)) requirements. Level 2 alterations to existing buildings or structures shall comply with the Washington State Energy Code (chapter 51-11C WAC).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-480809, filed 10/9/20, effective 11/9/20.]

AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-480810 ((Energy conservation-)) Reserved.

((810.1 Minimum requirements. Level 2 alterations to existing buildings or structures shall comply with the Washington State Energy Code (chapter 51-11C WAC-))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-480810, filed 2/23/21, effective 3/26/21.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-480912 ((Section 912—) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-480912, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-480912, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-481002 Section 1002—Special use and occupancy.

~~((1002.1 Compliance with the building code. Where the character or use of an existing building or part of an existing building is changed to one of the following special use or occupancy categories as defined in the *International Building Code*, the building shall comply with all of the applicable requirements of the *International Building Code*:~~

- ~~1. Covered and open mall buildings;~~
- ~~2. Atriums;~~
- ~~3. Motor vehicle-related occupancies;~~
- ~~4. Aircraft-related occupancies;~~
- ~~5. Motion picture projection rooms;~~
- ~~6. Stages and platforms;~~
- ~~7. Special amusement buildings;~~
- ~~8. Incidental use areas;~~
- ~~9. Hazardous materials;~~
- ~~10. Ambulatory care facilities;~~
- ~~11. Group I-2 occupancies;~~
- ~~12. Group I-1, Condition 2, for licensure as an assisted living facility under chapter 388-78A WAC or residential treatment facility under chapter 246-337 WAC.)~~

1002.3 Change of occupancy in health care. Where a change of occupancy occurs to a Group I-2 or I-1 facility, the work area with the change of occupancy shall comply with the *International Building Code*.

The *International Building Code* shall apply to Group I-1, Condition 2, for licensure as an assisted living facility under chapter 388-78A WAC or residential treatment facility under chapter 246-337 WAC.

EXCEPTION: A change in use or occupancy in the following cases shall not be required to meet the *International Building Code*:

1. Group I-2, Condition 2 to Group I-2, Condition 1.
2. Group I-2 to ambulatory health care.
3. Group I-2 to Group I-1.
4. Group I-1, Condition 2 to Group I-1, Condition 1.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-481002, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-481103 ((Section 1103—)) Reserved.

((1103.9 Reserved.))

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-481103, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-481103, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-481105 ((Section 1105—)) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-481105, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-481105, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-481201 Section 1201—Historic buildings—General.

1201.1 Scope. ((It is the intent of)) This chapter is intended to provide means for the preservation of historic buildings. It is the purpose of this chapter to encourage cost-effective preservation of original or restored architectural elements and features and to provide a historic building that will result in a reasonable degree of safety, based on accepted life and fire safety practices, compared to the existing building. Historical buildings shall comply with the provisions of this chapter relating to their repair, alteration, relocation and change of occupancy.

SECTION 1202—Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-481201, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-481201, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-481201, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-481205 Reserved.

~~((1205.1 General.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-481205, filed 12/12/19, effective 7/1/20. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-481205, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-481301 ~~((Relocated or moved buildings—General.))~~ **Reserved.**

~~((1301.1 Scope. This chapter provides requirements for relocated or moved structures, including relocatable buildings as defined in Chapter 2.~~

~~**1301.2 Conformance.** Buildings or structures moved into or within the jurisdiction shall comply with the provisions of this code, the *International Residential Code* (chapter 51-51 WAC), the *International Mechanical Code* (chapter 51-52 WAC), the *International Fire Code* (chapter 51-54 WAC), the *Uniform Plumbing Code and Standards* (chapters 51-56 and 51-57 WAC), the *Washington State Energy Code* (chapter 51-11 WAC) and the *Washington State Ventilation and Indoor Air Quality Code* (chapter 51-13 WAC) for new buildings or structures.~~

EXCEPTION: Group R-3 buildings or structures are not required to comply if:
 1. The original occupancy classification is not changed; and
 2. The original building is not substantially remodeled or rehabilitated.

~~For the purposes of this section, a building shall be considered to be substantially remodeled when the costs of remodeling exceed 60 percent of the value of the building exclusive of the costs relating to preparation, construction, demolition or renovation of foundations.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-481301, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-481301, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-481301, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-481301, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-481302 ~~((Requirements.))~~ **Reserved.**

~~((This section is not adopted.))~~

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-481302, filed 2/1/13, effective 7/1/13.]

NEW SECTION**WAC 51-50-481401 Relocated or moved buildings—General.**

1401.2 Conformance. Buildings or structures moved into or within the jurisdiction shall comply with the provisions of this code, the *International Residential Code* (chapter 51-51 WAC), the *International Mechanical Code* (chapter 51-52 WAC), the *International Fire Code* (chapter 51-54 WAC), the *Uniform Plumbing Code and Standards* (chapters 51-56 and 51-57 WAC), the Washington State Energy Code (chapter 51-11 WAC) and the Washington State Ventilation and Indoor Air Quality Code (chapter 51-13 WAC) for new buildings or structures.

EXCEPTION: Group R-3 buildings or structures are not required to comply if:
 1. The original occupancy classification is not changed; and
 2. The original building is not substantially remodeled or rehabilitated.

For the purposes of this section, a building shall be considered to be substantially remodeled when the costs of remodeling exceed 60 percent of the value of the building exclusive of the costs relating to preparation, construction, demolition or renovation of foundations.

[]

NEW SECTION

WAC 51-50-481402 Requirements. This section is not adopted.

[]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-481500 Section 1501—General.

((1501.1)) 1501.7 Facilities required. Sanitary facilities shall be provided during construction or demolition activities in accordance with the Uniform Plumbing Code.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-481500, filed 10/9/20, effective 11/9/20; WSR 10-03-097, § 51-50-481500, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-481500, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-490000 ((Appendix N—Solar readiness.)) Reserved.

((The provisions contained in this appendix are not mandatory unless specifically referenced in the local adopting ordinance.

490101.1 General. A solar zone shall be provided on nonresidential buildings of any size that are 5 stories or less in height above grade

plane, and shall be located on the roof of the building or on another structure elsewhere on the site. The solar zone shall be in accordance with Sections 490101.3 through 490101.9 and the *International Fire Code*.

EXCEPTION: A solar zone is not required where the solar exposure of the building's roof area is less than 75 percent of that of an unshaded area, as measured by one of the following:

- Incident solar radiation expressed in kWh/ft² per year using typical meteorological year (TMY) data;
- Annual sunlight exposure expressed in cumulative hours per year using TMY data;
- Shadow studies indicating that the roof area is more than 25 percent in shadow, on September 21 at 10:00 a.m., 11:00 a.m., 12:00 p.m., 1:00 p.m., and 2:00 p.m. solar time.

490101.2 Definitions. The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of the *International Building Code* for general definitions.

SOLAR ZONE. A clear area or areas reserved solely for current and future installation of photovoltaic or solarwater heating systems.

490101.3 Minimum area. The minimum area of the solar zone shall be determined by one of the following methods, whichever results in the smaller area:

- 40 percent of roof area. The roof area shall be calculated as the horizontally-projected gross roof area, less the area covered by skylights, occupied roof decks and planted areas.
- 20 percent of electrical service size. The electrical service size shall be the rated capacity of the total of all electrical services to the building. The required solar zone size shall be based upon 10 peak watts of PV per square foot.

EXCEPTION: Subject to the approval of the *building official*, buildings with extensive rooftop equipment that would make full compliance with this section impractical shall be permitted to reduce the size of the solar zone required by Section N101.3 to the maximum practicable area.

490101.4 Contiguous area. The solar zone is permitted to be comprised of smaller separated subzones. Each subzone shall be at least 5 feet wide in the narrowest dimension.

490101.5 Obstructions. The solar zone shall be free of pipes, vents, ducts, HVAC equipment, skylights and other obstructions, except those serving photovoltaics or solar water heating systems within the solar zone. Photovoltaics or solar water heating systems are permitted to be installed within the solar zone. The solar zone is permitted to be located above any such obstructions, provided that the racking for support of the future system is installed at the time of construction, the elevated solar zone does not shade other portions of the solar zone, and its height is permitted by the *International Building Code* and other applicable codes.

490101.6 Shading. The solar zone shall be set back from any existing or new object on the building or site that is located south, east, or west of the solar zone a distance at least two times the object's height above the nearest point on the roof surface. Such objects include, but are not limited to, taller portions of the building itself, parapets, chimneys, antennas, signage, rooftop equipment, trees and roof plantings. No portion of the solar zone shall be located on a roof slope greater than 2:12 that faces within 45 degrees of true north.

490101.7 Access. Areas contiguous to the solar zone shall provide access pathways and provisions for emergency smoke ventilation as required by the *International Fire Code*.

490101.8 Structural integrity. The as-designed dead load and live load for the solar zone shall be clearly marked on the record drawings, and shall accommodate future photovoltaic or solar water heating arrays at

an assumed dead load of 4 pounds per square foot in addition to other required live and dead loads. For photovoltaic systems, a location for future inverters shall be designated either within or adjacent to the solar zone, with a minimum area of 2 square feet for each 1,000 square feet of solar zone area, and shall accommodate an assumed dead load of 175 pounds per square foot. Where photovoltaic or solar water heating systems are installed in the solar zone, structural analysis shall be based upon calculated loads, not upon these assumed loads.

~~490101.9 Photovoltaic or solar water heating interconnection provisions.~~ Buildings shall provide for the future interconnection of either a photovoltaic system in accordance with Section 490101.9.1 or a solar water heating system in accordance with Section 490101.9.2.

~~490101.9.1 Photovoltaic interconnection.~~ A capped roof penetration sleeve shall be provided in the vicinity of the future inverter, sized to accommodate the future photovoltaic system conduit. Interconnection of the future photovoltaic system shall be provided for at the main service panel, either ahead of the service disconnecting means or at the end of the bus opposite the service disconnecting means, in one of the following forms:

a. A space for the mounting of a future overcurrent device, sized to accommodate the largest standard rated overcurrent device that is less than 20 percent of the bus rating;

b. Lugs sized to accommodate conductors with an ampacity of at least 20 percent of the bus rating, to enable the mounting of an external overcurrent device for interconnection.

The electrical construction documents shall indicate the following:

a. Solar zone boundaries and access pathways;

b. Location for future inverters and metering equipment; and

c. Route for future wiring between the photovoltaic panels and the inverter, and between the inverter and the main service panel.

~~N101.9.2 Solar water heating interconnection.~~ Two capped pipe tees shall be provided upstream of the domestic water heating equipment to provide plumbing interconnections between a future solar water heating system and the domestic water heating system. Two roof penetration sleeves shall be provided in the vicinity of the solar zone, capable of accommodating supply and return piping for a future solar water heating system. The plumbing construction documents shall indicate the following:

a. Solar zone boundaries and access pathways;

b. Location for future hot water storage tanks; and

c. Route for future piping between the solar zone and the plumbing interconnection point, following the shortest feasible pathway.))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-490000, filed 1/19/16, effective 7/1/16.]

WSR 22-17-153
PROPOSED RULES
BUILDING CODE COUNCIL
 [Filed August 23, 2022, 4:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-060.

Title of Rule and Other Identifying Information: Chapter 51-56 WAC, Adoption and amendment of the 2021 edition of the Uniform Plumbing Code.

Hearing Location(s): On September 30, 2022, at 10:00 a.m., at 129 North 2nd Street, Yakima, WA 98901; or on October 14, 2022, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person, or via Zoom or conference call. The Zoom link and phone are provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: November 4, 2022.

Submit Written Comments to: State Building Code Council (SBCC), P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by October 14, 2022.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, email sbcc@des.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adopts the 2021 edition of the Uniform Plumbing Code (UPC), published by the International Association of Plumbing and Mechanical Officials, with state amendments to incorporate proposed changes as adopted by SBCC. The rules will provide increased clarity and life safety measures for building construction in Washington state.

SUMMARY OF PROPOSED CHANGES
 2021 UPC Amendments to Chapter 51-56 WAC

WAC	Section	Changes in 2021	Rationale/Discussion
51-56		Replaces 2018 with 2021	Refers to the current model code.
51-56-003		Adds Appendix M to the adopted appendices.	21-GP2-038 proposed the adoption of Appendix M, Peak Water Demand Calculator, in the Washington state plumbing code. This appendix is proposed to be adopted as optional, not mandatory, allowing use of its provisions and guidance in the installation and sizing of potable water distribution systems within the state.
51-56-008		Modifies the implementation date.	The modification changes the implementation date to July 2, 2023.
51-56-0200	211.0	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
51-56-0300	301.3	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	312.6	Replaces the requirement for R-3 insulation with a reference to the Washington State Energy Code.	The proposed modification provides consistency with the energy code.

WAC	Section	Changes in 2021	Rationale/Discussion
51-56-0400	408.4	Corrects section references and the water use for the shower.	Align the existing amendment with the model code language.
	411.2.1	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	420.1	Deletes the existing amendment.	The existing amendment is no longer needed. The existing amendment eliminates some standards. New model code language is clearer.
51-56-0500	504.1	Corrects section references.	Incorporates renumbering in the model code.
	511.0	Deletes the existing amendment.	The existing amendment specifies that Section 511.00 is not adopted. The existing amendment is no longer needed because Section 511.0 is no longer in the UPC.
51-56-0600	603.4.9	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	603.5.14	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	606.5	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	608.3	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
	608.5(1)	Modifies the existing amendment.	Editorial modification; incorporates changes in the model code.
	608.5(2)	Modifies the existing amendment.	This proposal is intended to provide a safe drainage of the T&P relief termination. Retaining full size and avoiding a reduction from crimping or crushing of the T&P line. A catastrophic event can occur with a crimped or crushed relief drain. (21-GP2-021R)
	608.5(8)	Modifies the existing amendment.	Incorporates model code changes.
	609.9	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.
51-56-0700	Table 703.2	Deletes the existing amendment.	The existing amendment is no longer needed; it is addressed in the model code.

WAC	Section	Changes in 2021	Rationale/Discussion
51-56-0900	908.2.4	Deletes the existing amendment.	The existing amendment is in alignment with circuit venting indicating there is no required order of fixture placement. The deletion was recommended by the UPC technical advisory group (TAG).
	911.1	Modifies the existing amendment.	The modification incorporates the newly adopted model code language.
	913.0 913.1 913.2 913.3 913.3.1 913.4 913.5 913.6 913.6.1 913.7 913.7.1 913.7.2 913.7.3 913.7.4	New sections pertaining to air admittance valves.	This proposal allows air admittance valves within the UPC. Section 913 is proposed as optional and will be effective if adopted by a local ordinance. 21-GP2-057
51-56-1100	1101.12.2 1101.12.2.1 1101.12.2.2 1101.12.2.2.1 1101.12.2.2.2 1103.0 1103.1 1103.2 1103.3 1103.4	New sections.	This proposal aligns the UPC with the requirements for rain loading on roofs in ASCE 7, and with the 2021 IBC rain load requirements. Without this change, secondary drainage systems could be undersized, which could result in damage to roofs and possibly, collapse. See detailed rationale here: 21-GP2-100

Note: Sections not listed on the table above remain as adopted in 2018 UPC.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: RCW 19.27.031 and 19.27.074.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; Enforcement: Local jurisdictions.

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 Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email sbcc@des.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry

standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule adopts by reference the 2021 UPC with new and existing amendments. Many of the existing amendments are modified to incorporate changes to the model codes or to clarify language. There are three significant changes to the model code with economic impact. However, the model code changes are exempt under RCW 19.85.025(3) and 34.05.310 (4) (c) and are not part of this report.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The proposed rule adopts by reference the 2021 UPC with new and existing amendments. Many of the existing amendments are modified to incorporate changes to the model codes or to clarify language. There are three significant changes to the model code with economic impact. However, the model code changes are exempt under RCW 19.85.025(3) and 34.05.310 (4) (c) and are not part of this report.

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. For the 2021 code adoption cycle, the council received six proposals. The UPC TAG recommended approval of three proposals as submitted or as modified. The council approved four proposals to be included in the CR-102. Only one proposal was identified by the proponent and TAG as having a cost (increase) for compliance on businesses. However, staff research showed that Proposal #21-GP2-100 is necessary to avoid conflicts between the International Building Code (IBC) and UPC. It increases the construction cost compared to the existing requirements in UPC. However, both codes are applicable for new construction, and if there is a conflict between IBC and UPC, the more stringent requirement would apply. Therefore, the cost will be driven by IBC with or without 21-GP2-100.

A copy of the detailed cost calculations may be obtained by contacting Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email sbcc@des.wa.gov.

August 23, 2022

Tony Doan
Council Chair

OTS-4044.1

**Chapter 51-56 WAC
STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2018)) 2021 EDITION OF THE UNIFORM PLUMBING CODE**

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

WAC 51-56-003 Uniform Plumbing Code. The ((2018)) 2021 edition of the Uniform Plumbing Code, including Appendices A, B, ((and)) I, and M, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted by reference with the following additions, deletions and exceptions: Provided that chapters 12 and 14 of this code are not adopted. Provided further, that those requirements of the Uniform Plumbing Code relating to venting and combustion air of fuel fired appliances as found in chapter 5 and those portions of the code addressing building sewers are not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-02-072, § 51-56-003, filed 12/26/19, effective 7/1/20; WSR 16-02-044, § 51-56-003, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-003, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-003, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-003, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-003, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-003, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 21-11-066, filed 5/14/21, effective 6/14/21)

WAC 51-56-008 Implementation. The Uniform Plumbing Code adopted by chapter 51-56 WAC shall become effective in all counties and cities of this state on ((February 1, 2021)) July 1, 2023.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-11-066, § 51-56-008, filed 5/14/21, effective 6/14/21; WSR 20-02-072, § 51-56-008, filed 12/26/19, effective 7/1/20; WSR 16-02-044, § 51-56-008, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074 and 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-008, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-008, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-008, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-008, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

WAC 51-56-0200 Chapter 2—Definitions.

205.0 Certified Backflow Assembly Tester - A person certified by the Washington state department of health under chapter 246-292 WAC to inspect (for correct installation and approval status) and test (for

proper operation), maintain and repair (in compliance with chapter 18.106 RCW) backflow prevention assemblies, devices and air gaps.

210.0 Hot Water - Water at a temperature exceeding or equal to 100°F.

~~((211.0 Insanitary~~ - A condition that is contrary to sanitary principles or is injurious to health.

~~Conditions to which "insanitary" shall apply include the following:~~

- ~~(1) A trap that does not maintain a proper trap seal.~~
- ~~(2) An opening in a drainage system, except where lawful, that is not provided with an approved liquid-sealed trap.~~
- ~~(3) A plumbing fixture or other waste discharging receptor or device that is not supplied with water sufficient to flush and maintain the fixture or receptor in a clean condition, except as otherwise provided in this code.~~
- ~~(4) A defective fixture, trap, pipe, or fitting.~~
- ~~(5) A trap, except where in this code exempted, directly connected to a drainage system, the seal of which is not protected against siphonage and backpressure by a vent pipe.~~
- ~~(6) A connection, cross-connection, construction, or condition, temporary or permanent, that would permit or make possible by any means whatsoever for an unapproved foreign matter to enter a water distribution system used for domestic purposes.~~
- ~~(7) The foregoing enumeration of conditions to which the term "insanitary" shall apply, shall not preclude the application of that term to conditions that are, in fact, insanitary.))~~

218.0 Plumbing System - Includes all potable water, building supply and distribution pipes, all reclaimed or other alternate source water systems, all rainwater systems, all plumbing fixtures and traps, all drainage and vent pipe(s), and all building drains including their respective joints and connection, devices, receptors, and appurtenances within the property lines of the premises and shall include potable water piping, potable water treating or using equipment, medical gas and medical vacuum systems, and water heaters: Provided, That no certification shall be required for the installation of a plumbing system within the property lines and outside a building.

221.0 Spray Sprinkler Body - The exterior case or shell of a sprinkler incorporating a means of connection to the piping system designed to convey water to a nozzle or orifice.

225.0 Water Heater (consumer electric storage) - A consumer product that uses electricity as the energy source to heat domestic potable water, has a nameplate input rating of twelve kilowatts or less, contains nominally forty gallons but no more than one hundred twenty gallons of rated hot water storage volume, and supplies a maximum hot water delivery temperature less than one hundred eighty degrees Fahrenheit.

Water Heater (mini-tank electric) - A small electric water heater that has a measured storage volume of more than one gallon and a rated storage volume of less than twenty gallons.

Water/Wastewater Utility - A public or private entity, including a water purveyor as defined in chapter 246-290 WAC, which may treat, deliver, or do both functions to reclaimed (recycled) water, potable water, or both to wholesale or retail customers.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-02-072, § 51-56-0200, filed 12/26/19, effective 7/1/20; WSR 16-02-044, §

51-56-0200, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, and 19.27.074. WSR 13-23-094, § 51-56-0200, filed 11/20/13, effective 4/1/14. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-0200, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-0200, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-0200, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-0200, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-0200, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

WAC 51-56-0300 Chapter 3—General regulations.

301.2.2 Standards. Standards listed or referred to in this chapter or other chapters cover materials which will conform to the requirements of this code, when used in accordance with the limitations imposed in this or other chapters thereof and their listing. Where a standard covers materials of various grades, weights, quality, or configurations, the portion of the listed standard that is applicable shall be used. Design and materials for special conditions or materials not provided for herein shall be permitted to be used by special permission of the authority having jurisdiction after the authority having jurisdiction has been satisfied as to their adequacy in accordance with Section 301.2.

~~((301.3 Alternative Materials and Methods of Construction Equivalency. Nothing in this code is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed by this code. Technical documentation shall be submitted to the authority having jurisdiction to demonstrate equivalency. The authority having jurisdiction shall have the authority to approve or disapprove the system, method, or device for the intended purpose. Where the alternate material, design or method of construction is not approved, the code official shall respond in writing, stating the reasons why the alternative was not approved.~~

~~However, the exercise of this discretionary approval by the authority having jurisdiction shall have no effect beyond the jurisdictional boundaries of said authority having jurisdiction. An alternate material or method of construction so approved shall not be considered as in accordance with the requirements, intent or both of this code for a purpose other than that granted by the authority having jurisdiction where the submitted data does not prove equivalency.))~~

310.4 Use of Vent and Waste Pipes. Except as hereinafter provided in Sections 908.0 through 911.0 and Appendix C, no vent pipe shall be used as a soil or waste pipe, nor shall any soil or waste pipe be used as a vent.

312.6 Freezing Protection. No water, soil, or waste pipe shall be installed or permitted outside of a building, in attics or crawl spaces, or in an exterior wall unless, where necessary, adequate provision is

made to protect such pipe from freezing. All hot and cold water pipes installed outside the conditioned space shall be insulated to ((~~a minimum R-3~~)) meet the minimum requirements of the Washington State Energy Code.

312.7 Fire-Resistant Construction. All pipe penetrating floor/ceiling assemblies and fire-resistance rated walls or partitions shall be protected in accordance with the requirements of the building code.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-02-044, § 51-56-0300, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-0300, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-0300, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-0300, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-0300, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-0300, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 21-01-125, filed 12/15/20, effective 1/15/21)

WAC 51-56-0400 Chapter 4—Plumbing fixtures and fixture fittings.

402.5 Setting. Fixtures shall be set level and in proper alignment with reference to adjacent walls. No water closet or bidet shall be set closer than fifteen (15) inches (381 mm) from its center to any side wall or obstruction nor closer than thirty (30) inches (762 mm) center to center to any similar fixture. The clear space in front of any water closet or bidet shall be not less than twenty-four (24) inches (610 mm). No urinal shall be set closer than twelve (12) inches (305 mm) from its center to any side wall or partition nor closer than twenty-four (24) inches (610 mm) center to center.

EXCEPTIONS: 1. The clear space in front of a water closet, lavatory or bidet in dwelling units and sleeping units shall be not less than 21 inches (533 mm).
2. The installation of paper dispensers or accessibility grab bars shall not be considered obstructions.

405.4 Application. No individual, public or private corporation, firm, political subdivision, government agency, or other legal entity, may, for purposes of use in the state of Washington, distribute, sell, offer for sale, import, install, or approve for installation any plumbing fixtures or fittings unless the fixtures or fittings meet the standards as provided for in this chapter.

407.2 Water Consumption. The maximum water flow rate of faucets shall comply with Section 407.2.1 through 407.2.2.

407.2.1 Maximum Flow Rate. The maximum flow rate for public lavatory faucets shall not exceed 0.5 gpm at 60 psi (1.9 L/m at 414 kPa).

407.2.1.1 Residential Lavatory Faucets. The maximum flow rate of residential lavatory faucets shall not exceed 1.2 gallons (4.54 L) per minute at 60 psi. The minimum flow rate of residential lavatory faucets shall not be less than 0.8 gallons (3.03 L) per minute at 20 psi.

407.2.1.2 Lavatory Faucets in Common and Public Use Areas. The maximum flow rate of lavatory faucets, installed in common and public use

areas (outside of dwellings or sleeping units) in residential buildings, shall not exceed 0.5 gallons (1.89 L) per minute at 60 psi.

407.2.2 Metering Faucets. Metered faucets shall deliver a maximum of 0.25 gallons (1.0 L) per metering cycle in accordance with ASME A112.18.1/CSA B125.1.

407.4 Metering Valves. Lavatory faucets located in restrooms intended for use by the general public shall be equipped with a metering valve designed to close by spring or water pressure when left unattended (self-closing).

EXCEPTIONS: 1. Where designed and installed for use by persons with a disability.
2. Where installed in day care centers, for use primarily by children under 6 years of age.

408.2 Water Consumption. Showerheads shall meet the maximum flow rate of 1.8 gallons (6.81 L) per minute measured at 80 psi. Showerheads shall be certified to the performance criteria of the U.S. EPA Water-Sense Specification for Showerheads.

EXCEPTION: Emergency use showers shall be exempt from the maximum water usage rates.

408.2.1 Multiple Showerheads Serving One Shower. When a shower is served by more than one showerhead, including handheld showerheads, the combined flow rate of all showerheads and/or other shower outlets controlled by a single valve shall not exceed 1.8 gallons (6.81 L) per minute at 80 psi, or the shower shall be designed to allow only one shower outlet to be in operation at a time.

408.4 Waste Outlet. Showers shall have a waste outlet and fixture tailpiece not less than two (2) inches (50 mm) in diameter. Fixture tailpieces shall be constructed from the materials specified in Section ((701.1)) 701.2 for drainage piping. Strainers serving shower drains shall have a waterway at least equivalent to the area of the tailpiece.

EXCEPTION: In a residential dwelling unit where a 2 inch waste is not readily available and approval of the AHJ has been granted, the waste outlet, fixture tailpiece, trap and trap arm may be 1-1/2 inch when an existing tub is being replaced by a shower sized per Section ((408.6(2))) 408.2. This exception only applies where one shower head rated at ((2-5)) 1.8 gpm is installed.

408.6 Shower Compartments. Shower compartments, regardless of shape, shall have a minimum finished interior of nine hundred (900) square inches (0.58 m²) and shall also be capable of encompassing a thirty (30) inch (762 mm) circle. The minimum required area and dimensions shall be measured at a height equal to the top of the threshold and at a point tangent to its centerline. The area and dimensions shall be maintained to a point of not less than seventy (70) inches (1,778 mm) above the shower drain outlet with no protrusions other than the fixture valve or valves, shower head, soap dishes, shelves, and safety grab bars or rails. Fold-down seats in accessible shower stalls shall be permitted to protrude into the thirty (30) inch (762 mm) circle.

EXCEPTIONS: 1. Showers that are designed to comply with ICC/ANSI A117.1.
2. The minimum required area and dimension shall not apply for a shower receptor having overall dimensions of not less than thirty (30) inches (762 mm) in width and sixty (60) inches (1,524 mm) in length.

411.2 Water Consumption. The effective flush volume of all water closets shall not exceed 1.28 gallons (4.8 L) per flush when tested in accordance with ASME A112.19.2/CSA B45.1.

EXCEPTIONS: 1. Water closets located in day care centers, intended for use by young children may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.
2. Water closets with bed pan washers may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.
3. Blow out bowls, as defined in ANSI/ASME A112.19.2M, Section 5.1.2.3 may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.

~~((411.2.1 Dual Flush Water Closets. Dual flush water closets shall comply with ASME A112.19.14. The effective flush volume for dual flush~~

~~water closets shall be defined as the composite, average flush volume of two reduced flushes and one full flush.))~~

411.2.2 Performance. Water closets installed shall meet or exceed the minimum performance criteria developed for certification of high-efficiency toilets under the WaterSense program sponsored by the U.S. Environmental Protection Agency (EPA).

411.2.3 Flushometer Valve Activated Water Closets. Flushometer valve activated water closets shall have a maximum flush volume of 1.28 gallons (4.8 Lpf) of water per flush in accordance with ASME A112.19.2/CSA B45.1.

412.1 Application. Urinals shall comply with ASME A112.19.2/CSA B45.1, ASME A112.19.19, or CSA B45.5/IAPMO Z124. Wall-mounted urinals shall have an average water consumption not to exceed 0.125 gallons (0.47 L) per flush. Other urinals shall have an average water consumption not to exceed 0.5 gallons (1.89 L) per flush.

414.3 Drainage Connection. Domestic dishwashing machines shall discharge indirectly through an air gap fitting in accordance with Section 807.3 into a waste receptor, a wye branch fitting on the tailpiece of a kitchen sink, or dishwasher connection of a food waste disposer. Commercial dishwashing machines shall discharge indirectly through an air gap.

415.2 Drinking Fountain Alternatives. This section is not adopted. See Building Code chapter 29.

418.3 Location of Floor Drains. Floor drains shall be installed in the following areas:

1. Toilet rooms containing two (2) or more water closets or a combination of one (1) water closet and one (1) urinal, except in a dwelling unit. The floor shall slope toward the floor drains.

2. Laundry rooms in commercial buildings and common laundry facilities in multifamily dwelling buildings.

420.0 Sinks

~~((420.1 Application. Sinks shall comply with ASME A112.19.1/CSA B45.2, ASME A112.19.2/CSA B45.1, ASME A112.19.3/CSA B45.4, or CSA B45.5/IAPMO Z124. Moveable sink systems shall comply with ASME A112.19.12.))~~

420.2 Water Consumption. Sink faucets shall have a maximum flow rate of not more than 2.2 gpm at 60 psi (8.3 L/m at 414 kPa) in accordance with ASME A112.18.1/CSA B125.1.

EXCEPTION: Clinical sinks, laundry trays, service sinks.

420.2.1 Kitchen Faucets. Kitchen faucets shall have a maximum flow rate of not more than 1.8 gallons (6.81 L) per minute at 60 psi. Kitchen faucets may temporarily increase the flow above the maximum rate, but not to exceed 2.2 gallons (8.3 L) per minute at 60 psi, and must default to a maximum flow rate of 1.8 gallons (6.81 L) per minute at 60 psi.

EXCEPTION: Where faucets meeting the maximum flow rate of 1.8 gpm (6.81 L) are unavailable, aerators or other means may be used to achieve reduction.

420.3 Prerinse Spray Valve. Commercial food service prerinse spray valves shall have a maximum flow rate of 1.6 gallons per minute (gpm) at 60 pounds-force per square inch (psi) (6.0 L/m at 414 kPa) in accordance with ASME A112.18.1/CSA B125.1 and shall be equipped with an integral automatic shutoff.

422.0 Minimum Number of Required Fixtures. For minimum number of plumbing fixtures required, see Building Code Chapter 29 and Table 2902.1.

423.0 Landscape Irrigation.

423.1 Spray Sprinkler Body. Spray sprinkler bodies must include an integral pressure regulator and must meet the water efficiency and performance criteria and other requirements of environmental protection agency water sense program product specification for spray sprinkler bodies.

EXCEPTION: Spray sprinkler bodies specifically excluded from the scope of the environmental protection agency water sense program product specification for spray sprinkler bodies.

Sections 422.1 through 422.5 and Table 422.1 are not adopted.

[Statutory Authority: RCW 19.27.035 and 19.27.074. WSR 21-01-125, § 51-56-0400, filed 12/15/20, effective 1/15/21. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-02-072, § 51-56-0400, filed 12/26/19, effective 7/1/20; WSR 17-10-074, § 51-56-0400, filed 5/3/17, effective 6/3/17; WSR 16-02-044, § 51-56-0400, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-0400, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-0400, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-0400, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-0400, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-0400, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 21-01-125, filed 12/15/20, effective 1/15/21)

WAC 51-56-0500 Chapter 5—Water heaters.

501.1 Applicability. The regulations of this chapter shall govern the construction, location, and installation of fuel burning and other types of water heaters heating potable water. The minimum capacity for water heaters shall be in accordance with the first hour rating listed in Table 501.1(2). See the Mechanical Code for combustion air and installation of all vents and their connectors. No water heater shall be hereinafter installed that does not comply with the manufacturer's installation instructions and the type and model of each size thereof approved by the authority having jurisdiction. A list of accepted water heater appliance standards is referenced in Table 501(2). Listed appliances shall be installed in accordance with the manufacturer's installation instructions. Unlisted water heaters shall be permitted in accordance with Section 504.3.2.

TABLE 501.1(2)^{1,3}

Number of Bathrooms	1 to 1.5			2 to 2.5				3 to 3.5			
	1	2	3	2	3	4	5	3	4	5	6
Number of Bedrooms											

Number of Bathrooms	1 to 1.5			2 to 2.5				3 to 3.5			
	First Hour Rating ² , Gallons	38	49	49	49	62	62	74	62	74	74

Notes:

¹The first hour rating is found on the "Energy Guide" label.

²Nonstorage and solar water heaters shall be sized to meet the appropriate first hour rating as shown in the table, and shall be capable of delivering hot water at the maximum system demand flow, as calculated in Section 610.0 or Appendix A, as applicable.

³For replacement water heaters, see Section 102.4.

501.1.2 Consumer Electric Storage Water Heater Requirements. Consumer electric storage water heaters must have a modular demand response communications port compliant with the March 2018 version of the ANSI/CTA-2045-A communication interface standard, or equivalent and the March 2018 version of the ANSI/CTA-2045-A application layer requirements. The interface standard and application layer requirements required in this subsection are the versions established on March 16, 2018.

EXCEPTIONS:

1. Water heaters manufactured prior to January 1, 2021.

2. Electric storage water heaters other than heat pump type water heaters manufactured prior to January 1, 2022.

501.1.3 Mini-tank Electric Water Heaters. The standby energy consumption of hot water dispensers and mini-tank electric water heaters manufactured on or after January 1, 2010, shall be not greater than 35 watts. Mini-tank electric water heaters shall be tested in accordance with the method specified in the California Code of 39 Regulations, Title 20, section 1604 in effect as of July 26, 2009.

504.1 Location. Water heater installation in bedrooms and bathrooms shall comply with one of the following:

(1) Fuel-burning water heaters may be installed in a closet located in the bedroom or bathroom provided the closet is equipped with a listed, gasketed door assembly and a listed self-closing device. The self-closing door assembly shall meet the requirements of Section ((505.1.1)) 504.1.1. The door assembly shall be installed with a threshold and bottom door seal and shall meet the requirements of Section ((505.1.2)) 504.1.2. All combustion air for such installations shall be obtained from the outdoors in accordance with the International Mechanical Code. The closet shall be for the exclusive use of the water heater.

(2) Water heater shall be of the direct vent type.

505.2 Safety Devices. All storage-type water heaters deriving heat from fuels or types of energy other than gas, shall be provided with, in addition to the primary temperature controls, an over-temperature safety protection device constructed, listed, and installed in accordance with nationally recognized applicable standards for such devices and a combination temperature and pressure relief valve.

506.0 Combustion Air. For issues relating to combustion air, see the Mechanical Code.

Sections 506.1 through 506.9 are not adopted.

Sections 507.6 through 507.9 are not adopted.

507.2 Seismic Provisions. Water heaters shall be anchored or strapped to resist horizontal displacement due to earthquake motion. Strappings shall be at points within the upper one-third and lower one-third of its vertical dimensions. At the lower point, a distance of not less

than four (4) inches (102 mm) shall be maintained from the controls to the strapping.

507.13 Installation in Garages. Appliances in garages and in adjacent spaces that open to the garage and are not part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices and ignition sources are located not less than eighteen (18) inches above the floor unless listed as flammable vapor ignition resistant.

507.16 Venting of Flue Gases - Delete entire section.

Sections 507.18 through 507.22 are not adopted.

509.0 Venting of Equipment. Delete entire section.

510.0 Sizing of Category I Venting Systems. Delete entire section.

~~(**511.0 Direct Vent Equipment.** Delete entire section.)~~

[Statutory Authority: RCW 19.27.035 and 19.27.074. WSR 21-01-125, § 51-56-0500, filed 12/15/20, effective 1/15/21. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-02-072, § 51-56-0500, filed 12/26/19, effective 7/1/20; WSR 17-10-074, § 51-56-0500, filed 5/3/17, effective 6/3/17; WSR 16-02-044, § 51-56-0500, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-0500, filed 2/1/13, effective 7/1/13; WSR 11-05-037, § 51-56-0500, filed 2/8/11, effective 7/1/13; WSR 10-03-101, § 51-56-0500, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-0500, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-0500, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-0500, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

WAC 51-56-0600 Chapter 6—Water supply and distribution.

601.1 Applicability. This chapter shall govern the materials, design and installation of *water supply systems*, including backflow prevention devices, assemblies and methods used for backflow prevention.

603.1 General. Cross-connection control shall be provided in accordance with the provisions of this chapter. Devices or assemblies for protection of the public water system must be models approved by the department of health under WAC 246-290-490. The authority having jurisdiction shall coordinate with the local water purveyor where applicable in all matters concerning cross-connection control within the property lines of the premises.

No person shall install any water operated equipment or mechanism, or use any water treating chemical or substance, if it is found that such equipment, mechanism, chemical or substance may cause pollution or contamination of the domestic water supply. Such equipment or mechanism may be permitted only when equipped with an approved backflow prevention device or assembly.

603.2 Approval of Devices or Assemblies. Before any device or assembly is installed for the prevention of backflow, it shall have first been approved by the authority having jurisdiction. Devices or assemblies shall be tested for conformity with recognized standards or other standards acceptable to the authority having jurisdiction. Backflow prevention devices and assemblies shall comply with Table 603.2, except for specific applications and provisions as stated in Section 603.5.1 through 603.5.21.

All devices or assemblies installed in a potable water supply system for protection against backflow shall be maintained in good working condition by the person or persons having control of such devices or assemblies. Such devices or assemblies shall be tested in accordance with Section 603.4.2 and WAC 246-290-490. If found to be defective or inoperative, the device or assembly shall be replaced or repaired. No device or assembly shall be removed from use or relocated or other device or assembly substituted, without the approval of the authority having jurisdiction.

Testing shall be performed by a Washington state department of health certified backflow assembly tester.

**TABLE 603.2
Backflow Prevention Devices, Assemblies and Methods
The following line is deleted from the table:**

Device, Assembly or Method	Applicable Standards	Pollution (Low Hazard)		Contamination (High Hazard)		Installation
		Back Siphonage	Back Pressure	Back Siphonage	Back Pressure	
Backflow preventer for carbonated beverage dispensers (two independent check valves with a vent to the atmosphere.)	ASSE 1022	X				Installation includes carbonated beverage machines or dispensers. These devices operate under intermittent or continuous pressure conditions.

603.4.2 Testing. For devices and assemblies other than those regulated by the Washington department of health in conjunction with the local water purveyor for the protection of public water systems, the authority having jurisdiction shall ensure that the premise owner or responsible person shall have the backflow prevention assembly tested by a Washington state department of health certified backflow assembly tester:

- (1) At the time of installation, repair or relocation; and
- (2) At least on an annual schedule thereafter, unless more frequent testing is required by the authority having jurisdiction.

~~((603.4.9 Prohibited Location. Backflow prevention devices with atmospheric vents or ports shall not be installed in pits, underground or in submerged locations. Backflow preventers shall not be located in any area containing fumes or aerosols that are toxic, poisonous, infectious, or corrosive.))~~

603.5.6 Protection from Lawn Sprinklers and Irrigation Systems. Potable water supplies to systems having no pumps or connections for pumping equipment, and no chemical injection or provisions for chemical injection, shall be protected from backflow by one of the following:

- (1) Atmospheric vacuum breaker (AVB).
- (2) Pressure vacuum breaker backflow prevention assembly (PVB).

- (3) Spill-resistant pressure vacuum breaker (SVB).
- (4) Reduced pressure principle backflow prevention assembly (RP).
- (5) A double check valve backflow prevention assembly (DC) may be

allowed when approved by the water purveyor and the authority having jurisdiction.

603.5.10 Steam or Hot Water Boilers. Potable water connections to steam or hot water boilers shall be protected by an air gap or a reduced pressure principle backflow preventer.

603.5.12 Beverage Dispensers. Potable water supply to carbonators shall be protected by a listed reduced pressure principle backflow preventer as approved by the authority having jurisdiction for the specific use. The backflow preventer shall comply with Section 603.4.3. The piping downstream of the backflow preventer shall not be of copper, copper alloy, or other material that is affected by carbon dioxide.

~~((603.5.14 Protection from Fire Systems. Except as provided under Sections 603.5.14.1 and 603.5.14.2, potable water supplies to fire protection systems that are normally under pressure, including but not limited to standpipes and automatic sprinkler systems, except in one or two family or townhouse residential flow-through or combination sprinkler systems piped in materials approved for potable water distribution systems, shall be protected from back pressure and back-siphonage by one of the following testable assemblies:~~

- ~~1. Double check valve backflow prevention assembly (DC).~~
- ~~2. Double check detector fire protection backflow prevention assembly.~~
- ~~3. Reduced pressure principle backflow prevention assembly (RP).~~
- ~~4. Reduced pressure detector fire protection backflow prevention assembly.~~

~~Potable water supplies to fire protection systems that are not normally under pressure shall be protected from backflow and shall meet the requirements of the appropriate standard(s) referenced in Table 1401.1.)~~

604.14 Plastic Pipe Termination. Plastic water service piping may terminate within a building, provided the connection to the potable water distribution system shall be made as near as is practical to the point of entry and shall be accessible. Barbed insert fittings with hose clamps are prohibited as a transition fitting within the building.

~~((606.5 Control Valve. A control valve shall be installed immediately ahead of each water-supplied appliance and immediately ahead of each slip joint or appliance supply.~~

~~Parallel water distribution systems shall provide a control valve either immediately ahead of each fixture being supplied or installed at the manifold, and shall be identified with the fixture being supplied. Where parallel water distribution system manifolds are located in attics, crawl spaces, or other locations not accessible, a separate shutoff valve shall be required immediately ahead of each individual fixture or appliance served.~~

608.3 Expansion Tanks, and Combination Temperature and Pressure-Relief Valves. A water system provided with a check valve, backflow preventer, or other normally closed device that prevents dissipation of building pressure back into the water main, independent of the type of water used, shall be provided with an approved, listed, and adequately

~~sized expansion tank or other approved device having a similar function to control thermal expansion. Such expansion tank or other approved device shall be installed on the building side of the check valve, backflow preventer, or other device and shall be sized and installed in accordance with the manufacturer's installation instructions.~~

EXCEPTION: ~~Instantaneous hot water systems installed in accordance with the manufacturer's installation instructions.)~~

608.5 Discharge Piping. The discharge piping serving a temperature relief valve, pressure relief valve or combination of both shall have no valves, obstructions or means of isolation and be provided with the following:

(1) ~~(Equal to)~~ Not less than the size of the valve outlet and shall discharge full size to the flood level of the area receiving the discharge and pointing down.

(2) Materials shall be rated at not less than the operating temperature of the system and approved for such use or shall comply with ASME A112.4.1. Materials shall be straight, rigid lengths only, without coils or flexes.

(3) Discharge pipe shall discharge independently by gravity through an air gap into the drainage system or outside of the building with the end of the pipe not exceeding 2 feet (610 mm) and not less than 6 inches (152 mm) above the ground pointing downwards.

(4) Discharge in such a manner that does not cause personal injury or structural damage.

(5) No part of such discharge pipe shall be trapped or subject to freezing.

(6) The terminal end of the pipe shall not be threaded.

(7) Discharge from a relief valve into a water heater pan shall be prohibited.

(8) The discharge termination point shall be readily observable.

EXCEPTION: Where no drainage was provided, replacement water heating equipment shall only be required to provide a drain pointing downward from the relief valve to extend between two (2) feet (610 mm) and six (6) inches (152 mm) from the floor. No additional floor drain need be provided.

~~(**609.9 Disinfection of Potable Water System.** New or repaired potable water systems shall be disinfected prior to use where required by the authority having jurisdiction. The method to be followed shall be that prescribed by the health authority or, in case no method is prescribed by it, the following:~~

~~(1) The pipe system shall be flushed with clean, potable water until potable water appears at the points of outlet.~~

~~(2) The system or parts thereof shall be filled with a water-chlorine solution containing not less than 50 parts per million of chlorine, and the system or part thereof shall be valved off and allowed to stand for twenty-four hours; or, the system or part thereof shall be filled with a water-chlorine solution containing not less than 200 parts per million of chlorine and allowed to stand for three hours.~~

~~(3) Following the allowed standing time, the system shall be flushed with clean, potable water until the chlorine residual in the water coming from the system does not exceed the chlorine residual in the flushing water.~~

~~(4) The procedure shall be repeated when a standard bacteriological test for drinking water, performed by a laboratory certified for drinking water in Washington state, shows unsatisfactory results indicating that contamination persists in the system.)~~

609.11 Insulation of Potable Water Piping. Domestic water piping within commercial buildings shall be insulated in accordance with Section C403.2.8 and Table C403.2.8 or Section C404.6 of the Washington State Energy Code, as applicable.

610.4 Sizing Water Supply and Distribution Systems. Systems within the range of Table 610.4 may be sized from that table or by the method set forth in Section 610.5.

Listed parallel water distribution systems shall be installed in accordance with their listing.

611.1 Application. Drinking water treatment units shall comply with NSF 42 or NSF 53. Water softeners shall comply with NSF 44. Ultraviolet water treatment systems shall comply with NSF 55. Reverse osmosis drinking water treatment systems shall comply with NSF 58. Drinking water distillation systems shall comply with NSF 62.

The owner of a building that serves potable water to twenty-five or more people at least sixty or more days per year and that installs drinking water treatment units including, but not limited to, the treatment units in Section 611.1, may be regulated (as a Group A public water system) by the Washington state department of health under chapter 246-290 WAC. See Washington state department of health publication 331-488 for guidance.

612.1 General. Where residential fire sprinkler systems are installed, they shall be installed in accordance with the International Building Code or International Residential Code.

Sections 612.2 through 612.7.2 are not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-02-072, § 51-56-0600, filed 12/26/19, effective 7/1/20; WSR 17-10-074, § 51-56-0600, filed 5/3/17, effective 6/3/17; WSR 16-02-044, § 51-56-0600, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, and 19.27.074. WSR 13-23-094, § 51-56-0600, filed 11/20/13, effective 4/1/14. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-0600, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031, 19.27.035, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 12-07-018, § 51-56-0600, filed 3/12/12, effective 4/12/12. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-101, § 51-56-0600, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-0600, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-0600, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-0600, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 17-10-074, filed 5/3/17, effective 6/3/17)

WAC 51-56-0700 Chapter 7—Sanitary drainage.

701.2 Drainage Piping. Materials for drainage piping shall be in accordance with one of the referenced standards in Table 701.1 except that:

1. No galvanized wrought-iron or galvanized steel pipe shall be used underground and shall be kept not less than 6 inches (152 mm) above ground.

2. ABS and PVC DWV piping installations shall be installed in accordance with applicable standards in Table 1701.1. Except for individual single family dwelling units, materials exposed within ducts or plenums shall have a maximum flame-spread index of 25 and a maximum smoke developed index of 50, when tested in accordance with ASTM E-84 and UL 723.

3. No vitrified clay pipe or fittings shall be used above ground or where pressurized by a pump or ejector. They shall be kept not less than 12 inches (305 mm) below ground.

4. Copper tube for drainage and vent piping shall have a weight of not less than that of copper drainage tube type DWV.

5. Stainless steel 304 pipe and fittings shall not be installed underground and shall be kept not less than 6 inches (152 mm) above ground.

6. Cast-iron soil pipe and fittings shall be listed and tested in accordance with standards referenced in Table 1701.1. Such pipe and fittings shall be marked with country of origin and identification of the original manufacturer in addition to markings required by referenced standards.

(Table 703.2

~~MAXIMUM UNIT LOADING AND MAXIMUM LENGTH OF DRAINAGE AND VENT PIPING~~

Notes:

- ~~1. Excluding trap arm.~~
- ~~2. Except sinks, urinals, and dishwashers — Exceeding 1 fixture unit.~~
- ~~3. Except six-unit traps or water closets.~~
- ~~4. Only four water closets or six-unit traps allowed on a vertical pipe or stack; and not to exceed three water closets or six-unit traps on a horizontal branch or drain.~~

EXCEPTION: In a single family dwelling addition or alteration where a 4 inch horizontal waste is not readily available four water closets not to exceed 1.6 gpf each may be allowed on a 3 inch horizontal waste when approved by the AHJ.

~~5. Based on one-fourth inch per foot (20.8 mm/m) slope. For one-eighths of an inch per foot (10.4 mm/m) slope, multiply horizontal fixture units by a factor of 0.8.~~

~~6. The diameter of an individual vent shall be not less than one and one-fourth inches (32 mm) nor less than one-half the diameter of the drain to which it is connected. Fixture unit load values for drainage and vent piping shall be computed from Table 702.1 and Table 702.2(b). Not to exceed one-third of the total permitted length of a vent shall be permitted to be installed in a horizontal position. Where vents are increased one pipe size for their entire length, the maximum length limitations specified in this table do not apply. This table is in accordance with the requirements of Section 901.2.)~~

704.3 Commercial Sinks. Except where specifically required to be connected indirectly to the drainage system, or when first approved by the authority having jurisdiction, all plumbing fixtures, drains, appurtenances, and appliances shall be directly connected to the drainage system of the building or premises.

707.4 Location. Each horizontal drainage pipe shall be provided with a cleanout at its upper terminal, and each run of piping, that is more than 100 feet (30,480 mm) in total developed length, shall be provided with a cleanout for each 100 feet (30,480 mm), or fraction thereof, in

length of such piping. An additional cleanout *shall* be provided in a drainage line for each aggregate horizontal change of direction exceeding 135 degrees (2.36 rad).

EXCEPTIONS:

1. Cleanouts *shall* be permitted to be omitted on a horizontal *drain* line less than 5 feet (1,524 mm) in length unless such line is serving sinks or urinals.
2. Cleanouts *shall* be permitted to be omitted on a horizontal drainage *pipe* installed on a *slope* of 72 degrees (1.26 rad) or less from the vertical angle (one-fifth bend).
3. Except for the *building drain*, its *horizontal branches*, and urinals, a cleanout *shall* not be required on a *pipe* or piping that is above the floor level of the lowest floor of the *building*.
4. An *approved* type of two-way cleanout fitting, installed inside the *building* wall near the connection between the *building drain* and the *building sewer* or installed outside of a *building* at the lower end of a *building drain* and extended to *grade*, *shall* be permitted to be substituted for an upper terminal cleanout.

707.9 Clearance. Each cleanout in piping 2 inches (50 mm) or less in size *shall* be so installed that there is a clearance of not less than 12 inches (457 mm) in front of the cleanout. Cleanouts in piping exceeding 2 inches (50 mm) *shall* have a clearance of not less than 18 inches (610 mm) in front of the cleanout. Cleanouts in under-floor piping *shall* be extended to or above the finished floor or *shall* be extended outside the *building* where there is less than 18 inches (457 mm) vertical overall, allowing for obstructions such as ducts, beams, and piping, and 30 inches of (762 mm) horizontal clearance from the means of access to such cleanout. No under-floor cleanout *shall* be located exceeding 20 feet (1,524 mm) from an access door, trap door, or crawl hole.

CHAPTER 7, PART II—BUILDING SEWERS

Part II Building Sewers. Delete all of Part II (Sections 713 through 723, and Tables 717.1 and 721.1).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 17-10-074, § 51-56-0700, filed 5/3/17, effective 6/3/17; WSR 16-02-044, § 51-56-0700, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-0700, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-0700, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-0700, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031, 19.27.074. WSR 02-01-114, § 51-56-0700, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

WAC 51-56-0900 Chapter 9—Vents.

((~~908.2.4 Water Closet. This section is not adopted.~~))

911.1 Circuit Vent Permitted. A maximum of eight fixtures connected to a horizontal branch drain shall be permitted to be circuit vented. Each fixture drain shall connect horizontally to the horizontal branch being circuit vented. The horizontal branch drain shall be classified as a vent from the most downstream fixture drain connection to the most upstream fixture drain connection to the horizontal branch. Given its grease-producing potential, restaurant kitchen equipment shall not be connected to a circuit vented system. Each trap arm shall connect horizontal to the horizontal branch being circuit vented in accordance with Table 1002.2.

EXCEPTION: Back-outlet and wall-hung water closets shall be permitted to be circuit vented provided that no floor-outlet fixtures are connected to the same horizontal branch.

913.0 Air Admittance Valves. This section is optional and will be effective if adopted by a local ordinance.

913.1 General. Vent systems utilizing air admittance valves shall comply with this section.

913.2 Where Permitted. Individual fixtures, a branch vent, a vertical wet vent, and a horizontal wet vent shall be permitted to terminate with a connection to an air admittance valve. Fixtures connected to an air admittance valve shall be located on the same floor level.

913.3 Installation. Air admittance valves shall conform to ASSE 1051 for single fixtures, and ASSE 1050 for multiple fixtures, and shall be installed as required in this section and the manufacturer's installations guidelines.

913.3.1 Location.

(1) Air admittance valves shall be accessible and located in an area that allows air to enter the valve.

(2) The air admittance valve shall be located a minimum of four (4) inches above the trap arm.

(3) The air admittance valve that serves as a vent termination for a branch vent, or vertical and horizontal wet vent, shall be located at a minimum of six (6) inches above the flood level rim of the highest fixture being vented.

(4) The air admittance valve shall be located within the maximum developed length permitted for the vent as shown in Table 703.2.

(5) The air admittance valve shall be installed not less than six (6) inches above insulation materials.

913.4 Size. The air admittance valve shall be rated in accordance with the standard for the vent size as determined in Table 703.2.

913.5 Vent Required. Not less than one plumbing vent sized as required by Section 904.1, shall extend to the exterior of the building as required in Section 906.1.

913.6 Relief Vent. When a horizontal branch drain utilizes an individual or branch type air admittance valve, a relief vent shall be installed when the horizontal branch drain is located more than four (4) branch intervals from the top of the building drain (waste stack), and the relief vent shall extend to the outdoors or connect to a vent stack. The relief vent shall be sized in accordance with Section 904.1, installed in accordance with Section 905.0, and shall be permitted to serve as the vent for other fixtures.

913.6.1 Prior Approval. Installations that require a relief vent shall be submitted for an installation design review.

913.7 Prohibited Installations.

913.7.1 Sumps. Air admittance valves shall not be utilized to vent sumps or tanks of any type.

913.7.2 Chemical Waste Systems. Air admittance valves shall not be installed in nonneutralized chemical waste systems without a design review and approval by the authority having jurisdiction.

913.7.3 FOG Disposal Systems. Air admittance valves shall not be installed on any fixtures that are connected to a FOG disposal system.

913.7.4 Plenums. Air admittance valves shall not be located in spaces utilized as supply or return air plenums.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-02-072, § 51-56-0900, filed 12/26/19, effective 7/1/20; WSR 16-02-044, § 51-56-0900, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-0900, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-0900, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-0900, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031, 19.27.074. WSR 02-01-114, § 51-56-0900, filed 12/18/01, effective 7/1/02.]

AMENDATORY SECTION (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

WAC 51-56-1100 Chapter 11—Storm drainage.

1101.4 Material Uses. Pipe, tube, and fittings conveying rainwater shall be of such materials and design as to perform their intended function to the satisfaction of the authority having jurisdiction. Conductors within a vent or shaft shall be of cast iron, galvanized steel, wrought iron, copper, copper alloy, lead, Scheduled 40 ASB DWV, Scheduled 40 PVC DWV, stainless steel 304 or 316L (stainless steel 304 pipe and fittings shall not be installed underground and shall be kept not less than six (6) inches (152 mm) aboveground), or other approved materials, and changes in direction shall conform to the requirements of Section 706.0. ABS and PVC DWV piping installations shall be installed in accordance with IS 5 and IS 9. Except for individual single-family dwelling units, materials exposed within ducts or plenums shall have a maximum flame-spread index of 25 and a maximum smoke-developed index of 50, when tested in accordance with ASTM E-84 and UL 723.

1101.12.2 Secondary Drainage. Secondary (emergency) roof drainage shall be provided by one of the methods specified in Section 1101.12.2.1 or Section 1101.12.2.2.

1101.12.2.1 Roof Scuppers or Open Side. Secondary roof drainage shall be provided by an open-sided roof or scuppers where the roof perimeter construction extends above the roof in such a manner that water will be entrapped. An open-sided roof or scuppers shall be sized to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1101.12.1. Scupper openings shall be not less than four (4) inches (102 mm) high and have a width equal to the circumference of the roof drain required for the area served, sized in accordance with Table 1103.1, based on double the rainfall rate for the local area.

EXCEPTION: Scupper openings shall be permitted to be sized for the normal rainfall rate where the structural design of the roof includes a ponding instability analysis in accordance with ASCE 7 for the additional ponding load resulting from twice the normal rainfall rate or a 15-minute duration/100-year return period storm. The analysis shall assume the primary drain system is blocked.

1101.12.2.2 Secondary Roof Drain. Secondary roof drains shall be provided. The secondary roof drains shall be located not less than two (2) inches (51 mm) above the roof surface. The maximum height of the

roof drains shall be a height to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1101.12.1. The secondary roof drains shall connect to a piping system in accordance with Section 1101.12.2.2.1 or Section 1101.12.2.2.2.

1101.12.2.2.1 Separate Piping System. The secondary roof drainage system shall be a separate system of piping, independent of the primary roof drainage system. The discharge shall be above grade, in a location observable by the building occupants or maintenance personnel. Secondary roof drain systems shall be sized in accordance with Section 1101.12.1 based on double the rainfall rate for the local area.

EXCEPTION: The secondary drainage system shall be permitted to be sized for the normal rainfall rate where the structural design of the roof includes a ponding instability analysis in accordance with ASCE 7 for the additional ponding load resulting from twice the normal rainfall rate or a 15-minute duration/100-year return period storm. The analysis shall assume the primary drain system is blocked.

1101.12.2.2.2 Combined System. The secondary roof drains shall connect to the vertical piping of the primary storm drainage conductor downstream of the last horizontal offset located below the roof. The primary storm drainage system shall connect to the building storm water that connects to an underground public storm sewer. The combined secondary and primary roof drain systems shall be sized in accordance with Section 1103.0 based on double the rainfall rate for the local area.

1101.13 Cleanouts. Cleanouts for building storm drains shall comply with the requirements of this section.

1101.13.1 Locations. Rain leaders and conductors connected to a building storm sewer shall have a cleanout installed at the base of the outside leader or outside conductor before it connects to the horizontal drain. Cleanouts shall be placed inside the building near the connection between the building drain and the building sewer or installed outside the building at the lower end of the building drain and extended to grade.

1101.13.2 Cleaning. Each cleanout shall be installed so that it opens to allow cleaning in the direction of flow of the soil or waste or at right angles thereto, and except in the case of wye branch and end-of-line cleanouts, shall be installed vertically above the flow line of the pipe.

1101.13.3 Access. Cleanouts installed under concrete or asphalt paving shall be made accessible by yard boxes, or extending flush with paving with approved materials and be adequately protected.

1101.13.4 Manholes. Approved manholes may be installed in lieu of cleanouts when first approved by the authority having jurisdiction. The maximum distance between manholes shall not exceed three hundred (300) feet (91.4 m).

The inlet and outlet connections shall be made by the use of a flexible compression joint no closer than twelve (12) inches (305 mm) to, and not farther than three (3) feet (914 mm) from the manhole. No flexible compression joints shall be embedded in the manhole base.

1103.0 Size of Leaders, Conductors, and Storm Drains.

1103.1 Vertical Conductors and Leaders. Vertical conductors and leaders shall be sized by the maximum projected roof area and Table 1103.1. Vertical conductors and leaders for secondary roof drains shall be sized based on double the rainfall rate for the local area.

EXCEPTION: Vertical conductors and leaders for secondary drainage systems shall be permitted to be sized for the normal rainfall rate where the structural design of the roof includes a ponding instability analysis in accordance with ASCE 7 for the additional ponding load resulting from twice the normal rainfall rate or a 15-minute duration/100-year return period storm. The analysis shall assume the primary drain system is blocked.

1103.2 Size of Horizontal Storm Drains and Sewers. The size of building storm drains, or building storm sewers or their horizontal branches shall be based on the maximum projected roof or paved area to be handled and Table 1103.2. Building storm drains, building storm sewers, or their horizontal branches receiving drainage from secondary roof drain systems shall be sized based on double the rainfall rate for the local area.

EXCEPTION: Building storm drains, building storm sewers, or their horizontal branches receiving drainage from secondary drainage systems shall be permitted to be sized for the normal rainfall rate where the structural design of the roof includes a ponding instability analysis in accordance with ASCE 7 for the additional ponding load resulting from twice the normal rainfall rate or a 15-minute duration/100-year return period storm. The analysis shall assume the primary drain system is blocked.

1103.3 Size of Roof Gutters. The size of semi-circular gutters shall be based on the maximum projected roof area and Table 1103.3.

1103.4 Side Walls Draining onto a Roof. Where vertical walls project above a roof to permit storm water to drain into the roof area below, the adjacent roof area shall be permitted to be computed from Table 1103.1 as follows:

(1) (No change to Items (1) through (6))

Secondary drainage systems for the adjacent roof area shall be sized based on double the rainfall rate for the local area.

EXCEPTION: Secondary drainage systems for the adjacent roof area shall be permitted to be sized for the normal rainfall rate where the structural design of the roof includes a ponding instability analysis in accordance with ASCE 7 for the additional ponding load resulting from twice the normal rainfall rate or a 15-minute duration/100-year return period storm. The analysis shall assume the primary drain system is blocked.

1105.0 Controlled-Flow Roof Drainage. This section is not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-02-044, § 51-56-1100, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-1100, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-1100, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-1100, filed 12/17/03, effective 7/1/04.]

WSR 22-17-154

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 23, 2022, 5:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-169.

Title of Rule and Other Identifying Information: WAC 182-505-0211
Washington apple health—Foster care.

Hearing Location(s): On September 27, 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_9Uo_ve5ETY2is3tDmG1Udw.

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: September 28, 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 September 27, 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 September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to update subsection (3) to include language regarding the out-of-state alumni population as mandated by the SUPPORT Act, section 1002. The SUPPORT Act, Public Law 115-271, makes changes to the new coverage group created under the Affordable Care Act (ACA) that extends medic-aid coverage to former foster youth (alumni). This change expands the coverage group so former foster youth who have aged out of foster care in any state at the age of 18 can have medicaid coverage in any other state through the age of 26. Other housekeeping changes include the change of agencies from the children's administration to what is now the department of children, youth, and families (DCYF). Group home is now referred to as a community facility and managed by DCYF's juvenile rehabilitation. Subsection (2)(d)(v) is being removed as the voluntary placement waiver program is no longer operating.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: Public Law 115-271, Sec. 1002; RCW 41.05.021, 41.05.160.

Statute Being Implemented: Public Law 115-271, Sec. 1002; RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Public Law 115-271, Sec. 1002.

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: Emily Good, P.O. Box 33023, Olympia, WA 98504-3023, 360-725-0920.

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.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule applies to client program eligibility and does not impact small businesses.

August 23, 2022
Wendy Barcus
Rules Coordinator

OTS-4012.1

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

WAC 182-505-0211 Washington apple health—Foster care. (1) A ~~((person))~~ client under the age of ~~((nineteen))~~ 18 is eligible for Washington apple health foster care coverage when they:

(a) Are in foster care, as determined by the department of children, youth, and families (DCYF), under the legal responsibility of the state, or a federally recognized tribe located within the state; and

(b) Meet Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525.

(2) A ~~((person))~~ client age ~~((twenty))~~ 20 or younger is eligible for coverage when the ~~((person))~~ client meets:

(a) Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525;

(b) Citizenship or immigration status requirements as described in WAC 182-503-0535;

(c) Social Security number requirements as described in WAC 182-503-0515; and

(d) One of the following requirements:

(i) Is in foster care, or is eligible for continued foster care services as determined by ~~((the children's administration))~~ DCYF, under the legal responsibility of the state, or a federally recognized tribe located within the state; or

(ii) Receives subsidized adoption services through ~~((the children's administration))~~ DCYF; or

(iii) Is enrolled in the unaccompanied refugee minor (URM) program as authorized by the office of refugee and immigrant assistance (ORIA); or

(iv) Is living in a ~~((group home))~~ community facility (as defined in WAC 110-700-0005) operated or contracted by ~~((the juvenile rehabilitation administration; or~~

~~(v) Is placed in a foster home or group home through the voluntary placement waiver program managed by the division of developmental disabilities))~~ DCYF's juvenile rehabilitation.

(3) A ~~((person))~~ client age ~~((nineteen))~~ 18 or older but under age ~~((twenty-six))~~ 26 is eligible for Washington apple health coverage when the ~~((person))~~ client:

(a) Was ~~((both))~~ in foster care under the legal responsibility of ~~((the))~~ any state or a federally recognized tribe located within ~~((the))~~ any state ~~((and enrolled in medicaid))~~:

(i) On the ~~((person's eighteenth))~~ client's 18th birthday; or

(ii) At such higher age ~~((at which))~~ as to when the state or tribe extends foster care ~~((assistance ended))~~ coverage; and

(b) Meets residency, Social Security number, and citizenship requirements as described in subsection (2) of this section.

(4) A ~~((person))~~ client described in subsections (1) through (3) of this section is not eligible for full-scope coverage if the ~~((person))~~ client is confined to a public institution as defined in WAC 182-500-0050, except:

(a) If the ~~((person))~~ client is under age ~~((twenty-one))~~ 21;

(b) Resides in an institution for mental disease (IMD); and

(c) Meets the institutional status requirements in WAC ~~((182-505-0240))~~ 182-513-1320, 182-514-0250, or 182-514-0260.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-017, § 182-505-0211, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-505-0211, filed 12/9/13, effective 1/9/14.]

WSR 22-17-156

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed August 24, 2022, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-099.

Title of Rule and Other Identifying Information: WAC 448-16-060
Determining agreement of duplicate breath samples.

Hearing Location(s): On September 27, 2022, at 10:00 a.m., Call-in 1-253-215-8782, Meeting ID 921 0040 6923, Passcode 969488. Hearing to be held via Zoom.

Date of Intended Adoption: September 30, 2022.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by September 23, 2022.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by September 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct an administrative oversight in WAC 448-16-060(2) regarding the method for determining agreement between duplicate breath samples obtained during an evidential breath test.

WAC 448-16-060, in its current form, provides a method of determining agreement between duplicate breath samples by rounding the mean of the four results to the fourth decimal place. However, the evidential instrument, known as the Draeger Alcotest 9510, truncates to the fourth decimal place. This rule change is necessary to align WAC language and the method employed by the Draeger Alcotest 9510.

Reasons Supporting Proposal: The amendment would align the rule with the method currently utilized by the Draeger Alcotest 9510. The amendment is intended to be remedial in nature.

Statutory Authority for Adoption: RCW 46.61.506.

Statute Being Implemented: RCW 46.61.506.

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

Name of Proponent: Washington state patrol (WSP), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lt. Jeffrey Leonard, Seattle, Washington, 206-720-3018; Enforcement: Washington state patrol, Olympia, Washington, 206-720-3018.

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 provides that a cost-benefit analysis (CBA) is required before adopting a rule described in subsection (5) of the statute. RCW 34.05.328 (5) (a) (i) makes the requirements applicable to significant legislative rules of certain identified agencies. WSP is not one of those identified agencies. The requirements also apply to any rule of an agency if the section is voluntarily made applicable to the rule by the agency or by a majority vote of the joint administrative rules review committee. Neither of these conditions have been met, therefore the requirement of preparing a CBA is not applicable to this rule making. See RCW 34.05.328 (5) (a) (ii).

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: A small business economic impact statement is not required because the proposed rule change in WAC 448-16-060 would modify the internal standards approved by the state toxicologist and would not affect small business and would not be subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

August 24, 2022
John R. Batiste
Chief

OTS-3911.1

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-060 Determining agreement of duplicate breath samples. Pursuant to RCW 46.61.506 the following method is approved for determining whether two breath samples agree to within plus or minus (~~ten~~) 10 percent of their mean.

(1) The breath test results will be reported, truncated to three decimal places.

(2) For the DataMaster instruments, the mean of the two breath test results will be calculated and rounded to four decimal places. For the Drager instrument, the mean of all four results will be calculated and (~~rounded~~) truncated to four decimal places.

(3) The lower acceptable limit will be determined by multiplying the above mean by 0.9, and truncating to three decimal places.

(4) The upper acceptable limit will be determined by multiplying the mean by 1.1 and truncating to three decimal places.

(5) If the individual results fall within and inclusive of the upper and lower acceptable limits, the two breath samples are valid.

[Statutory Authority: RCW 46.61.506. WSR 10-24-066, § 448-16-060, filed 11/30/10, effective 12/31/10; WSR 04-19-144, § 448-16-060, filed 9/22/04, effective 10/23/04.]

WSR 22-17-159
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 24, 2022, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-162.

Title of Rule and Other Identifying Information: New sections to chapter 392-122 WAC (WAC 392-122-430, 392-122-440, 392-122-445, 392-122-450, 392-122-455) to describe compliance rules and calculations related to physical, social, and emotional support in schools.

Hearing Location(s): On September 29, 2022, at 1:15 p.m., webinar via Zoom (call-in option also available). Participation link available on office of superintendent of public instruction (OSPI) website k12.wa.us/policy-funding/ospirulemaking-activity [k12.wa.us/policy-funding/ospi-rulemaking-activity]. Due to the ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). For information on participating, please visit OSPI's website at k12.wa.us/policy-funding/ospi-rulemaking-activity. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: October 4, 2022.

Submit Written Comments to: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email Thomas.kelly@k12.wa.us, by September 29, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by September 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add new sections to chapter 392-122 WAC to describe the compliance rules and calculations concerning provisions in SSHB [2SHB] 1664 (2022) and the 2022 supplemental budget (ESSB 5693) related to physical, social, and emotional support in schools. These changes are required to ensure that local education agencies receive an allocation for basic education that is in alignment with the state budget.

Reasons Supporting Proposal: The 2022 supplemental budget (ESSB 5693) implements SSHB [2SHB] 1664 which provides increased funding allocations for physical, social, and emotional support through the prototypical school funding model beginning with the 2022-23 school year. Maximum allocations to local education agencies are subject to compliance rules as drafted by OSPI. These changes are required to ensure that local education agencies receive an allocation for basic education that is in alignment with the state budget. Without these rules, local education agencies could receive state basic education allocations in excess of what RCW and state budget language allows.

Statutory Authority for Adoption: RCW 28A.150.260.

Statute Being Implemented: RCW 28A.150.260.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Proposed language is the same as that adopted under the emergency rule (see WSR 22-15-056).

Name of Agency Personnel Responsible for Drafting: Michelle Matas, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6019; Im-

plementation: T. J. Kelly, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6301; and Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

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

Scope of exemption for rule proposal:

Is fully exempt.

August 15, 2022

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-3884.1

PHYSICAL, SOCIAL, AND EMOTIONAL SUPPORT

NEW SECTION

WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys. (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

[]

NEW SECTION

WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment. (1) Grade level enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

[]

NEW SECTION

WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff. (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01 or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
- Duty root 42 - All activities - Counselor;
- Duty root 43 - All activities - Occupational therapist;
- Duty root 44 - All activities - Social worker;
- Duty root 45 - All activities - Speech, language pathology/ audio;
- Duty root 46 - All activities - Psychologists;
- Duty root 47 - All activities - Nurse;
- Duty root 48 - All activities - Physical therapist;
- Duty root 49 - All activities - Behavior therapist;
- Duty root 64 - All activities - Contractor ESA;
- Duty root 96 - Activity 24 - Family engagement coordinator;
- Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
- Duty roots 91 - 99 - Activity 26 - Health/related services.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.

(4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

[]

NEW SECTION

WAC 392-122-445 Physical, social, and emotional support (PSES) compliance—Contracted and supplemental staff. (1) Eligible staff working under contract and staff not required to be reported in the S-275 must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered.

(2) The full-time equivalency of supplemental staff reported must be reported as less than a 1.0 full-time equivalent (FTE).

(3) The full-time equivalency (FTE) of staff providing services under contract should be reported as determined in the contracting agreement or defined at the local school district level.

(4) Supplemental staff reporting should include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignments of staff.

[]

NEW SECTION

WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations. (1) Funded staffing units will be calculated using each grade level funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

[]

NEW SECTION

WAC 392-122-455 Physical, social, and emotional support (PSES)—Penalty for noncompliance. (1) Penalty units identified by the calculations will be split between certificated instructional staff and classified staff based on the percentage that each contributes to the combined total of certificated instructional staff and classified staff in the physical, social, and emotional support staff for that school year at the state level.

(2) Any adjustments to those calculations will be made in January, March, and June apportionment payments.

[]

WSR 22-17-160
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 24, 2022, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-098.

Title of Rule and Other Identifying Information: Chapter 392-210 WAC, Washington state honors award program.

Hearing Location(s): On October 4, 2022, at 2:00 p.m., webinar via Zoom (call-in option also available). Participation link available on office of superintendent of public instruction (OSPI) website k12.wa.us/policy-funding/ospirulemaking-activity. Due to ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). For information on participating, please visit OSPI's website at k12.wa.us/policy-funding/ospi-rulemaking-activity. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: October 10, 2022.

Submit Written Comments to: Tony May, OSPI, P.O. Box 47200, Olympia, WA 98504, email tony.may@k12.wa.us, by October 4, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by September 27, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing amendments to the process and procedures concerning the administration of the Washington state honors awards program, including:

Updating the process by which students are identified as being eligible for the award.

Expanding testing and assessment options to be considered for qualification of the award.

Updating processes concerning notifications and award certificates.

Repealing sections in which requirements identified in those sections are already stated in RCW or WAC.

Reasons Supporting Proposal: Updating process and procedures are intended to streamline the administration of the honors awards program for school districts and OSPI. In addition, expanding testing and assessment options is needed to allow for assessments in addition to the SAT and ACT to be considered as part of the qualification process. Some students, who would otherwise be eligible for the award, are not taking the SAT or ACT since some institutions of higher education are no longer requiring the tests as part of the admission consideration process. In addition, for some students, access and local availability of these tests have been challenging especially in recent years. Expanding options allows for a more equitable process, in particular for students with limited local access or financial resources.

Statutory Authority for Adoption: RCW 28A.600.070.

Statute Being Implemented: RCW 28A.600.050 through [28A.600].080.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Tony May, OSPI, 600 South Washington Street, Olympia, WA, 360-972-4047.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

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

Scope of exemption for rule proposal:

Is fully exempt.

August 15, 2022

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-2985.2

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-015 Criteria for the selection of Washington state honors award students. The Washington state honors award program shall recognize the top ten percent of the students in the state in each year's public and private high school graduating class who have demonstrated outstanding academic achievement. Outstanding academic achievement shall be determined by the following criteria:

(1) ~~((An academic achievement index based upon a combination of the combined))~~ The office of superintendent of public instruction shall identify the top ten percent of students in the state using the cumulative high school grade point average (calculated as provided in WAC 180-57-055) ((in)) including, but not limited to, the academic core subjects of English, mathematics, science, social studies, the arts, and languages other than English which may include American Indian languages ((and the combined verbal and quantitative composite scores on));

(2) For students with a grade point average (GPA) in the top ten percent in the state, high schools shall use at least one of the assessments available for students, which can include the Scholastic Aptitude Test (SAT) ((or)), the American College Test (ACT), the state-wide English language arts and mathematics assessments, or local assessments to evaluate students' academic achievement;

~~((2) Credits (as defined in WAC 180-51-050) earned in grades nine through twelve in the academic core subjects of English, mathematics, science, social studies, the arts, and foreign language;))~~

(3) Completion of at least seventy-five percent of the graduation requirements for the high school in which the candidate is enrolled; and

(4) Enrollment in at least three academic core subjects in grade twelve.

~~((In order to be considered for a Washington honors award, students must have taken the Scholastic Aptitude Test (SAT) or the American College Test (ACT) prior to January 31 of the year of graduation and be enrolled in a participating high school as indicated by the principal on forms provided by the superintendent of public instruction.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-015, filed 11/3/06, effective 12/4/06. Statutory Authority: RCW 28A.150.220. WSR 93-23-038 (Order 93-24), § 392-210-015, filed 11/10/93, effective 12/11/93. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-015, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-020 (~~(Determination of)~~ Identification of students for the Washington state honors award (academic achievement index)).
~~((The superintendent of public instruction shall calculate the academic achievement index based upon an equivalent numeric weighting of the combined high school grade point average in academic core subjects and the combined verbal and quantitative composite scores on the Scholastic Aptitude Test (SAT) or the American College Test (ACT). The superintendent of public instruction shall determine the top ten percent of each year's graduating class based upon a ranking of all participating students on the academic achievement index.))~~ All participating high schools shall use the eligibility criteria to identify the qualifying students for the award on or before the date provided by the superintendent of public instruction.

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-020, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-020, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-035 Notification of students eligible for honors award. Commencing with the ninth grade, and each year thereafter, each participating high school shall provide each enrolled student with a copy of the eligibility criteria for the Washington state honors award. ~~((The superintendent of public instruction shall provide schools with a suggested format that may be used to notify students.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-035, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-035, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-045 Washington honors award certificate. The superintendent of public instruction shall prepare annually for each honors award recipient a suitable (~~printed~~) certificate which shall describe the purposes of the award, indicate the year in which the award was given, and be signed by the superintendent of public instruction. The certificate for each honors award recipient shall be delivered to the participating high school principal on or before May 30 of each school year. (~~Each participating principal shall provide for issuing the certificate to each recipient at the regular high school commencement or other appropriate time prior to high school commencement.~~)

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-045, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-045, filed 12/9/85.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|--|
| WAC 392-210-025 | Credits earned in academic core subjects. |
| WAC 392-210-030 | Enrollment in academic core subjects during grade twelve required. |
| WAC 392-210-040 | Notification of Washington honors award recipients. |

WSR 22-17-165
PROPOSED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION
[Filed August 24, 2022, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-07-045.

Title of Rule and Other Identifying Information: Revisions to Title 391 WAC.

Hearing Location(s): October 7, 2022, at 10:00 a.m., by Zoom <https://perc-wa-gov.zoom.us/j/2679794803>. Public viewing also available at 112 Henry Street, Suite 300, Olympia, WA 90504 [98504].

Date of Intended Adoption: November 8, 2022.

Submit Written Comments to: Michael Sellars, 112 Henry Street, Suite 300, Olympia, WA 98504, email mike.sellars@perc.wa.gov, fax 360-570-7334, info@perc.wa.gov, by September 30, 2022.

Assistance for Persons with Disabilities: Contact Diane Tucker, phone 360-570-7335, fax 360-570-7334, email diane.tucker@perc.wa.gov, info@perc.wa.gov, by September 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision of rules that govern agency practice and procedures in all types of cases, including representation cases, unit clarification cases, unfair labor practice cases, impasse resolution cases, grievance arbitration cases, and grievance mediation cases as well as public records requests.

Reasons Supporting Proposal: Agency rules need revision to streamline agency procedures to reflect changes in practice to add greater efficiencies and to reflect changes of agency practice based upon recent agency case law. Rules are also needed to implement chapter 13, Laws of 2021 (SB 5055), which requires the agency to maintain a law enforcement disciplinary grievance arbitration roster.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, 49.39.060.

Statute Being Implemented: RCW 41.58.070.

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

Name of Proponent: Public employment relations commission, governmental.

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, Dianne Ramerman, Christopher Casillas, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7300; Implementation and Enforcement: Michael P. Sellars, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7306.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amendments to the agency's rules are procedural in nature relating to any agency hearings and any filing or related process requirement for making application to an agency or a policy statement pertaining to the consistent internal operations of an agency.

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; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to

agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

August 10, 2022
Dario de la Rosa
Rules Coordinator

OTS-3723.1

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-001 Application and scope ((of chapter 391-08 WAC)).

((Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); section 15, chapter 356, Laws of 2002 (RCW 41.76.060); section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess., to promulgate)) The purpose of chapter 391-08 WAC is to provide comprehensive and uniform rules ((for)) of practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency((, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270,

~~391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and~~

~~(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.~~

~~(2) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

~~(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)). To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge under RCW 34.05.250 and found in chapter 10-08 WAC, these rules prevail.~~

~~((In the event of a conflict)) If a conflict arises between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule ((shall)) governs.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-001, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. WSR 10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-003 Policy—Construction—Waiver. The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the ((agency shall be)) commission are liberally construed to effectuate the purposes and provisions of the

statutes administered by the agency (~~(, and)~~). Nothing in any rule (~~(shall be construed to)~~) prevents the (~~(commission and its authorized agents)~~) agency from using (~~(their)~~) its best efforts to adjust any labor dispute. The (~~(commission and its authorized agents)~~) agency may waive any requirement of the rules unless a party shows that it would be prejudiced by (~~(such)~~) a waiver.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). WSR 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-007 Definitions. As used in Title 391 WAC:

(1) "Agency" means the public employment relations commission, its officers, and its agents;

(2) "Commission" means the commissioners of the public employment relations commission appointed by the governor;

(3) "Executive director" means the officer of that title appointed by the commission (~~(pursuant to)~~) under RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment (~~(r)~~) or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) (~~("Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.~~

~~(6))~~ "Presiding officer" means an agency official (~~(-s)~~), examiner, or hearing officer (~~(or other person authorized to act on behalf of the agency)~~).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-007, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-007, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-007, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

NEW SECTION

WAC 391-08-008 Agency structure. (1) The agency maintains an impartial role in all proceedings pending before it.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate under RCW 41.58.010. Commission members serve on a part-time basis only. All

commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission under RCW 41.58.015(2) is the full-time agency head with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The agency's staff is appointed under RCW 41.58.015(3). Individual members of the agency's staff are assigned to conduct any or all of the types of dispute resolution services provided by the agency.

[]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-08-010 (~~(Appearance and practice before agency)~~) **Who may appear before the agency—Notice of appearance.** (1) ~~((No person))~~ Any of the following may appear in a representative capacity before the agency ~~((other than the following:~~

~~(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;~~

~~(b) Attorneys at law 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;~~

~~(c))~~ (a) A bona fide officer, employee, or other authorized representative of ~~((÷))~~ (i) any employer subject to the jurisdiction of the agency ~~((τ))~~ or (ii) any ~~((labor or))~~ employee organization ~~((τ))~~; i

~~((iii))~~ (b) An individual or their authorized representative.

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, email address, mailing address, and telephone number ~~((, fax number, and email address))~~.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-08-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-010, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-020 Appearance and practice before agency—Standards of conduct. ~~Misconduct at any hearing conducted by the ((commission or a member of its staff shall be))~~ agency is grounds for ((summary)) suspension or exclusion from ((the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission)) appearing before the agency after due notice and hearing.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-030 Appearance and practice before agency—~~((Appearance by))~~ Former employee of agency or former member of attorney general's staff as representative. ~~((No))~~ A former member of the commission, former employee of the agency, or former member of the attorney general's staff assigned to represent the agency ~~((shall))~~ may not, at any time after severing ~~((his or her))~~ employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding in which ((was pending before the agency)) that person participated personally or substantially during the time of ((his or her)) employment with the agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-040 Appearance and practice before agency—Former employee or former member of attorney general's staff as witness. Except upon the express written consent of the ~~((commission, no))~~ agency, a former member of the commission, former employee of the agency, or former member of the attorney general's staff assigned to represent the agency ~~((shall))~~ may not, at any time after severing ~~((his or her))~~ employment with the agency or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding in which ((was pending before the agency)) that person par-

anticipated personally or substantially during the time of ((his or her)) employment with the agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-040, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-040, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-100 Computation of time. In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not ~~((to be))~~ included. The last day of the period so computed is ~~((to be))~~ included, unless it is a Saturday, Sunday, ~~((a))~~ legal holiday, in which event the period runs until the end of the next day ~~((which))~~ that is ~~((neither))~~ not a Saturday, Sunday ~~((nor a)), or legal~~ holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays ~~((shall be))~~ are excluded ~~((in))~~ from the computation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-100, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-100, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-100, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-100, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 16-05-033, filed 2/9/16, effective 3/11/16)

WAC 391-08-120 Filing and service of ~~((papers))~~ documents. (1) ~~((Documents filed with the agency shall be filed at the Olympia office.))~~ The agency will post on its website at www.perc.wa.gov information ~~((containing the street address for filing by personal delivery, the mailing addresses for filing by mail, the telephone number for filing by fax transmission, and the email address or other method to be used for electronic filing))~~ for filing using the agency's e-filing system, the email address for filing by email, the mailing address for filing by mail, and the street address for filing by personal delivery.

(2) Documents may be filed with the agency by one of the following methods:

(a) ~~((In person.))~~ E-filing on the agency's website at www.perc.wa.gov;

(b) ~~((By))~~ Email to filing@perc.wa.gov;

(c) First class, registered, or certified mail ~~((-~~

~~-e) By))~~ to the agency's Olympia mailing address;

~~(d) Commercial parcel delivery ((company.
(d) Electronically by email, fax transmission, or)) to the agency's Olympia office;~~

(e) Hand delivery to the agency's Olympia office; or

(f) Other methods posted ((by)) on the agency website at www.perc.wa.gov.

(3) Documents filed with the agency ((shall)) must be served ((upon)) on all parties on the same day the documents are filed. Service ((shall)) must be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.

(4) Unless otherwise ordered by the agency in a particular proceeding, filing and service is complete upon one or a combination of the following methods:

(a) ~~((Hand delivery.))~~ E-filing. Filing is complete when a legible copy of the document is successfully uploaded to the e-filing system. Service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of service.

(b) Email. Filing or service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of filing or service.

(c) Depositing the ((documents, properly)) document(s) correctly addressed and postage paid, in the U.S. mail.

~~((e))~~ (d) Acceptance of the ((documents)) document(s) for delivery by a commercial parcel delivery company.

~~((d) Receipt of entire fax transmission by the recipient and receipt by the sending party of confirmation of receipt of the fax transmission. If receipt of a fax commences after office hours, the paper will be deemed filed on the next business day the office is open.~~

~~(e) Receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email or electronic filing constitutes the time of service. If an electronic filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open.~~

~~(5))~~ (e) Hand delivery.

(5) A document uploaded to the agency's e-filing system or an email received by the agency after 5:00 p.m. is considered filed on the following business day.

(6) On the same day that filing and service of documents is completed under subsection (3) of this section, the person who completed service ((shall)) must take one of the following actions:

(a) Obtain ~~((an acknowledgment of service from the person who accepted personal service))~~ the confirmation of filing and service upon the recipient(s) generated by the agency's e-filing system under subsection (4) (a) of this section((; or)).

(b) Make a certificate stating that the person signing the certificate completed service of the ((papers)) document(s) by:

(i) ~~((Personally delivering a copy under subsection (4) (a))~~ Electronically transmitting a copy under subsection (4) (b) of this section; ((or))

(ii) Mailing a copy under subsection (4) ~~((b))~~ (c) of this section; ~~((or))~~

(iii) Depositing a copy (~~(under subsection (4)(c) of this section)~~) with a commercial parcel delivery company named in the certificate under subsection (4)(d) of this section; or

(iv) (~~(Electronically transmitting the documents under subsection (4)(d) or (e))~~) Personally delivering a copy under subsection (4)(e) of this section.

~~((6))~~ (c) Obtain an acknowledgment of service from the person who accepted personal service under subsection (4)(e) of this section.

(7) Where the sufficiency of service is contested, (~~(an acknowledgment of service obtained under subsection (5)(a) of this section or)~~) a confirmation of filing obtained under subsection (6)(a) of this section, a certificate of service made under subsection (~~((5))~~) (6)(b) of this section (~~(shall)~~), or an acknowledgment of service obtained under subsection (6)(c) of this section constitutes proof of service.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-05-033, § 391-08-120, filed 2/9/16, effective 3/11/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). WSR 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-120, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (18). WSR 96-07-105, § 391-08-120, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-120, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-053 (Order 88-01), § 391-08-120, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-120, filed 1/27/77.]

NEW SECTION

WAC 391-08-155 Adjudicative proceedings—Dispositive prehearing motions. Unless controlled by WAC 391-08-180, 391-25-170, 391-25-190, 391-45-070, 391-45-210, or 391-45-250, all prehearing motions must be made in writing and filed and served on all parties of record in accordance with WAC 391-08-120.

(1) When a hearing date(s) has not been established, dispositive prehearing motions may be filed at any time after the answer has been filed. The presiding officer shall establish a schedule for any non-moving party to respond to the motion and for the moving party to file a brief in reply to the response(s).

(2) If a hearing date(s) has been established, all dispositive prehearing motions must be filed with the presiding officer at least 65 days before the first hearing date, unless the presiding officer deems the time frame waivable for good cause shown.

(a) When a dispositive prehearing motion is filed, any nonmoving party may file and serve a response to the motion within 21 days from the date on which the motion was filed.

(b) When a response to the dispositive prehearing motion is filed, the moving party may file and serve a reply to the response within seven days from the date on which the response was filed.

(c) The presiding officer must rule on or respond to the motion at least 21 days before the first hearing date.

(3) All motions must state the relief sought, the specific basis for the request, and the supporting legal authorities. Motions may be accompanied by other supporting materials, such as affidavits.

[]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-180 Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered (~~by the presiding officer on his or her~~) on the presiding officer's own motion or may be granted on the timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance (~~shall~~) must state whether or not all other parties agree to the continuance.

If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference or request written submissions to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-180, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-180, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-180, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-180, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-300 ((Subpoenas)) Discovery. (~~The power of subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.~~

Pursuant to) Under the authority delegated to the agency by RCW 34.05.446(2), (~~other forms of~~) prehearing discovery (~~shall not be~~) is not available in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.446. WSR 98-14-112, § 391-08-300, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090,

41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-300, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-300, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-300, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-310 Subpoenas—Form—Issuance to parties. The power of subpoena is limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.

(1) Every subpoena (~~shall~~) must:

(a) State the name of the agency as (~~the~~) state of Washington, public employment relations commission;

(b) State the title of the proceeding and case number; and

(c) Identify the party causing issuance of the subpoena.

(2) Every subpoena shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under (~~his or her~~) that person's control at the time and place set for the hearing (~~, except no subpoena shall~~). No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, (~~any~~) a member of the commission or (~~any member of the~~) agency staff in any proceeding before the agency.

(3) Upon a showing of general relevance and reasonable scope of the testimony or evidence sought, subpoenas may be issued by the commission or (~~its~~) a presiding officer:

(a) On the request of counsel or other representative (~~authorized to practice before the agency~~); or

(b) On the request of a party not represented by counsel or other representative (~~authorized to practice before the agency, but may then be conditioned upon a showing of general relevance and reasonable scope of the testimony or evidence sought~~).

(4) Subpoenas may be issued by attorneys under the authority conferred upon them by RCW 34.05.446(1).

(5) A subpoena may be served by any suitable person over (~~eighteen~~) 18 years of age (~~or~~) by exhibiting and reading it to the witness, (~~or~~) by giving (~~him or her~~) the witness a copy of the subpoena, or by leaving a copy of the subpoena at (~~the place of his or her~~) the witness's abode or usual dwelling place. When service is made by any person other than an officer authorized to serve process, proof of service (~~shall~~) must be made by affidavit or declaration under penalty of perjury.

(6) The party (~~which~~) that issues or requests issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(a) Witness fees, mileage, and allowances for meals and lodging (~~shall~~) must be at the rates and terms allowed by the superior court for (~~Thurston County~~) the county the witness is in when the hearing occurs.

(b) Witnesses (~~(shall be)~~) are entitled to payment in advance for their fees for one day's attendance, together with mileage for traveling to and returning from the place where they are required to attend, if their demand for payment is made to the officer or person serving the subpoena at the time of service.

(7) The presiding officer, upon motion made at or before the time specified in the subpoena (~~(for compliance therewith)~~), may:

(a) Quash or modify the subpoena if it is unreasonable or oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, (~~(papers,)~~) documents, or (~~(tangible)~~) things.

(8) Subpoenas (~~(shall)~~) may be enforced as provided in RCW 34.05.588(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.40.010, 5.56.010 and 34.05.446. WSR 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-08-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-310, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-310, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-315 Interpreters. (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, and 391-45 (~~(and 391-95)~~) WAC), the provisions of WAC 10-08-150 (~~(as now or hereafter amended shall)~~) apply.

(2) For all cases that are not adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-55 and 391-65 WAC), the provisions of WAC 10-08-150 (~~(as now or hereafter amended shall)~~) apply, except that all interpreter fees and expenses (~~(shall)~~) must be paid by the party (~~(which)~~) that requests the participation of an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.42.120 and 2.43.030. WSR 98-14-112, § 391-08-315, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100, 41.59.150 and chapter 2.42 RCW. WSR 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-520 Declaratory orders. Any person may petition the commission for a declaratory order ~~((τ))~~ under RCW 34.05.240 ~~((τ))~~ with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the ~~((commission))~~ agency. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order ~~((shall))~~ must generally adhere to the following form:

(a) At the top of the page ~~((shall))~~ must appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition ~~((shall))~~ must set out, in numbered paragraphs:

(i) The name, email address, and mailing address of the petitioner and ~~((the name and address, if any,))~~ of the petitioner's representative ~~((appearing on behalf of the petitioner.)), if any;~~

(ii) The name(s), email address(es), and mailing address(es) of any other party ~~((which))~~ that the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s), email address(es), and mailing address(es) of ~~((their))~~ those parties' representatives, if known ~~((τ));~~

(iii) The rule(s), order(s), or statute(s) from which the controversy arises ~~((τ));~~

(iv) The facts ~~((which))~~ that the petitioner wishes the commission to consider ~~((in issuing a declaratory order.));~~

(v) The issues ~~((which))~~ that the petitioner wishes the commission to address ~~((in its order.));~~

(vi) The relief requested by the petitioner ~~((τ));~~ and

(vii) The reasons on which the petitioner relies to show that ~~((τ))~~ uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition ~~((shall))~~ must be filed ~~((at the commission's Olympia office))~~ and served as required by WAC 391-08-120 ~~((1)), and copies shall be served on other parties named in the petition as required by WAC 391-08-120 (3) and (4)).~~

(2) Within ~~((fifteen))~~ 15 days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law ~~((τ))~~ and may give notice to any other person ~~((he or she))~~ the executive director or designee deems desirable. The notice ~~((shall))~~ must establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties ~~((shall))~~ must be forwarded to the commission for consideration. The commission ~~((shall))~~ may not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within ~~((thirty))~~ 30 days after receipt of the petition, do one of the following:

(a) Enter an order declaring the applicability of the ~~((statute))~~ rule, ~~((or))~~ order, or statute in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within ~~((ninety))~~ 90 days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission ~~((7))~~ or submission of written argument ~~((upon the matter))~~ if the material facts are not in dispute. The commission shall give seven days' or more advance written notice to the petitioner and other persons who have been given notice of the petition ~~((pursuant to))~~ under subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within ~~((ninety))~~ 90 days after receipt of the petition ~~((by which))~~ when it will enter a declaratory order; ~~((or))~~

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, ~~((including))~~ which may include setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for ~~((such))~~ that action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order ~~((shall))~~ must be in writing ~~((, and shall))~~ and be served ~~((upon))~~ on all parties identified in subsection (2) of this section. Each declaratory order ~~((shall))~~ must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order ~~((has the same status as any other order entered in an adjudicative proceeding conducted by the commission.~~

~~((10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission))~~ is a final agency order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-520, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. WSR 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-610 Agency decisions—Service. Every final order issued by the agency (~~shall~~) must be served on each party or upon the agency designated by the party or by law to receive service of (~~such papers~~) documents; and a copy (~~shall~~) must be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-610, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-610, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-640 (~~Adjudicative proceedings—Appeals.~~) Amicus briefs—Commission review. (~~Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.~~

(1) ~~The parties shall have the right to appeal to the commission, as follows:~~

(a) ~~Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.~~

(b) ~~Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.~~

(c) ~~Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.~~

(d) ~~Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.~~

(e) ~~Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.~~

(2) ~~For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.~~

(3) ~~(1)~~ (1) The commission will only consider amicus (~~friend of the forum~~) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

- (i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;
- (ii) Limit any amicus brief to particular issues on appeal;
- (iii) Limit any legal analysis to arguments that differ from those advanced by the parties;
- (iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;
- (v) Limit any amicus brief to ~~((twenty-five))~~ 25 pages in total length (double-spaced, 12-point type); and
- (vi) File the amicus brief with the commission within ~~((fourteen))~~ 14 days following the filing and service of the parties' briefs ~~((of the parties,))~~ and serve copies of ~~((any such))~~ the amicus brief on each of the original parties ~~((in))~~ to the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for ~~((such))~~ an extension.

(c) The original parties to the case may, within ~~((fourteen))~~ 14 days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not ~~((thereby acquire))~~ have any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not ~~((thereby))~~ become a party to the case for purposes of any further proceedings or appeal.

~~((4))~~ (2) The commission may, on its own motion, review any order which is subject to appeal ~~((under subsection (1) of this section,))~~ by giving written notice to all parties within ~~((thirty))~~ 30 days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-08-640, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-640, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. WSR 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 16-19-058, filed 9/19/16, effective 10/20/16)

WAC 391-08-650 Case docketing and numbering. The agency maintains a ~~((computerized))~~ case docketing and numbering system ~~((which is used to))~~ that tracks and manages all requests for ~~((the))~~ dispute resolution services ~~((provided by the agency))~~.

(1) Each case ~~((processed by the agency is identified by))~~ is assigned an alphanumeric identifier that includes a unique sequential number ~~((consisting of three components.~~

~~((a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.~~

~~(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:~~

~~"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.~~

~~"C" indicates a unit clarification proceeding under chapter 391-35 WAC.~~

~~"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"E" indicates a representation proceeding under chapter 391-25 WAC.~~

~~"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.~~

~~"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.~~

~~"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.~~

~~"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.~~

~~"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.~~

~~"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.~~

~~"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.~~

~~(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed), an alphabetic letter signifying the type of dispute being processed, and a number indicating the calendar year in which the case was filed.~~

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization (~~or labor organization~~) are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

[Statutory Authority: RCW 28B.52.080, 41.56.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-19-058, § 391-08-650, filed 9/19/16, effective 10/20/16. Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-650, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. WSR 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions. (1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of ~~((two or))~~ three or four components, as follows:

(a) The first component ~~((, consisting of))~~ is a number ~~((,))~~ and indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency ~~((commenced))~~ began operations on January 1, 1976.

(b) The second component (where appropriate) ~~((consisting of an alphabetic code in ascending))~~ is a letter in consecutive alphabetical order ~~((,))~~ and indicates the second and subsequent decisions issued in the case ~~((to which the numerical component was originally assigned)).~~

(c) The third component ~~((, consisting of a four-letter alphabetic code,))~~ is a group of four alphabetical letters that indicates the statute under which the decision was issued:

"CCOL" ~~((indicates cases decided under))~~ - Chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" ~~((indicates cases decided under))~~ - Chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" ~~((indicates cases decided under))~~ - Chapter 41.76 RCW ((faculty at public four-year institutions of higher education)) (Public Four-Year Institutions of Higher Education—Faculty Labor Relations).

"MRNE" ~~((indicates cases decided under))~~ - Chapter 47.64 RCW ((relating to the Washington state ferries system)) (Marine Employees—Public Employment Relations).

"PECB" ~~((indicates cases decided under))~~ - Chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" ~~((indicates cases decided exclusively under))~~ - Chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" ~~((indicates cases decided under))~~ - Chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" ~~((indicates cases decided under RCW 41.06.340 and/or))~~ - Chapter 41.80 RCW (Personnel System Reform Act).

(d) The fourth component is the year in which the decision was issued.

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency ~~((shall))~~ must conform to the formats specified in this section:

GENERAL RULE: Citations ~~((shall))~~ must list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in ~~((parenthesis))~~ parentheses).

Examples: *City of Roe*, Decision 12345 (PECB, ~~((1992))~~ 2022)
City of Roe, Decision 12345-A (PECB, ~~((1993))~~ 2022)
City of Roe, Decision 12345-B (PECB, ~~((1994))~~ 2022)

EXCEPTION: For decisions in which an employee organization ~~((or labor organization))~~ was named as the respondent in an unfair labor practice case, the citation ~~((shall))~~ must list the name of the union (in ~~((parenthesis))~~ parentheses) following the name of the employer.

Example: *City of Roe (Doe Union)*, Decision 23456 (PECB, ~~((1995))~~ 2022)

(3) ~~((The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.~~

~~(4))~~ To satisfy the requirements of RCW ~~((42.17.260(5)))~~ 42.56.070(5), the agency publishes its decisions, together with a search engine, on its website at ~~((:"))~~ www.perc.wa.gov ~~(("))~~.

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-670, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. WSR 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; WSR 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. WSR 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; WSR 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-08-190	Prefiling of collective bargaining agreements.
WAC 391-08-630	Agency structure—Substitution for executive director.
WAC 391-08-800	Agency records—Public records officer—Contact information.
WAC 391-08-810	Agency records—Confidentiality.
WAC 391-08-820	Agency offices.
WAC 391-08-830	Agency records—Availability—Organization—Requests.
WAC 391-08-840	Processing of public records requests.
WAC 391-08-850	Processing of public records—Electronic records.
WAC 391-08-860	Exemptions to public records.
WAC 391-08-870	Costs for providing public records.
WAC 391-08-880	Review of denial of public records.

OTS-3724.1

**Chapter 391-15 WAC
PUBLIC RECORDS REQUESTS—PUBLIC EMPLOYMENT RELATIONS COMMISSION**

NEW SECTION

WAC 391-15-001 Scope—Contents—Other rules. This chapter governs public records requests submitted to the agency and establishes its procedures to provide full access to its public records under the Public Records Act, chapter 42.56 RCW.

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NEW SECTION

WAC 391-15-010 Agency records—Public records officer—Contact information. (1) Any person wishing to request access to public records of the agency or seeking assistance in making that request should contact the agency's public records officer:

Public Records Officer
Public Employment Relations Commission
P.O. Box 40919
Olympia, Washington 98504-0919
360-570-7300
info@perc.wa.gov

Information is also available on the agency's website at www.perc.wa.gov.

(2) The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

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NEW SECTION

WAC 391-15-020 Agency records—Confidentiality. The agency shall preserve the confidentiality of certain records, as follows:

(1) To protect the privacy of individual employees, the agency shall not disclose evidence furnished as a showing of interest in support of a representation petition or motion for intervention.

(2) To respect the confidential nature of mediation, the agency shall not disclose notes and memoranda made by any member of the commission or agency staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

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NEW SECTION

WAC 391-15-030 Agency offices. (1) The agency maintains its principal office in Olympia, Washington.

(a) The street address of the Olympia office is:

112 Henry Street N.E., Suite 300
Olympia, Washington 98506-4470.

(b) The mailing address of the Olympia office is:

P.O. Box 40919
Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

9757 N.E. Juanita Drive, Suite 201
Kirkland, Washington 98034.

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NEW SECTION

WAC 391-15-040 Agency records—Availability—Organization—Requests. (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's Olympia office.

(2) **Organization of records.** The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor may not take agency records from its offices without the permission of the public records officer or designee. A variety of records are available on the agency website at www.perc.wa.gov. Requestors are encouraged to view the documents available on the website before submitting a records request.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or copy the agency's public records should make the request by email to info@perc.wa.gov, by letter, or by submitting the request in person at the agency's Olympia office addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Email address, mailing address, and telephone number of the requestor;

(iii) Identification of the public records adequate for the public records officer or designee to locate the records; and

(iv) The date and time of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor should so indicate and make arrangements to pay for copies of the records or make a deposit.

(c) The public records officer or designee may accept oral requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts an oral request, the records officer will confirm receipt of the information and the substance of the request in writing.

(d) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

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NEW SECTION

WAC 391-15-050 Processing of public records requests. (1) **Providing "fullest assistance."** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(a) Upon receipt of a request, the agency will assign it a tracking number and enter it into a log.

(b) The public records officer or designee will evaluate the request according to the nature of the request, the volume of requested records, and the availability of the requested records.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying by:

(i) If copies are available on the agency's website, providing a link to the website where the requested records are located;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, sending the copies to the requestor;

(b) Provide a reasonable estimate of when records will be available (the public records officer or designee may revise the estimate of when records will be available);

(c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor.

(i) Clarification may be requested and provided by telephone and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the agency need not respond to it. The agency will respond to those portions of a request that are clear.

(d) Deny the request.

(3) **Protecting rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, before providing the records, give notice to any persons whose rights may be affected by the disclosure. That notice should be given so as to make it possible for those other persons to contact the requestor and ask the requestor to revise the request or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure but the remainder is not exempt, the public records officer will redact the ex-

empt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record were redacted.

(5) **Inspection of records.**

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. A member of the public may not remove a document from the viewing area without permission or disassemble or alter any document. The requestor may indicate which documents the requestor would like the agency to copy.

(b) The requestor must claim or review the assembled records within 30 days of the agency's notification that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and ask the requestor to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if the public records officer or designee reasonably determine that it would be practical to provide the records in that manner. If, within 30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(10) **Later-discovered documents.** If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

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NEW SECTION

WAC 391-15-060 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of those records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) **Customized electronic access services.** With the consent of the requestor, the agency may provide customized access services and assess charges under RCW 42.56.120 (2)(f). A customized service charge applies only if the agency estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The agency may charge a fee consistent with RCW 42.56.120 (2)(f) for such customized access.

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NEW SECTION

WAC 391-15-070 Exemptions to public records. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure.

(2) The agency is prohibited by statute from disclosing lists of individuals for commercial purposes.

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NEW SECTION

WAC 391-15-080 Costs of providing copies of public records. (1) **Inspection.** There is no fee for inspecting public records, including records on the agency website at www.perc.wa.gov.

(2) **Costs.** A requestor may obtain standard copies for 15 cents per page.

(3) **Processing payments.** Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

(4) **Electronic records.** There is no charge for emailing electronic records to a requestor, unless another cost applies.

(5) **Costs of mailing.** The agency may also charge actual costs of mailing, including the cost of the shipping container.

(6) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

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NEW SECTION

WAC 391-15-090 Review of denial of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days, or a mutually agreed time, following the agency's receipt of the petition.

(3) **Review by the attorney general's office.** Under RCW 42.56.530, if the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of the request regardless of any internal administrative appeal.

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OTS-3725.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-001 ~~Scope—Contents—Other rules.~~ This chapter governs representation proceedings (~~before the public employment relations commission on petitions for investigation of questions concerning representation of employees~~) under all chapters of the Revised Code of Washington (RCW) administered by the (~~commission~~). The provisions of this chapter should be read in conjunction with:

~~(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:~~

~~(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070 and 391-25-090;~~

~~(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

~~(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, and 391-25-670; and~~

~~(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, and 391-25-250.~~

~~(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

~~(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-001, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-072, § 391-25-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-010 Representation petition ((for investigation of a question concerning representation of employees))—Who may file. A representation petition ((for investigation of a question concerning representation of employees)) may be filed by any employee, group of employees, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-010, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-030 Petition—Time for filing. (1) ~~((A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.~~

~~(a)) A petition may be filed at any time during which no "contract bar" or "certification bar" exists.~~

(2) (a) If a valid collective bargaining agreement is in effect, it operates as a "contract bar" to a petition, and a representation petition may only be filed during the statutory window period.

(i) For state civil service employees who collectively bargain under chapter 41.80 RCW and marine employees who collectively bargain under chapter 47.64 RCW, the statutory window period is not more than 120 days nor less than 90 days before the stated expiration date of the collective bargaining agreement.

(ii) For all other employees, the statutory window period is not more than 90 days nor less than 60 days before the stated expiration date of the collective bargaining agreement.

(b) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, ~~((and))~~ signed by the parties' representatives, and in effect; and

(iii) The agreement must contain a fixed expiration date not less than ~~((ninety))~~ 90 days after it was signed ~~((; and~~

~~(iv) The agreement will only operate as a bar for the first three years after its effective date)).~~

~~((b))~~ (c) An agreement to extend or replace a collective bargaining agreement ~~((shall))~~ does not bar a petition filed in the ~~((the))~~ window ~~((the))~~ period of the previous agreement.

~~((c))~~ (d) Following the close of the window period described in this subsection, a "protected" period is in effect ~~((during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative))~~ until the expiration of the existing collective bargaining agreement.

(i) If the employer and incumbent exclusive bargaining representative negotiate a valid collective bargaining agreement during ~~((that))~~ the protected period, a contract bar will be in effect and bar a petition under this chapter.

(ii) If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative ~~((shall be))~~ are given a ~~((sixty-day))~~ 60-day protected period commencing on the date the withdrawal or dismissal is final.

~~((d))~~ (e) A certification of issues for interest arbitration issued under WAC 391-55-200 serves as a valid agreement under subsection ~~((1-a))~~ (2) (b) of this ~~((rule))~~ section.

~~((2))~~ (f) For certificated employees who collectively bargain under chapter 41.59 RCW and four-year institution of higher education faculty who collectively bargain under chapter 41.76 RCW, the agree-

ment only operates as a bar for the first three years after its effective date.

~~(3) A "certification bar" exists where a certification has been issued by the agency(, so that). A petition involving the same bargaining unit or any subdivision of that bargaining unit will ((only)) be timely only if it is filed(÷~~

~~(a)) more than ((twelve)) 12 months following the date of the certification of an exclusive bargaining representative(÷or~~

~~(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.~~

~~(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time).~~

~~(4) Neither a certification bar nor a contract bar ((in an underlying existing bargaining unit will)) precludes petitions filed under WAC ((391-25-440)) 391-25-080 from being processed at any time subject to the limitations stated in that rule.~~

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-030, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-030, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080. WSR 96-07-105, § 391-25-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-050 Petition ((in writing Number of copies))—Filing((—)) and service. ((Each)) A representation petition ((for investigation of a question concerning representation shall be)) may be filed through the agency's online e-filing system, by email, or in writing(, and shall be filed at) to the ((commission's)) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The party filing the petition shall serve a copy of the petition (excluding any showing of interest) on the employer and ((on)) each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-050, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-050, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-050, filed 7/1/98, effective 8/1/98;

WSR 96-07-105, § 391-25-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-070 Contents of petition filing forms. Each (~~petition for investigation of a question concerning representation shall contain, in separate numbered paragraphs~~) completed representation petition filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(1) Information identifying the parties and their representatives (if known), including:

(a) The name, email address, mailing address, and telephone number of the employer (~~, and the name, address, telephone number, fax number, and email address of its principal~~) and of the employer's representative.

~~((2))~~ (b) The name, email address, mailing address, and telephone number (~~, fax number, and email address~~) of the petitioner (~~, and the name, address, telephone number, fax number, and email address of its principal~~) and of the petitioner's representative.

~~((3))~~ (c) The name, email address, mailing address, and telephone number of any organization (~~which~~) that currently represents the employees involved and (~~the name, address, telephone number, fax number, and email address~~) of its principal representative.

~~((4) An indication that:~~

~~(a) There has never been a collective bargaining agreement))~~ (2) Information concerning the parties' relationships, including:

(a) The employer department or division involved;

(b) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract covering the employees involved; or

~~((b))~~ (ii) The parties have had a contract, and a copy of the current ((+) or most recent ((+)) collective bargaining agreement is attached.

~~((5) Identification of:~~

~~(a) The employer's principal business;~~

~~(b) The employer department or division involved;~~

~~(e))~~ (3) A description of the proposed or existing bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions ((+) and ((+)) the number of employees in the proposed or existing bargaining unit;

(4) A statement consenting to the public employment relations commission's jurisdiction over the public employer and petitioner; and

(5) The existence of any unfair labor practice complaints involving the petitioned-for employees.

(6) A statement that:

(a) The petitioner claims to represent a majority of the employees involved ((+) and requests certification as exclusive bargaining representative of the bargaining unit; ((+))

(b) The employees in the bargaining unit desire to change their exclusive bargaining representative(~~(r)~~) and to designate the petitioner as their exclusive bargaining representative; or

(c) The employees in the bargaining unit no longer desire to be represented by any employee organization(~~(r)~~ or

~~(d) The employer has been presented with one or more demands for recognition, and requests a determination by the commission; or~~

~~(e) The employer has a good faith belief that a majority of employees no longer desire representation by the incumbent exclusive bargaining representative).~~

(7) Any other relevant facts.

(8) The name, signature, and(~~(r)~~ if any,~~r~~) title, if any, of the (~~petitioner or its representative, and~~) person filing the petition as well as the date of the signature.

(9) Any other information requested in the representation petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-070, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080. WSR 96-07-105, § 391-25-070, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-070, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-080 Election for inclusion of unrepresented employees. (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit that it already represents, the organization may petition for a self-determination election to ascertain the employees' desire to be included in the existing bargaining unit.

(2) To invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least 30 percent of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that it seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the applicable statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted must affirmatively indicate that the petitioning organization seeks to include the petitioned-for employees in an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election or card check to ascertain whether the petitioned-for employees desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Card check procedures under WAC 391-25-400 apply to this section.

(c) In a self-determination election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of the eligible employees vote against inclusion in the existing unit, they are considered to have indicated a desire to remain unrepresented.

(5) (a) If another organization seeks to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has the support of at least 30 percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents, the resulting unit would be an appropriate unit.

(b) If either (a) (i) or (ii) of this subsection are not established, the request for intervention will be denied and the petition processed in accordance with this section.

(c) If the requirement of both (a) (i) and (ii) of this subsection are met, the election must be for representation by the petitioner as part of the larger unit proposed by the petitioner, representation by the intervenor as part of the larger unit proposed by the intervenor, or no representation.

(6) If a competing employee organization files a representation petition for a stand-alone bargaining unit consisting of the same employees sought by the petitioner under this rule and the petitioned-for bargaining unit is appropriate under the applicable statute, then the self-determination petition will be dismissed.

(7) The existence of a valid collective bargaining agreement does not preclude the processing of a petition filed under this rule.

(8) Petitions filed under this rule do not raise a question concerning representation for the existing appropriate bargaining unit.

(a) The issuance of a certification for the existing appropriate bargaining unit within the previous 12 months does not bar the filing and processing of a petition under this rule.

(b) An amended certification issued under this rule does not affect the certification bar of the existing unit, nor does it create a new certification bar as described in WAC 391-25-030(3).

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-090 Petition filed by employer. (1) ~~((Where))~~ If an employer has been presented with one or more demands for recognition of an exclusive bargaining representative of previously unrepresented employees, it may obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070. ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach copies of any written demand(s) for recognition or other correspondence pertaining to the claimed question concerning representation.

(2) ~~((Where))~~ If an employer disputes the majority status of the incumbent exclusive bargaining representative of its employees, it ~~((shall))~~ may obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070.

(a) ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach affidavits and any other documentation ~~((as may be))~~ available to it to demonstrate the existence of a good faith belief that a majority of its employees in an existing bargaining unit no longer desire to be represented by their incumbent exclusive bargaining representative.

(b) ~~((Unsolicited signature documents provided to the employer by employees and filed by the employer in support of a petition under this subsection must be in a form which would qualify under WAC 391-25-110 if filed by the employees directly with the commission, and shall be treated as confidential under WAC 391-25-110.))~~ Any evidence submitted by employees to the employer must be in a form consistent with WAC 391-25-110 and must not be disclosed by the agency consistent with WAC 391-25-110(4).

(3) A petition under this section ~~((shall))~~ may be filed ~~((at the commission's))~~ by email or in writing to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The employer shall serve a copy of the petition (excluding any showing of interest) on each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-090, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-090, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-090, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-110 Supporting evidence—Showing of interest confidential. (1) A petition filed by employees or an employee organization (~~shall~~) must be accompanied by a showing of interest indicating that the petitioner has the support of (~~thirty~~) at least 30 percent (~~or more~~) of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest (~~shall~~) must be (~~furnished~~) filed under the same timeliness standards applicable to the petition (~~r~~) and (~~shall~~) consist of original or legible paper or electronic copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization cards or letters (~~shall not be~~) are not valid unless signed and dated during the one-year period preceding the filing of the petition. The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a card check election;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of card check.

(2) The agency shall notify the petitioner of the existence and number of any revocations filed under subsection (1)(e) of this section before the commencement of the card check but shall not disclose the identities of the employees involved.

(3) For any bargaining unit affected by RCW 74.39A.270 and 74.39A.300, the showing of interest requirement described in subsection (1) of this section is 10 percent for either a petitioner or an intervenor.

~~((2))~~ (4) The agency shall not disclose the identities of employees whose authorization cards or letters are (~~furnished to~~) filed with the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) (~~In order~~) To preserve the confidentiality of the showing of interest and the right of employees to freely (~~to~~) express their views on the selection of a bargaining representative, the agency shall not honor any attempt by an employee to withdraw any authorization submitted for purposes of this section.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-110, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-110, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-25-110, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-130 List of employees. (~~(Within ten days following a request by the agency)~~) (1) Unless otherwise specified by the executive director or designee, the employer shall submit to the agency and the petitioner a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition within 10 days following a request by the agency. ((Following administrative determination that the petition is supported by a sufficient showing of interest, the agency shall furnish a copy of the list of names and addresses to the petitioner. Following)) After granting ((ef)) a motion for intervention, the agency shall ((furnish)) provide a copy of the list of names and addresses to the intervenor.

(2) In addition to the information required by subsection (1) of this section, an employer of symphony musicians who are seeking to be represented for the purposes of collective bargaining must, upon request, provide the executive director with financial information that establishes the agency's jurisdiction over the employer.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-130, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-140 Notice to employees—Limitations on employer actions. (1)(a) The employer shall ((post)) provide to the petitioned-for employees a copy of the petition and a notice ((, in the form specified)) created by the ((commission,)) agency to inform employees

of the existence of proceedings under this chapter. The ~~((agency shall furnish the employer with copies of the petition and notice, and the))~~ employer shall also post ~~((them))~~ the notice in conspicuous places on its premises where notices to affected employees are usually posted. The ~~((petition and))~~ notice ~~((shall))~~ must remain posted until a ~~((certification or interim certification))~~ direction of election or order of dismissal is issued in the proceeding.

(b) The posting requirement in this subsection does not apply to the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(2) Changes of the status quo concerning wages, hours, or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the ~~((commission))~~ agency under this chapter.

(3) The employer ~~((shall))~~ may not express or otherwise indicate any preference between competing organizations ~~((, where))~~ if two or more employee organizations are seeking to represent its employees.

(4) ~~((Where))~~ If a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition ~~((,))~~ and shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

~~(5) ((When an order of dismissal issued under WAC 391-25-390 (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.~~

~~(a) If a party to the proceeding files a timely notice of appeal of the order of dismissal, then the obligations under subsections (2) and (4) of this section shall be reinstated once the parties to the proceeding are served the notice of appeal. Those obligations shall remain in effect until a final order is issued by the commission under WAC 391-25-670, unless governed by (b) of this subsection.~~

~~(b) Where a timely filed notice of appeal reinstates the obligation to maintain the status quo or suspend bargaining,) An order dismissing a representation petition lifts the obligations under subsections (2) and (4) of this section. Those obligations are reinstated upon the filing and service of a notice of appeal.~~

(6) Any party to the proceeding may petition the commission to stay ~~((either of those))~~ the obligations ~~((where))~~ under subsections (2) and (4) of this section if the petitioning party demonstrates a need for a change in terms and conditions of employment due to circumstances that are beyond that party's control ~~((,))~~ or ~~((where))~~ if the failure to resume bargaining would substantially harm the petitioned-for employees and leave ~~((them))~~ the parties without an adequate administrative remedy. A petition filed under this subsection ~~((shall))~~ must be accompanied by affidavits and evidence.

~~((e))~~ (a) Following the receipt of a petition under ~~((b) of))~~ this subsection, the due date for any counter-affidavits from other parties is seven days following the date on which that party is served with the petition.

~~((d))~~ (b) The executive director shall forward all petitions and affidavits to the commission, ~~((who))~~ which shall determine whether to stay the obligations under subsections (2) and (4) of this section at the next regularly scheduled commission meeting.

~~((e))~~ (c) If the commission uses its authority under ~~((b) or f))~~ this subsection, any party seeking review of the commission's decision ~~((shall))~~ may seek relief through the courts.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-140, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.050. WSR 01-14-009, § 391-25-140, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-140, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.050. WSR 90-06-072, § 391-25-140, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-140, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-150 Amendment and withdrawal. A petition may be amended or withdrawn by the petitioner at any time ~~((prior to))~~ before the issuance of a notice of election and the mailing of the ballots~~((r))~~ or under ~~((such))~~ any conditions ~~((as))~~ the executive director or the commission may impose.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-150, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. WSR 90-06-072, § 391-25-150, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-150, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-25-170 Intervention—By incumbent representative. An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition ~~((may, by motion,))~~ must automatically be allowed to intervene in the proceedings without motion and ~~((, upon granting of its motion for intervention, shall be))~~ is entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. ~~((No motion for intervention shall be considered if made:~~

~~(1) After the close of the hearing on the petition;~~

- ~~(2) More than seven days after the filing and posting of an election agreement or cross-check agreement; or~~
~~(3) More than seven days after the posting of an investigation statement.)~~)

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. WSR 96-07-105, § 391-25-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-190 Intervention—By organization other than incumbent. (1) An organization not covered by WAC 391-25-170 may, by motion, intervene in proceedings under this chapter (~~and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election.~~) if:

(a) The motion for intervention ((shall be)) is supported by a showing of interest indicating that the intervenor has the support of ((ten)) at least 10 percent ((or more)) of the employees in the bargaining unit which the original petitioner claims to be appropriate ((- A showing of interest filed in support of a motion for intervention shall be subject to the requirements and confidentiality protections of WAC 391-25-110. A motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the agency may impose to avoid undue delay of the proceedings.)); or

(b) The organization seeking intervention demonstrates, through affidavits or other documentary evidence, that the petitioned-for employees only share a community of interest with a bargaining unit it represents and demonstrates that it has filed a unit clarification petition under chapter 391-35 WAC.

(2) No motion for intervention (~~shall~~) may be considered if made:

- (a) After the close of the hearing on the petition;
 (b) (~~More than seven days after the filing and posting of an election agreement or cross-check agreement; or~~
~~(c))~~) More than seven days after ((the posting of)) an investigation statement has been issued and a notice of election or card check has been posted.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-190, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-190, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW

28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-190, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-25-190, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-210 Bargaining unit configurations—New organizing.

~~((1) In proceedings on a petition for "decertification" under WAC 391-25-070 (6)(c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit;~~

~~(2) An organization which files a motion for intervention under WAC 391-25-190 shall not be permitted to seek a bargaining unit configuration different than proposed by the original petitioner.~~

~~(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a cross-check in another proceeding under WAC 391-25-410 shall be dismissed as untimely.~~

~~(4) A party to proceedings under this chapter shall not be permitted to propose more than one bargaining unit configuration for the same employee or employees, except where a merger of bargaining units is proposed under WAC 391-25-420.~~

~~(5) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.)) (1) A party to proceedings under this chapter may not propose more than one bargaining unit configuration for the same employee(s).~~

(2) If new organizing petitions filed by two or more organizations are pending at the same time and involve any or all of the same employees, the following process applies:

(a) The timeliness and the sufficiency of the respective showings of interest of each petition must be determined separately;

(b) If multiple petitions are timely and properly supported by the appropriate showing of interest, then the proceedings for each valid petition must be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s) and eligibility list(s).

(3) A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a card check in another proceeding under WAC 391-25-400 must be dismissed as untimely.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.070, 41.59.070, and 41.80.080. WSR 03-11-029, § 391-25-210, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-210, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-210, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-215 Bargaining unit configurations—Decertification, change of representation, and severance petitions. (1) A petition to "decertify" under WAC 391-25-070 (6) (c) or 391-25-090(2) may not alter the existing bargaining unit configuration during the representation proceeding;

(2) If an organization files a motion for intervention under WAC 391-25-190 in a decertification proceeding, the intervening organization may not seek a bargaining unit configuration different from the existing bargaining unit configuration.

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-220 Investigation conferences. (1) ~~((The agency routinely conducts conferences with the parties, to investigate a representation petition according to a checklist provided to the parties.~~

~~(a) The issues which may properly arise in representation cases include:~~

~~(i) The identification of the parties;~~

~~(ii)) If a representation petition is properly supported under WAC 391-25-110, an investigation conference may be held to determine:~~

~~(a) The jurisdiction of the ~~((commission))~~ agency;~~

~~((iii)) (b) The qualification of the petitioner and any intervenor(s) for certification as exclusive bargaining representative;~~

~~((iv) The existence of a question concerning representation;~~

~~(v)) (c) The timeliness of the petition;~~

~~((vi)) (d) The existence of blocking charges under WAC 391-25-370;~~

~~((vii)) (e) The propriety of the petitioned-for bargaining unit; and~~

~~((viii)) (f) The list of employees eligible to vote or be considered in determining a question concerning representation((r)) and the cut-off date for eligibility((; and~~

~~(ix) The method and arrangements for determining a question concerning representation.~~

~~(b) The investigation conference may be conducted by telephone conference call, or in person by agency staff.)~~

~~((e)) (2) The parties are encouraged to reach binding stipulations on all issues during the course of the investigation conference.~~

~~((2)) (3) The stipulations made by the parties during an investigation conference may be set forth in an investigation statement issued (in lieu of an election agreement or cross-check agreement.~~

~~(a) Immediately upon receipt of an investigation statement, the employer shall post it in conspicuous places on its premises where notices to affected employees are usually posted, and it shall remain posted for at least seven days.~~

~~(b) An investigation statement shall be) by the executive director or designee and are binding on the parties unless written objections are filed and served as required by WAC 391-08-120 within ~~((ten)) 10~~ days following issuance of the statement.~~

~~((3)) (4) When it appears that all conditions precedent to an election or ~~((cross-check)) card check~~ are met, the executive director or designee shall ~~((determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute. The agency shall proceed with the determination of the question concerning representation. Objections by parties named in the investigation statement shall be limited to matters relating to specific conduct affecting the results of an election.~~~~

~~(4) The parties may set forth stipulations in election agreements or cross-check agreements under this chapter) proceed with the election or card check.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431. WSR 01-14-009, § 391-25-220, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-220, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.56.040. WSR 90-06-072, § 391-25-220, filed 3/7/90, effective 4/7/90.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-270 Interim certification—Supplemental proceedings.

Where the matters at issue in a proceeding under this chapter are limited to the eligibility of particular individuals or classifications for inclusion in the bargaining unit, the executive director or designee may expedite the ~~((determination of the question concerning representation))~~ proceedings while reserving the eligibility issues for subsequent determination.

(1) The agency ~~((shall))~~ will conduct an election or ~~((cross-check))~~ card check, as ~~((may be))~~ appropriate.

(a) The individuals whose eligibility is disputed ~~((shall be))~~ are permitted to vote by challenged ballot in an election.

(b) The individuals whose eligibility is disputed ~~((shall))~~ will be listed as challenged in a ~~((cross-check))~~ card check, and any au-

thorizations signed by those individuals (~~(shall)~~) must not be tallied.

(2) After a tally is issued under WAC 391-25-550:

(a) If the number of challenges (~~(are sufficient in number to)~~) would affect the outcome, they (~~(shall)~~) will be determined under subsection (3) of this section (~~(, prior to)~~) before the issuance of a certification.

(b) If (~~(an organization is entitled to certification regardless of the reserved eligibility issues, a)~~) the number of challenges does not affect the outcome, an interim certification (~~(shall)~~) will be issued (~~(, but)~~) and the case (~~(shall)~~) will remain open for supplemental proceedings under subsection (3) of this section. The employer and the exclusive bargaining representative (~~(shall)~~) have the duty to bargain (~~(, under the applicable statute, after a)~~) upon issuance of an interim certification (~~(is issued)~~) under (~~(b) of)~~) this subsection.

(c) If a certification of "no representation" is appropriate regardless of the reserved eligibility issues, a final certification (~~(shall)~~) will be issued and no supplemental proceedings (~~(shall)~~) may be conducted.

(3) All eligibility issues reserved for subsequent determination under this section (~~(shall)~~) must be resolved (~~(under WAC 391-25-290, 391-25-310, 391-25-350 and 391-25-390)~~), without regard to whether the individuals cast challenged ballots.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-270, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-270, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-270, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-270, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-290 Notice of hearing. If it appears to the executive director or designee that a question concerning representation may exist, a (~~(hearing officer shall issue a)~~) notice of hearing (~~(and have it)~~) will be issued and served on the parties. (~~(Attached to the notice of hearing shall be a copy of the investigation statement issued under WAC 391-25-220.)~~) A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-290, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-290, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110

and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-290, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-299 (~~(Special provision)~~) **Private sector and other employees.** Except for symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW, the (~~commission~~) agency lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. (~~WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW, except for hearings and issues submitted by stipulation of all parties to the proceeding.~~)

[Statutory Authority: RCW 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-299, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-299, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. WSR 90-06-072, § 391-25-299, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-310 ~~Hearings—Who~~ (~~shall~~) may conduct. Hearings may be conducted by the commission, (~~by~~) the executive director, (~~by~~) or a member of the agency staff (~~or by any other individual designated by the commission or executive director as a hearing officer~~). At any time, a hearing officer may be substituted for the hearing officer previously (~~presiding~~) assigned.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-072, § 391-25-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-350 ~~Hearings—Reopening of hearing—Briefs.~~ (1) Hearings (~~shall be~~) directed under WAC 391-25-390 are public, (~~except where~~) unless a protective order is issued under WAC 10-08-200(7), and (~~shall be~~) are limited to matters concerning the determination of a question concerning representation.

(a) The parties (~~((shall be))~~) are responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties (~~((r))~~) to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party (~~((upon discovery of))~~) that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may (~~((allow or))~~) direct the filing of briefs as to any or all of the issues in a case.

(4) Arrangements and due dates for briefs (~~((shall be))~~) are established by the hearing officer.

(5) Any brief (~~((shall))~~) must be filed (~~((with the hearing officer))~~) and served as required by WAC 391-08-120 (~~((1)), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4))~~).

(~~((4))~~) (6) A party filing a brief under this section must limit (~~((its))~~) the brief's total length to (~~((twenty-five))~~) 25 pages (double-spaced, (~~((twelve-point))~~) 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~((in order))~~) to address novel or complex (~~((legal and/or factual issues raised by the objections))~~) issues; and

(b) The executive director, (~~((his or her))~~) the executive director's designee, or the hearing officer grants (~~((such a))~~) the motion for good cause shown (~~((; and))~~).

(~~((e))~~) (7) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the (~~((administrative))~~) hearing, and the hearing officer has the authority to orally grant (~~((such))~~) the motion at (~~((such))~~) that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.437, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-350, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-350, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-350, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-072, § 391-25-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed. (1) The executive director may suspend the process-

ing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings (~~(, where)~~) if:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; (~~and~~)

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) (~~Such~~) The unfair labor practice could improperly affect the outcome of a representation election.

(2) The complainant(s) in the unfair labor practice case may file and serve, as required by WAC 391-08-120, a written request to proceed (~~(with the executive director)~~). The request to proceed (~~(shall)~~) must specify the case number of the representation proceeding, (~~(shall)~~) request that the representation petition be processed notwithstanding the pending unfair labor practice case, and (~~(shall)~~) waive the right to file objections under WAC 391-25-590 (1)(a) based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed (~~(under this subsection)~~), the executive director may resume the processing of the representation petition and (~~(shall)~~) must summarily dismiss any objections filed in conflict with the request to proceed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-370, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-370, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-370, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-370, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-370, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-370, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-390 Proceedings before the executive director. (1)

The executive director may proceed upon the record, after submission of briefs or after hearing, as (~~(may be)~~) appropriate.

(a) The executive director shall determine whether a question concerning representation exists (~~(r)~~) and (~~(shall)~~) issue a direction of election, dismiss the petition, or make other disposition of the matter.

(b) Unless otherwise provided in a direction of election, the (~~(cut-off)~~) cutoff date for eligibility to vote in an election (~~(shall be)~~) is the date of issuance of the direction of election.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to (~~(the)~~) a hearing officer to decide those issues.

(3) A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders (~~(r)~~) and may only be appealed to the commission by objections under WAC 391-25-590 after the election.

(4)(a) A party seeking review by the commission of an interlocutory decision of the executive director, (~~(his or her)~~) the executive

director's designee, or a hearing officer must file a motion for discretionary review with the commission and a copy with the ~~((executive director or his or her designee))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, ~~((his or her))~~ the executive director's designee, or a hearing officer will be accepted by the commission only:

(i) If the executive director ~~((or his or her))~~, the executive director's designee, or the hearing officer has committed an obvious error ~~((which))~~ that would render further proceedings useless; ~~((or))~~

(ii) If the executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer has committed probable error and the interlocutory decision ~~((of the executive director, his or her designee, or hearing officer))~~ substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for ~~((the exercise of revisory jurisdiction))~~ immediate review by the commission.

(c) A motion for discretionary review ~~((under this rule))~~, and any response, should not exceed ~~((fifteen))~~ 15 pages ~~((double spaced,))~~ (double-spaced, 12-point type) excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the ~~((executive director's, his or her designee's, or hearing officer's))~~ interlocutory decision or the issues pertaining to that decision.

(5) Unless appealed to the commission under WAC 391-25-660, a decision issued under this section ~~((shall be))~~ is the final order of the agency~~((r))~~ with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-390, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-390, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 98-14-112, § 391-25-390, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-390, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-25-390, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-390, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-400 Card check. (1) If only one organization is seeking certification as the exclusive representative of unrepresented employees and the showing of interest exceeds 50 percent of the employees subject to the petition, then the executive director or the

executive director's designee may direct a card check to determine whether the employees desire to be represented by the petitioner.

(2) Employees desiring to withdraw their showing of interest cards for purposes of the card check may do so by sending an individual card or letter signed by the employee to the executive director or the executive director's designee before the date specified in the direction of card check. The agency shall notify the petitioner of any such request before the commencement of the card check but shall not disclose the identity of the employee submitting the request.

(3) The employer shall make available to the agency original or legible copies of employment records containing the names and signatures of the employees in the bargaining unit.

(4) Before the commencement of the card check, the petitioner may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election.

(5) All card checks must be by actual comparison of records provided by the parties. The agency shall not disclose the names of employees giving representation authorization in favor of the organization. Following the comparison of records, the agency shall issue a tally sheet demonstrating the outcome of the card check.

(6) The card check procedures described in subsections (1) through (5) of this section are not applicable for certificated employees who collectively bargain under chapter 41.59 RCW, academic employees who collectively bargain under chapter 28B.52 RCW, symphony musicians who collectively bargain under chapter 49.39 RCW, and the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-420 Unit determination elections. Employees ~~((shall))~~ may not be subjected to examination or cross-examination concerning their views on the configuration of bargaining units. A unit determination election ~~((shall be))~~ is the exclusive method to determine the ~~(())~~ desire ~~(())~~ of the employees involved.

(1) ~~((Where))~~ If the executive director determines that either of two or more bargaining unit configurations proposed by petitioning or intervening organizations could be appropriate ~~((under other criteria))~~, a unit determination election ~~((shall))~~ must be conducted.

(2) ~~((Where))~~ Unless governed by RCW 41.56.050(2) or 41.80.070(3), if an organization desires to merge two or more historically separate bargaining units, it may request a unit determination election under this section.

(a) The organization shall file a petition under WAC 391-25-070, indicating under "other relevant facts" that it is seeking a merger of two or more existing bargaining units.

(b) The showing of interest ~~((shall))~~ must indicate support for the merger of units ~~((r))~~ and ~~((shall))~~ be evaluated separately in each of the historical bargaining units.

(c) The proposed merged unit must be an appropriate unit under the applicable statute.

(i) If the propriety of the merged bargaining unit is disputed, the executive director shall make a determination following a hearing.

(ii) If the propriety of the merged bargaining unit is stipulated, the executive director or designee shall determine whether the proposed unit is, on its face, an appropriate bargaining unit under the applicable statute.

(d) If the merged unit is found to be appropriate, the agency shall conduct a unit determination election in each of the bargaining units proposed for merger.

(i) If the merger is rejected in any of the historical units, the petition (~~shall~~) must be dismissed.

(ii) If the merger is approved in all of the historical units and no motion for intervention has been granted, the executive director shall issue a certification designating the petitioning organization as the exclusive bargaining representative of the merged bargaining unit.

(iii) If a motion for intervention has been granted under WAC 391-25-170 or 391-25-190, the agency shall conduct a representation election prior to the issuance of a certification.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060. WSR 01-14-009, § 391-25-420, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 16-06-019, filed 2/22/16, effective 3/24/16)

WAC 391-25-430 Notice of election or card check. (1) When an election or card check is to be conducted, the agency shall (~~furnish the employer with appropriate notices,~~) issue a notice to the employer, and the employer shall provide to the petitioned-for employees a copy of the notice of election or card check. The employer shall also post (~~them~~) the notice in conspicuous places on its premises where notices to affected employees are usually posted. The notice (~~shall~~) must contain all of the following:

(~~(1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.~~

~~(2))~~ (a) The deadline for return of mail ballots or the date(s), hours, and polling place(s) for an on-site election (~~, or~~); the voting period for an electronic election; or the date of the card check.

(~~(3))~~ (b) The cut-off date, if any, or other criteria (~~to be applied in~~) establishing eligibility to vote in the election or card check, including that the eligible employees are limited to those who continue to be employed within the bargaining unit when they cast a ballot in an on-site election, at the deadline for return of mail ballots, (~~or~~) at the closing of polls in an electronic election, or on the date agency staff conducts the card check under WAC 391-25-400.

(~~(4))~~ (c) A statement of the purpose of the election or card check and the question to be voted upon (~~or a sample ballot~~).

(~~Notices of the election shall be posted for at least five business days prior to the date on which the polls are opened for an on-site election or electronic election or five business days prior to the date on which ballots are mailed in a mail ballot election.~~) (2) Notices of the election (~~shall~~) or card check must remain posted until a tally of ballots or card check has been issued. The requirement

that the employer post the notices of election in conspicuous places on its premises where notices to affected employees are usually posted is inapplicable to the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(3) While a notice of election is posted, employees in the bargaining unit or proposed bargaining unit have the right to conduct campaigning activities in the public areas or in the nonworking areas of the employer's premises, during nonworking time of the campaigner and employees being solicited, as long as the activities do not disrupt operations. However, if employees are permitted to discuss non-work subjects or solicit other employees in work areas, the employer cannot discriminatorily regulate employee discussions or solicitations.

(a) Nonemployees have the right to engage in campaigning activities in the employer's public areas consistent with the reasonable use of those areas. Where there are no public areas in an employer's workplace, reasonable comparable access must be granted.

(b) Employer rules and policies may expand these rights. Employer rules and policies must be nondiscriminatory.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-06-019, § 391-25-430, filed 2/22/16, effective 3/24/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-430, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-430, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-430, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-430, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-450 Disclaimers. (~~((Prior to the issuance of))~~) Before the agency issues a notice of election and ((the mailing of)) mails the ballots, an organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. The organization filing a disclaimer ((shall)) may not seek to be certified in the bargaining unit, or any subdivision thereof, for a period of at least six months.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-450, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-450, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-450, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-450, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and

47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-450, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 16-06-019, filed 2/22/16, effective 3/24/16)

WAC 391-25-480 Elections—Electioneering—Objectionable conduct.

(1) The executive director (~~((shall have))~~) has discretion to conduct elections electronically, by mail, or on-site. The procedures for each means of election (~~((shall))~~) must be designed to preserve the secrecy of employee voting. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots.

(2) (~~((Following the close of an electronic or telephonic election,))~~) The agency shall transmit the results of an electronic election to the parties of record.

(3) Following the close of an election by mail, each party may be represented by observers of (~~((its))~~) their own choosing at the tally of any ballots. (~~((Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.))~~)

(4) For an on-site election, each party may be represented by observers of (~~((its))~~) their own choosing, subject to (~~((such))~~) any limitations (~~((as))~~) the executive director may prescribe. During the hours of voting, no management official having authority over bargaining unit employees nor any officer or paid employee of an organization (~~((shall))~~) may serve as observer. (~~((Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.))~~)

(5) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the (~~((commission))~~) agency and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occur at a time which prevents others from effectively responding; and

(iv) Be reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period that the polls are open

in an on-site or electronic election or during the period beginning on the scheduled date for a mail ballot election and continuing through the deadline for mail ballots. Other electioneering not prohibited by (a) through (f) of this subsection is permitted during that period.

(h) For on-site elections, ~~((there shall be))~~ no electioneering may occur at or ~~((about))~~ around the polling place during the hours of voting.

(6) Violations of this rule ~~((shall be))~~ are grounds for setting aside an election upon objections properly filed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-06-019, § 391-25-480, filed 2/22/16, effective 3/24/16.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-510 Challenged ballots. (1) Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in ~~((the))~~ a mail ballot, on-site, or electronic election. No person ~~((shall))~~ may be denied the right to cast a challenged ballot ~~((The election officer shall not have authority to resolve challenges)),~~ and the ballot of the challenged voter ~~((shall))~~ must be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter ~~((The ballot shall not be opened until the challenge is resolved))~~.

(2) Any party may withdraw a challenge previously made and, unless the eligibility of the voter is challenged by another party or ~~((by))~~ the election officer, the challenge ~~((shall be))~~ is resolved.

(3) If the challenged ballots ~~((are insufficient in number to))~~ do not affect the results of the election, they ~~((shall))~~ will be impounded ~~((and no ruling shall be made))~~ and the appropriate certification or interim certification will be issued.

(4) If the number of challenged ballots ~~((are sufficient in number to))~~ would affect the results of the election, the ~~((election officer shall ascertain the position of each party as to each challenged ballot and shall include the information in his or her report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670))~~ executive director or the executive director's designee shall conduct proceedings under WAC 391-25-390 and rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the ex-

ecutive director or the executive director's designee as to the eligibility of the challenged voter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 01-14-009, § 391-25-510, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-510, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-510, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-510, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-530 Votes needed to determine election. (~~((1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.~~

~~(2) Unless governed by WAC 391-25-531, representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.)~~ (1) Except as provided in subsection (2) of this section, representation elections must be decided by a majority of those voting.

(a) If there are only two choices on the ballot, a tie vote results in a certification of no representative.

(b) If there are only two choices on the ballot and both choices are qualified employee organizations or bargaining representatives, the executive director may direct a rerun election following a tie result for good cause shown.

(2) Unit determination elections and representation elections conducted under chapter 41.56 RCW with three or more choices on the ballot must be decided by a majority of those eligible to vote in the election.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-530, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-530, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-530, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-25-550 Tally sheet. The election officer shall prepare and (~~furnish to each of the parties~~) issue a tally of the votes cast on unchallenged ballots and the number of challenged ballots. The tally must indicate whether the results of the election were conclusive or inconclusive. After the (~~subsequent~~) resolution of challenged

ballots affecting the results of the election, a revised tally ((shall)) must be issued ((and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive)).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 96-07-105, § 391-25-550, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-550, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-570 Procedure following inconclusive election. In any election in which there are ((more than two)) three or more choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a run-off election ((shall)) must be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any organization ((to be)) excluded from a run-off election may file objections to specific conduct affecting the results of the inconclusive election. Where the choice of "no representative" is to be excluded from a run-off election, the employer or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. ((Such)) Any objections ((shall)) must be resolved ((prior to the conduct of)) before a run-off election is conducted. All run-off elections ((shall)) must be determined as provided in WAC 391-25-530.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-570, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-570, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-25-590 ((Filing and service of)) Objections to improper conduct and interim orders. The due date for objections is seven days after the tally has been served under WAC ((391-25-410 or under)) 391-25-400 or 391-25-550, regardless of whether the number of challenged ballots ((are sufficient in number to)) would affect the results of the election. The time ((period)) for filing objections cannot be extended.

(1) Objections by the petitioner, the employer, or any intervenor ((shall)) must set forth, in separate numbered paragraphs:

(a) The specific conduct which the party filing the objection claims has improperly affected the results of the election; ~~((and/or))~~ or

(b) The direction of election, direction of ~~((cross-check))~~ card check, or other interim rulings which the objecting party desires to appeal to the commission.

(2) Objections by individual employees are limited to conduct or procedures which prevented them from casting a ballot.

(3) Any objections ~~((shall))~~ must be filed ~~((at the commission's Olympia office))~~ and served as required by WAC 391-08-120 ~~((1)), and the party filing the objections shall serve a copy on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4)).~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 00-14-048, § 391-25-590, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-590, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-590, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-590, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-590, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-610 Procedure where no objections are filed. If no objections are filed within the time set forth ~~((above, and if any))~~ in WAC 391-25-590, if the number of challenged ballots ~~((are insufficient in number to))~~ does not affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall issue a certification having the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.080 and 41.59.090. WSR 01-14-009, § 391-25-610, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-610, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-25-630 Procedure where conduct objections are filed. ~~((Where))~~ If objections allege improper conduct under WAC 391-25-590 (1)(a) or (2), other parties may be requested to respond to the objections within a period of time established by the agency. The period ~~((shall))~~ must be seven days or more.

(1) If the objections and any responses indicate there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law, the commission may issue a summary judgment in the matter.

(2) If the objections and any responses raise material questions of fact which cannot be resolved without a hearing, ~~((there shall be issued and served on each of the parties a notice of hearing before a hearing officer))~~ the matter may be remanded to the executive director to conduct further proceedings under WAC 391-25-390. ~~((a))~~ Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding.

~~((b) The rules relating to hearings on petitions shall govern hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.)~~

(3) The objections, any responses, and the record made at any hearing on the objections ~~((shall))~~ must be referred to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 98-14-112, § 391-25-630, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.56.040 and 41.59.110. WSR 90-06-072, § 391-25-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-630, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-25-650 Briefs and written arguments on objections. (1)

The due date for any appeal brief which the party filing an objection desires to have considered by the commission ~~((shall be fourteen))~~ is 14 days following the later of:

(a) The issuance of a transcript of a hearing held under WAC 391-25-630(2); or

(b) The filing of objections under WAC 391-25-590 ~~((1)(b))~~.

~~((Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120(3) and (4).))~~

(2) The due date for any responsive brief which any other ~~((parties))~~ party desires to have considered by the commission ~~((shall be fourteen))~~ is 14 days following the date on which that party is served with an appeal brief. ~~((Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120(3) and (4).))~~

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. ~~((Such))~~ Requests ~~((shall))~~ to extend the due date may only be considered if made ~~((on or before))~~ by the date the brief is due ~~((7))~~ and in compliance with WAC 391-08-180. Extensions of time ~~((shall))~~ may not be routine or automatic.

(4) A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel ~~((and/or))~~ or complex issues raised by the objections; and

(b) The commission or its designee grants ~~((such a))~~ the motion for good cause shown.

(5) Any motion filed under ((this)) subsection ((shall)) (4)(a) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to ((such)) the motion.

(6) Any brief or motion filed under this section must be filed and served as required by WAC 391-08-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-650, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-650, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-650, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-650, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-650, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-25-650, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-650, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-25-660 Appeals from orders and jurisdictional rulings.

An order issued under WAC ~~((391-25-390))~~ 391-25-290 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the ~~((commission))~~ agency, may be appealed to the commission as follows:

(1) The due date for a notice of appeal ~~((shall be twenty))~~ is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) ~~((Where))~~ If an order has been appealed, the due date for a notice of cross-appeal by other parties ~~((shall be))~~ is seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal ~~((shall))~~ must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party ~~((which))~~ that desires to cite or reassert a document previously filed in the matter ~~((shall))~~ must do so by reference to the document already on file ~~((7))~~ and shall not file or attach another copy of the document to ~~((papers))~~ documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120(~~((1)), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4))~~).

(6) The due date for any appeal brief (~~((which))~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~((shall be fourteen))~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120(~~((1)), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4))~~).

(7) The due date for any responsive brief (~~((which))~~) that a party desires to have considered by the commission (~~((shall be fourteen))~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120(~~((1)), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4))~~).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. (~~((Such))~~) Requests (~~((shall))~~) to extend the due date may only be considered if made (~~((on or before))~~) by the date the brief is due(~~((7))~~) and in compliance with WAC 391-08-180. Extensions of time (~~((shall))~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~((its))~~) the brief's total length to (~~((twenty-five))~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~((in order))~~) to address novel (~~((and/or))~~) or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~((such a))~~) the motion for good cause shown.

(10) Any motion filed under (~~((this))~~) subsection (~~((shall))~~) (9)(a) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~((such))~~) the motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-660, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. WSR 00-14-048, § 391-25-660, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-660, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-25-670 Commission action on objections and appeals. If there are objections under WAC 391-25-590 or an order is appealed under WAC 391-25-660, the entire record in the proceedings (~~((shall))~~) must be transmitted to the commission (~~((members))~~). The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the entire record transmitted to it, determine the objections or appeal and any challenged ballots referred to the commission (~~((pur-~~

suant to) under WAC 391-25-510((~~r~~)) and ((~~shall~~)) issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. WSR 00-14-048, § 391-25-670, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-670, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. WSR 90-06-072, § 391-25-670, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-670, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-25-002	Sequence and numbering of rules—Special provisions.
WAC 391-25-012	Special provision—Educational employees.
WAC 391-25-032	Special provision—Educational employees.
WAC 391-25-034	Special provision—Marine employees.
WAC 391-25-036	Special provision—State civil service employees.
WAC 391-25-037	Special provision—Higher education faculty.
WAC 391-25-051	Special provision—Individual providers of home care under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029—Language access providers under RCW 41.56.510.
WAC 391-25-092	Special provision—Educational employees.
WAC 391-25-096	Special provision—State civil service employees.
WAC 391-25-136	Special provision—State civil service employees.
WAC 391-25-137	Special provision—Higher education faculty.
WAC 391-25-197	Special provision—Higher education faculty.
WAC 391-25-217	Special provision—Higher education faculty.
WAC 391-25-229	Special provision—Symphony musicians.
WAC 391-25-230	Election agreements.

WAC 391-25-250	Cross-check agreements.
WAC 391-25-252	Special provision—Educational employees.
WAC 391-25-253	Special provision—Academic employees.
WAC 391-25-391	Special provision—Public employees.
WAC 391-25-396	Special provision—State civil service employees.
WAC 391-25-399	Special provision—Symphony musicians.
WAC 391-25-410	Cross-check of records.
WAC 391-25-412	Special provision—Educational employees.
WAC 391-25-413	Special provision—Academic employees.
WAC 391-25-416	Special provision—State civil service employees.
WAC 391-25-426	Special provision—State civil service employees.
WAC 391-25-427	Special provision—Higher education faculty.
WAC 391-25-436	Special provision—State civil service employees.
WAC 391-25-440	Election for inclusion of unrepresented employees.
WAC 391-25-486	Special provision—State civil service employees.
WAC 391-25-531	Special provision—Public employees.
WAC 391-25-674	Special provision—Marine employees.

OTS-3726.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-35-001 Scope—Contents—Other rules. This chapter governs unit clarification proceedings (~~((before the public employment relations commission on petitions for clarification of existing bargaining units))~~) under all chapters of the Revised Code of Washington (RCW) administered by the (~~(commission and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~ The provisions of this chapter should be read in conjunction with:

(1) Chapter ~~10-08~~ WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) ~~WAC 10-08-035~~, which is replaced by detailed requirements in ~~WAC 391-35-050~~;

~~(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

~~(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-35-210 and 391-35-250; and~~

~~(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-35-070.~~

~~(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

~~(3) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

~~(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-35-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-35-001, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-35-010 Unit clarification petition ((for clarification of an existing bargaining unit))—Who may file. A unit clarification petition ((for clarification of an existing bargaining unit)) may only be filed by the employer, the exclusive representative, ((~~or~~)) their agents, or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 96-07-105, § 391-35-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-020 Time for filing petition—Limitations on results of proceedings.

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) ~~Disputes ((concerning))~~ about the appropriate bargaining unit placement for newly created positions ((which have been newly created by an employer.

~~(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.)~~ ;

~~((e))~~ (b) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate((r)) ;

~~((d))~~ (c) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration((r)) ;

~~((e))~~ (d) Disputes under WAC 391-35-320 concerning status as a confidential employee((r)) ; or

~~((f))~~ (e) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A ~~((unit clarification))~~ petition concerning supervisory status ~~((as a supervisor))~~ under WAC 391-35-340 ~~((r))~~ or regular part-time status ~~((as a regular part-time or casual employee))~~ under WAC 391-35-350 ~~((r is subject to the following conditions))~~ will be considered timely if:

(a) ~~((The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.))~~ All parties agree to raise the issue;

(b) ~~((Except as provided under subsection (2) (a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.))~~ The petitioner demonstrates that it put the other party on notice during negotiation for the most recent collective bargaining agreement that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding and the petitioner files the petition before ratification of the current collective bargaining agreement; or

(c) The petitioner demonstrates through evidence that a substantial change in circumstances occurred within a reasonable time before the filing of the petition and that the change in circumstances warrants a modification of the bargaining unit by inclusion or exclusion of a position or class.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit ~~((in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the com-~~

~~community of interest of the employees or positions)) if the petition was timely filed as provided in subsections (1) and (2) of this section.~~

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding if:

(a) ~~((Where a))~~ The petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; ~~((or))~~

(b) ~~((Where))~~ The existing bargaining unit is the only appropriate unit for the employees or positions; or

(c) All parties to the proceeding agree the agency should rule upon the request for clarification.

~~(5) ((Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:~~

~~(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.~~

~~(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.~~

~~(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.)~~ An order clarifying bargaining unit will not be issued under this section if:

(a) Employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances; or

(b) Adding the disputed employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

~~(6) ((Where a petitioning union seeks severance of a portion of an existing))~~ An appropriate bargaining unit of classified employees at a school district or educational service district ~~((, appropriate bargaining units existing on July 25, 2005,))~~ may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-020, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-020, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-020, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-020, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-061 (Order 88-03), § 391-35-020, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-030 Petition (~~(in writing Number of copies Filing)~~)
~~Filing and service.~~ (~~Each~~) A unit clarification petition (~~(for clarification of an existing bargaining unit shall)~~) may be filed through the agency's online e-filing system, by email, or in writing (~~(, and shall be filed at)~~) to the (~~(commission's)~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the petition is not filed (~~(other than as a)~~) jointly (~~(filed petition)~~), the party filing the petition shall serve a copy on the other party to the collective bargaining relationship (~~(in which the disagreement arises)~~), as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-030, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-050 Contents of petition filing forms. Each completed unit clarification petition (~~(for clarification of an existing bargaining unit shall contain, in separate numbered paragraphs)~~) filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(1) Information identifying the parties and their (~~(relationships)~~) representatives, including:

(a) The name, email address, mailing address, and telephone number of the employer (~~(, and the name, address, telephone number, fax number, and email address of its principal)~~) and of the employer's representative; and

(b) The name, email address, mailing address, and telephone number (~~(, fax number, and email address)~~) of the exclusive representative (~~(, and the name, address, telephone number, fax number, and email address)~~) and of its principal representative (~~(, and the name, address, telephone number, fax number, and email address)~~);

(c) ~~The employer's principal business;~~

(d) ~~);~~

(2) Information concerning the parties' relationships, including:

(a) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) The parties have had a contract, and a copy of the current (~~(+)~~) or most recent (~~(+)~~) collective bargaining agreement is attached; (~~(+)~~)

(b) The status of negotiations between the parties, indicating that:

(i) The parties' contract is closed; or

(ii) The parties are currently in contract negotiations;

~~((f))~~ (c) The description of the existing bargaining unit, specifying inclusions and exclusions;

~~((g))~~ (d) The number of employees in the bargaining unit; and

~~((h))~~ (e) The history of the bargaining unit, including at least the approximate date of its creation.

~~((2))~~ (3) An explanation of the proposed change and the reasons for the proposed change, including identification of the position(s), classification(s), or group(s) at issue((r)); the number of employees in each position, classification, or group((r)); and the ((present)) bargaining unit ((inclusion or exclusion)) status of each position, classification, or group((r, identification of the party proposing that the present status be changed, and the reason for the proposed change)).

~~((3))~~ (4) Identification of other interested employee organizations, including the name((s and addresses)), email address, and mailing address of any other employee ((organizations)) organization(s) claiming to represent any employee((s)) affected by the proposed clarification(s)((r)) and a brief description((s)) of ((the contracts, if any,)) any contract(s) covering ((such)) those employees.

~~((4))~~ (5) Any other relevant facts.

~~((5))~~ (6) The name(s), signature(s), and ~~((if any,))~~ title(s), if any, of the ((representative(s) of the petitioner(s), and)) person(s) filing the petition as well as the date(s) of the signature(s).

(7) Any other information requested in the unit clarification petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-050, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-073, filed 3/7/90, effective 4/7/90)

WAC 391-35-070 Amendment and withdrawal. ~~((Any))~~ A petition may be amended or withdrawn by the petitioner(s) under ~~((such))~~ any conditions ~~((as))~~ the executive director or the commission may impose.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-15-032, filed 7/9/08, effective 8/9/08)

WAC 391-35-085 Amendment of certification. A party may file a petition to amend an existing certification to reflect a minor change in circumstances, such as a change of an employee organization's name or an employer's name, and the executive director may amend the certification (~~(, provided that the purpose of)~~) if the amendment ((is to reflect changed circumstances such as the name of a labor organization or the name of an employer, and the bargaining unit is not affected by the change and there is no question concerning representation)) does not add or remove positions from the existing bargaining unit or change the bargaining unit's configuration and there is no question concerning representation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. WSR 08-15-032, § 391-35-085, filed 7/9/08, effective 8/9/08.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-090 Notice of hearing. If it appears to the executive director or designee that a disagreement exists which could be the basis for issuing an order clarifying the bargaining (~~unit or units~~) unit(s), a (~~hearing officer shall issue a~~) notice of hearing (~~and have it~~) will be issued and served on the parties. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.434. WSR 01-14-009, § 391-35-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-110 Coordination of proceedings. (1) If a petition for clarification under this chapter is pending at the same time as a petition under chapter 391-25 WAC involving all or any part of the same bargaining unit, the proceedings under this chapter (~~shall~~) must be suspended, and all issues concerning the description of the bargaining unit (~~shall~~) must be resolved in the proceedings under chapter 391-25 WAC.

(2) A unit clarification proceeding may control or be controlled by an unfair labor practice proceeding. If a petition for clarification under this chapter is pending at the same time as a complaint under chapter 391-45 WAC involving all or any part of the same bargaining unit, the executive director or designee (~~shall have~~) has dis-

cretion to withhold processing of one of the related proceedings pending the outcome of the other related proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.070. WSR 01-14-009, § 391-35-110, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-073, filed 3/7/90, effective 4/7/90)

WAC 391-35-130 Hearings—Who ((shall)) may conduct. Hearings may be conducted by the commission, ((by)) the executive director, ((by)) or a member of the agency staff ((~~or by any other individual designated by the commission or executive director as a hearing officer~~)). At any time, a hearing officer may be substituted for the hearing officer previously ((~~presiding~~)) assigned.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-170 Hearings—Reopening of hearing—Briefs. (1) Hearings ((~~shall be~~)) are public, ((~~except where~~)) unless a protective order is issued under WAC 10-08-200(7), and ((~~shall be~~)) are limited to matters concerning the clarification of the existing bargaining unit.

(a) The parties ((~~shall be~~)) are responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties((~~r~~)) to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200(8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party ((~~upon discovery of~~)) that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may ((~~allow or~~)) direct the filing of briefs as to any or all of the issues in a case.

~~(4)~~ Arrangements and due dates for briefs ~~((shall be))~~ are established by the hearing officer.

~~(5)~~ Any brief ~~((shall))~~ must be filed ~~((with the hearing officer))~~ and served as required by WAC 391-08-120 ~~((1)), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4))~~.

~~((4))~~ ~~(6)~~ A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, ~~((twelve-point))~~ 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel or complex ~~((legal and/or factual issues raised by the objections))~~ issues; and

(b) The executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer grants ~~((such a))~~ the motion for good cause shown ~~((; and))~~.

~~((e))~~ ~~(7)~~ A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the ~~((administrative))~~ hearing, and the hearing officer has the authority to orally grant ~~((such a))~~ the motion at ~~((such))~~ that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-170, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-170, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-170, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-170, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-190 Proceedings before the executive director. (1)

The executive director may proceed upon the record, after submission of briefs or after hearing, as ~~((may be))~~ appropriate. The executive director shall determine the status of each position, classification, or group of employees ~~((over which there is a disagreement))~~ at issue and issue an order clarifying the bargaining unit, dismiss the petition, or make other disposition of the matter.

(2) ~~((Where))~~ If the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) (a) A party seeking review by the commission of an interlocutory decision of the executive director, ~~((his or her))~~ the executive director's designee, or a hearing officer must file a motion for discretionary review with the commission and a copy with the ~~((executive director or his or her designee))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, (~~his or her~~) the executive director's designee, or a hearing officer will be accepted by the commission only:

(i) If the executive director, (~~his or her~~) the executive director's designee, or the hearing officer has committed an obvious error (~~which~~) that would render further proceedings useless; (~~or~~)

(ii) If the executive director (~~or his or her~~), the executive director's designee, or the hearing officer has committed probable error and the interlocutory decision (~~of the executive director, his or her designee, or hearing officer~~) substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, (~~his or her~~) the executive director's designee, or the hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for (~~the exercise of revisory jurisdiction~~) immediate review by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed (~~fifteen~~) 15 pages (double-spaced, 12-point type) excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the (~~executive director's, his or her designee's, or hearing officer's~~) interlocutory decision or the issues pertaining to that decision.

(4) Unless appealed to the commission under WAC 391-35-210, a decision issued under this section (~~shall be~~) is the final order of the agency(~~r~~) with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-190, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-35-190, filed 7/1/98, effective 8/1/98; WSR 90-06-073, § 391-35-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-35-190, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-35-210 Appeals. An order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal (~~shall be twenty~~) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) (~~Where~~) If an order has been appealed, the due date for a notice of cross-appeal by other parties (~~shall be~~) is seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal (~~(shall)~~) must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party (~~(which)~~) that desires to cite or reassert a document previously filed in the matter (~~(shall)~~) must do so by reference to the document already on file (~~(7)~~) and shall not file or attach another copy of the document to (~~(papers)~~) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(6) The due date for any appeal brief (~~(which)~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(7) The due date for any responsive brief (~~(which)~~) that a party desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (1) (~~(, and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. (~~(Such)~~) Requests (~~(shall)~~) to extend the due date may only be considered if made (~~(on or before)~~) by the date the brief is due (~~(7)~~) and in compliance with WAC 391-08-180. Extensions of time (~~(shall)~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~(its)~~) the brief's total length to (~~(twenty-five)~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~(in order)~~) to address novel (~~(and/or)~~) or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~(such a)~~) the motion for good cause shown.

(10) Any motion filed under (~~(this)~~) subsection (~~(shall)~~) (9) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~(such)~~) the motion.

[Statutory Authority: RCW 41.56.060, 41.56.090, 41.58.050. WSR 08-04-059, § 391-35-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-210, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-210, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-35-210, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR

80-14-047 (Order 80-6), § 391-35-210, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-35-250 Commission action on appeals. If an order is appealed under WAC 391-35-210, the entire record in the proceedings (~~shall~~) must be transmitted to the commission (~~members~~). The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the entire record transmitted to it, determine the status of each position, classification, or group covered by the appeal(~~r~~) and (~~shall~~) issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-250, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-35-310 Employees eligible for interest arbitration. Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration (~~shall~~) may not be included in bargaining units (~~which include~~) with employees (~~who~~) occupying positions that are not eligible for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.430. WSR 96-07-105, § 391-35-310, filed 3/20/96, effective 4/20/96.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-320 Exclusion of confidential employees. Confidential employees excluded from all collective bargaining rights (~~shall be~~) are limited to:

(1) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, (~~except that~~) and the role of (~~such~~) that person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(2) Any person who assists and acts in a confidential capacity to such person.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.030(2) and 41.59.020 (4)(c)(i) and (ii). WSR 01-14-009, § 391-35-320, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-340 Unit placement of supervisors—Bargaining rights of supervisors. (1) It (~~shall be~~) is presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates (~~(, in order)~~) to avoid a potential for conflicts of interest (~~(which)~~) that would otherwise exist in a combined bargaining unit.

(2) It (~~shall be~~) is presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section (~~shall be~~) are subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-340, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-350 Unit placement of regular part-time employees—Exclusion of casual and temporary employees. (1) (~~It shall be presumptively appropriate to include regular part-time employees~~) Except as provided in subsection (2) of this section, regular part-time employees are presumptively included in the same bargaining unit (~~(with)~~) as full-time employees performing similar work (~~(, in order)~~) to avoid a potential for conflicting work jurisdiction claims (~~(which would otherwise exist in separate units. Employees)~~).

(a) A regular part-time employee is any employee who, during the previous (~~(twelve))~~ 12 months, (~~(have))~~ worked more than one-sixth of the time normally worked by full-time employees (~~(,)~~) and who remains available for work on the same basis (~~(, shall be presumed to be regular part-time employees)~~).

(b) For employees of school districts and educational institutions, the term "time normally worked by full-time employees" (~~shall be~~) is based on the number of days in the normal academic year.

(2) (~~It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.~~)

(a) ~~Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so~~

that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

~~(b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.)~~ (a) Part-time and nonpermanent civil service employees covered by chapter 41.06 RCW are presumptively included in the same bargaining unit as full-time employees covered by chapter 41.06 RCW performing similar work regardless of the number of hours worked to avoid a potential for conflicting work jurisdiction claims.

(b) Temporary employees defined by WAC 357-04-045(1) may only be included in a bargaining unit as provided in WAC 357-04-045(3).

(3) The presumptions set forth in this section (~~shall be~~) are subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-350, filed 6/22/01, effective 8/1/01.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-35-002	Sequence and numbering of rules—Special provisions.
WAC 391-35-026	Special provision—State civil service employees.
WAC 391-35-099	Special provision—Private sector and other employees.
WAC 391-35-254	Special provision—Marine employees.
WAC 391-35-300	School district employees.
WAC 391-35-301	Higher education employees.
WAC 391-35-326	Special provision—State civil service employees.
WAC 391-35-327	Special provision—Higher education faculty.
WAC 391-35-342	Special provision—Educational employees.
WAC 391-35-343	Special provision—Academic employees.
WAC 391-35-344	Special provision—Marine employees.
WAC 391-35-346	Special provision—State civil service employees.
WAC 391-35-347	Special provision—Higher education faculty.
WAC 391-35-356	Special provision—State civil service employees.

OTS-3727.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-45-001 Scope—Contents—Other rules. This chapter governs unfair labor practice proceedings ((before the public employment relations commission on complaints charging unfair labor practices)) under all chapters of the Revised Code of Washington (RCW) administered by the ((commission. The provisions of this chapter should be read in conjunction with:

(1) ~~Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:~~

(a) ~~WAC 10-08-035, which is replaced by detailed requirements in WAC 391-45-050;~~

(b) ~~WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

(c) ~~WAC 10-08-211, which is replaced by detailed requirements in WAC 391-45-350 and 391-45-390; and~~

(d) ~~WAC 10-08-230, which is replaced by detailed requirements in WAC 391-45-070, 391-45-090, and 391-45-260.~~

(2) ~~Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

(3) ~~Chapter 391-25 WAC, which regulates representation proceedings.~~

(4) ~~Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

(5) ~~Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

(6) ~~Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

(7) ~~Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-45-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-45-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-45-001, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. WSR 90-06-074, § 391-45-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-010 Complaint charging unfair labor practices—Who may file. A complaint charging that (~~a person~~) an employer or employee organization has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.040, 41.58.040, 41.59.060 and 53.18.015. WSR 00-14-048, § 391-45-010, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-030 Complaint (~~in writing—Number of copies—Filing~~)—Filing and service. (~~Each~~) A complaint charging unfair labor practices (~~shall~~) may be filed through the agency's online e-filing system, by email, or in writing(~~, and shall be filed at~~) to the (~~commission's~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-050 Contents of complaint filing forms—Contents of complaint. (~~Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:~~)

(1) Each completed unfair labor practice complaint filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(a) Information identifying the parties and (~~if known~~) their representatives (if know), including:

~~((a)) (i) The name, email address, mailing address, and telephone number of the employer (, and the name, address, telephone number, fax number, and email address of its principal) and of the employer's representative;~~

~~((b)) (ii) The name, email address, mailing address, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (the respondent) (, and the name, address, telephone number, fax number, and email address of its principal) and of the respondent's representative; and~~

~~((c)) (iii) The name, email address, mailing address, and telephone number (, fax number, and email address) of the party filing the complaint (the complainant) (, and the name, address, telephone number, fax number, and email address of its principal) and of the complainant's representative.~~

~~((2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.~~

~~(3) A statement of the remedy sought by the complainant.~~

~~(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.~~

~~((5)) (b) Information concerning the parties' relationships, including:~~

~~((a) The employer's principal business;~~

~~((b)) (i) Identification of the employer department or division (in which) where the dispute (arises) arose; and~~

~~((c)) (ii) The parties' contractual relationship, indicating that:~~

~~((i)) (A) The parties have never had a contract; or~~

~~((ii)) (B) The parties have had a contract, and a copy of the current (+) or most recent (+) collective bargaining agreement is attached (+)~~

~~(d) The status of related grievance proceedings between the parties, indicating that:~~

~~(i) No grievance has been filed on the dispute involved; or~~

~~(ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or~~

~~(iii) An arbitration award has been issued on a related grievance;~~

~~(e) A description of the bargaining unit involved, specifying inclusions and exclusions; and~~

~~(f) The number of employees in the bargaining unit.~~

~~(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated).~~

~~(c) Job titles of involved bargaining unit employees.~~

~~(d) The name, signature, and title, if any, of the person filing the complaint as well as the date of the signature.~~

~~(e) Any other information requested in the unfair labor practice complaint filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.~~

~~(2) Each complaint must contain in separate numbered paragraphs:~~

~~(a) Clear and concise statements of the facts constituting the alleged unfair labor practices, including the times, dates, and places of occurrences and the names of the participants; and~~

~~(b) A statement of the remedy sought by the complainant.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, §

391-45-050, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-070 Amendment. (1) A complaint may be amended upon motion made by the complainant(~~(r)~~) if:

(a) The proposed amendment only involves the same parties as the original complaint;

(b) The proposed amendment is timely under any statutory limitation as to new facts;

(c) The subject matter of the proposed amendment is germane to the subject matter of the complaint as originally filed or previously amended; and

(d) Granting the amendment will not cause undue delay of the proceedings.

(2) A motion(~~(s)~~) to amend a complaint(~~(s shall be)~~) is subject to the following limitations:

(a) (~~(Prior to)~~) Before the appointment of an examiner, amendment (~~(shall be)~~) is freely allowed upon motion (~~(to the agency official responsible for making preliminary rulings under WAC 391-45-110)~~);

(b) After the appointment of an examiner but (~~(prior to)~~) before the opening of (~~(an evidentiary)~~) a hearing, amendment may be allowed upon motion to the examiner and subject to due process requirements;

(c) After the opening of (~~(an evidentiary)~~) a hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made (~~(prior to)~~) before the close of the (~~(evidentiary)~~) hearing.

(3) (~~(Where)~~) If a motion for amendment is denied, the proposed amendment (~~(shall)~~) will be processed as a separate case.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.56.170, 41.59.140 and 53.18.015. WSR 00-14-048, § 391-45-070, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-090 Withdrawal. (1) A complaint may be withdrawn by the complainant(~~(r)~~) through an email to the examiner or by a written request filed as required by WAC 391-08-120 before issuance of a decision by an examiner.

(2) A withdrawal "without prejudice" (~~shall~~) does not vary any statutory time limitation for filing of unfair labor practice complaints (~~(, unless the parties file a written agreement for a different arrangement prior to the expiration of the applicable statutory period)~~).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 00-14-048, § 391-45-090, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-110 Deficiency notice—(~~Preliminary ruling~~) Cause of action statement—Deferral to arbitration. The executive director (~~or a designated staff member~~), the executive director's designee, or an examiner shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice (~~shall be issued and served on all parties,~~) identifying the defects and specifying a due date for the filing and service of an amended complaint will be issued and served on all parties. If the defects are not cured within (~~twenty-one~~) 21 days, an order (~~shall be issued and served,~~) dismissing the defective allegation(s) and stating the reasons for that action must be issued and served on all parties. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection (~~shall be~~) is the final order of the agency on the defective allegation(s) (~~and~~) with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the (~~commission~~) agency, a (~~preliminary ruling~~) cause of action statement summarizing the allegation(s) (~~shall~~) will be issued and served on all parties.

(a) A (~~preliminary ruling~~) cause of action statement forwarding a case for further proceedings is an interim order (~~which~~) that may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310(2).

(b) The (~~preliminary ruling~~) cause of action statement limits the (~~causes~~) cause(s) of action before an examiner and the commission. A complainant who claims that the (~~preliminary ruling~~) cause of action statement failed to address one or more causes of action (~~it~~) the complainant sought to advance in the complaint (~~must, prior to~~) may, before the issuance of a notice of hearing, seek clarification from the person (~~that~~) who issued the (~~preliminary ruling~~) cause of action statement.

(c) The (~~preliminary ruling shall~~) cause of action statement must establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section ~~((τ))~~ pending the outcome of related contractual dispute resolution procedures, but ~~((shall))~~ the agency retains jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered ~~((where))~~ if:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours, or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegations under this chapter ~~((shall))~~ must be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings ~~((shall be))~~ is considered binding, except ~~((where))~~ if:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result ~~((which))~~ that is repugnant to the purposes and policies of the applicable collective bargaining statute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 28B.52.073, 34.05.419, 41.56.140, 41.56.150 and 41.59.140. WSR 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 90-06-074, § 391-45-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-130 Examiner—Who may act. The executive director or ~~((a designated staff member))~~ designee shall assign an examiner to conduct further proceedings in the matter ~~((τ))~~ and shall notify the parties of that assignment. ~~((The examiner may be a member of the agency staff or any other individual designated by the commission or executive director.))~~ Upon notice to all parties, an examiner may be substituted for the examiner previously ~~((presiding))~~ assigned.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-130,

filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.56.170 and 53.18.015. WSR 90-06-074, § 391-45-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-170 Notice of hearing. The ~~((examiner shall issue a))~~ notice of hearing ~~((and have it))~~ will be issued and served on the parties. ~~((Attached to the notice of hearing shall be))~~ A copy of the ~~((preliminary ruling))~~ cause of action statement issued under WAC 391-45-110 must be attached to the notice of hearing. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.434, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-170, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-190 Answer—Filing and service. An answer to a complaint charging unfair labor practices ~~((shall))~~ must be in writing. The respondent shall file and serve its answer as required by WAC 391-08-120 ~~((1), and shall serve a copy on the complainant, as required by WAC 391-08-120 (3) and (4))~~.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-190, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-190, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-190, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-190, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-210 Answer—Contents—Amendment—Effect of failure to answer. (1) An answer filed by a respondent (~~((shall))~~) must specifically admit, deny, or explain each fact alleged in the portions of a complaint found to state a cause of action under WAC 391-45-110. A statement by a respondent that it is without knowledge of an alleged fact (~~((shall))~~) operates as a denial. An answer (~~((shall))~~) must assert any affirmative defenses that are claimed to exist.

(2) Counterclaims by a respondent against a complainant (~~((shall))~~) must be filed and processed as separate cases, subject to procedures for consolidation of proceedings.

(3) Motions to amend answers (~~((shall))~~) must be acted upon by the examiner, subject to the following limitations:

(a) Amendment (~~((shall be))~~) is allowed (~~((whenever))~~) if a motion to amend the complaint has been granted;

(b) Amendment may be allowed prior to the opening of (~~((an evidentiary))~~) a hearing, subject to due process requirements;

(c) After the opening of (~~((an evidentiary))~~) a hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made (~~((prior to))~~) before the close of the (~~((evidentiary))~~) hearing.

(4) If a respondent fails to file a timely answer or (~~((fails))~~) to specifically deny or explain a fact alleged in the complaint, the facts alleged in the complaint (~~((shall be))~~) are deemed to be admitted as true, and the respondent (~~((shall be))~~) is deemed to have waived its right to a hearing as to the facts so admitted. A motion for acceptance of an answer after its due date (~~((shall only))~~) may be granted for good cause, unless the complainant can show that it would be prejudiced by such action in accordance with WAC 391-08-003.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 00-14-048, § 391-45-210, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-210, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-250 Motion to make complaint more definite and detailed. The examiner may direct that the complaint be made more definite and detailed, upon motion of the respondent, if the examiner is satisfied that the complaint is so indefinite as to hamper the respondent in the preparation of its answer.

(1) The respondent shall file its motion (~~((on or before))~~) by the date specified for the filing of an answer. The motion (~~((shall))~~) must be filed and served as required by WAC 391-08-120.

(2) The filing of a motion under this section (~~((shall))~~) extends the due date for the respondent's answer until a date set by the examiner.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-250, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-260 Settlement ((conference)) mediation. ((Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference)) A settlement mediation concerning substantive issues may be held under WAC 10-08-200(15).

(1) A ((separate)) different case number ((shall be)) is assigned, and all ((files and papers)) documents for the settlement ((conference shall be)) mediation are kept in a case separate from the ((files and papers for)) documents in the unfair labor practice proceedings.

(2) ((A commission)) An agency staff member other than the assigned examiner ((shall be)) is assigned to explore settlement between the parties on the substantive issues.

(3) ((Any settlement conference shall be held in advance of the scheduled hearing date on)) A settlement mediation may be held at any time before issuance of a decision by an examiner in the underlying unfair labor practice proceedings.

(4) During a settlement ((conference)) mediation, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute.

(5) Participation in a settlement ((conference)) mediation is voluntary and nothing in this rule prohibits parties from exploring settlement on their own. Refusal by a party to participate in a voluntary settlement ((conference shall)) mediation does not prejudice that party in any manner.

(6) Conversations had and offers made in a settlement ((conference shall not be)) mediation are not admissible ((in)) into evidence at a hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-260, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-260, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-260, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-260, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-056 (Order 88-05), § 391-45-260, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-270 Hearings—Reopening of hearing. (1) Hearings ~~((shall be))~~ are public, ~~((except where))~~ unless a protective order is issued under WAC 10-08-200(7), and ~~((shall be))~~ are limited to the portions of a complaint found to state a cause of action under WAC 391-45-110.

(a) The complainant ~~((shall be))~~ is responsible for the presentation of its case~~((r))~~ and ~~((shall have))~~ has the burden of proof.

(b) The respondent ~~((shall be))~~ is responsible for the presentation of its defense~~((r))~~ and ~~((shall have))~~ has the burden of proof as to any affirmative defenses.

~~((c) The examiner's authority under WAC 10-08-200 (8) and (9) shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant or respondent under this subsection.))~~

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party ~~((upon discovery of))~~ that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-270, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-270, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-270, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-45-290 Posthearing briefs. (1) Any party ~~((shall be entitled))~~ may, upon request made before the close of the hearing, ~~((to))~~ file a posthearing brief.

(2) The examiner may direct the filing of briefs as to any or all of the issues in a case.

(3) Arrangements and due dates for briefs ~~((shall be))~~ are established by the examiner.

(4) Any brief ~~((shall))~~ must be filed ~~((with the examiner))~~ and served as required by WAC 391-08-120~~((1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4)).~~

~~((2))~~ (5) A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, ~~((twelve-point))~~ 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel or complex ~~((legal and/or factual issues raised by the objections))~~ issues; and

(b) The ~~((hearing))~~ examiner grants ~~((such a))~~ the motion for good cause shown~~((; and))~~.

~~((e))~~ (6) A motion for permission to file a longer brief may be made orally to the ~~((hearing))~~ examiner at the end of the ~~((administrative))~~ hearing, and the ~~((hearing officer))~~ examiner has the authority to orally grant ~~((such))~~ the motion at ~~((such))~~ that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-290, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-290, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-290, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-290, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-45-310 Motions for discretionary review—Examiner decisions. (1) (a) A party seeking review by the commission of an interlocutory decision of the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ an examiner must file a motion for discretionary review with the commission and a copy with the ~~((executive director, his or her designee, or a hearing examiner,))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ an examiner will be accepted by the commission only:

(i) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed an obvious error ~~((which))~~ that would render further proceedings useless; ~~((or))~~

(ii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed probable error and the ~~((decision of the))~~ interlocutory decision ~~((of the hearing examiner))~~ substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has so far departed from the accepted and usual course of administrative proceedings as to call for ~~((the exercise of revisory jurisdiction))~~ immediate review by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a ~~((preliminary ruling by the executive director or his or her designee or a hearing examiner))~~ cause of action statement under WAC 391-45-110; ~~((or))~~

(ii) Application of the six-month statute of limitations; or

(iii) Any evidentiary ruling by ~~((a hearing))~~ an examiner during the course of ~~((an administrative))~~ a hearing.

(d) If a motion for discretionary review is filed, the due date for any response is seven days following the date on which a party wishing to file a response is served with the motion. Responses must be filed and served as required by WAC 391-08-120.

(e) A motion for discretionary review ((under this rule)), and any response, should not exceed ((fifteen)) 15 pages (double-spaced, 12-point type) excluding appendices.

~~((e))~~ (f) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the ((executive director's, his or her designee's, or hearing examiner's)) interlocutory decision or the issues pertaining to that decision.

(2) After the close of ~~((the))~~ a hearing and the filing of all briefs, ~~((the))~~ an examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section ~~((shall be))~~ is the final order of the agency~~((r))~~ with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-310, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-330 Withdrawal or modification of examiner decision.

The examiner may set aside, modify, change, or reverse any findings of fact, conclusions of law, or order~~((r))~~ if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion~~((r))~~ or on a written motion filed and served by any party as required by WAC 391-08-120.

(2) Action may only be taken under this section within ~~((ten))~~ 10 days following issuance of the decision.

(3) This section ~~((shall be))~~ is inoperative after the filing of an appeal to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-330, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-330, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-330, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110,

28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-330, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-330, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-350 Appeals. An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal (~~(shall be twenty)~~) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) (~~Where~~) If an order has been appealed, the due date for a notice of cross-appeal by other parties (~~(shall be)~~) is seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal (~~(shall)~~) must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party (~~(which)~~) that desires to cite or reassert a document previously filed in the matter (~~(shall)~~) must do so by reference to the document already on file (~~(r)~~) and shall not file or attach another copy of the document to (~~(papers)~~) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(6) The due date for any appeal brief (~~(which)~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(7) The due date for any responsive brief (~~(which)~~) that a party desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. (~~(Such)~~) Requests (~~(shall)~~) to extend the due date may only be considered if made (~~(on or before)~~) by the date the brief is due (~~(r)~~) and in compliance with WAC 391-08-180. Extensions of time (~~(shall)~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~(its)~~) the brief's total length to (~~(twenty-five)~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~(in order)~~) to address novel or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~(such a)~~) the motion for good cause shown.

(10) Any motion filed under (~~(this)~~) subsection (~~(shall)~~) (9) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~(such)~~) the motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-350, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-45-350, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-390 Commission action on appeals. If an order is appealed under WAC 391-45-350, the entire record in the proceedings (~~(shall)~~) must be transmitted to the commission (~~(members)~~). The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the entire record (~~(and any briefs or arguments submitted)~~) transmitted to it, determine the appeal(~~(r)~~) and (~~(shall)~~) issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-390, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-390, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-390, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-410 Unfair labor practice remedies—Back pay. If an unfair labor practice is found to have been committed, the commission

or an examiner shall issue a remedial order. In calculating back pay orders, the following (~~shall apply~~) applies:

(1) Individuals reinstated to employment with back pay (~~shall~~) must have deducted from any amount due an amount equal to any earnings the employee may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Individuals reinstated to employment with back pay (~~shall~~) must have deducted from any amount due an amount equal to any unemployment compensation benefits the employee may have received during the period of the violation, and the employer shall provide evidence to the (~~commission~~) agency that the deducted amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due (~~shall be~~) are subject to interest at the rate (~~which~~) that would accrue on a civil judgment of the Washington state courts(~~(7)~~) from the date of the violation to the date of payment.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. WSR 00-14-048, § 391-45-410, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-410, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-410, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-430 Motion for temporary relief. In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make a motion requesting that the commission seek appropriate temporary relief through the superior court(~~(, and)~~). All such motions (~~shall~~) must be processed as provided in this section.

(1) When the complaint is filed, or as soon thereafter as facts giving rise to the request for temporary relief become known, the complainant shall file and serve written notice of its intent to make a motion for temporary relief with the executive director as required by WAC 391-08-120(~~((1), and shall serve a copy of the notice on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4))~~).

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the processing of the matter (~~shall~~) must be expedited under WAC 391-45-110.

(3) After a determination that the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-120, a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.

(4) If (~~there is~~) a motion for temporary relief is filed, the due date for counter-affidavits (~~(from other parties)~~) is seven days following the date on which (~~that party~~) a party wishing to file counter-affidavits is served with a motion for temporary relief.

((The)) Counter-affidavits ((shall)) must be filed and served as required by WAC 391-08-120.

(5) The executive director shall forward all motions and affidavits to the commission, which shall determine whether an injunction ((pendente lite)) for temporary relief should be sought. In making its determination, the commission ((shall)) must adhere to the following policy:

(("))The name and authority of the public employment relations commission ((shall)) may not be invoked in connection with a request for temporary relief ((prior to)) before the completion of administrative proceedings under ((WAC 391-45-010, et seq.)) this chapter, unless it appears that one or more of the allegations in the complaint ((of unfair labor practices)) is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and ((the complainant)) would suffer irreparable harm ((unless)) if the status quo ((be preserved)) is not returned pending the completion of administrative proceedings. (("))

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction ((pendente lite)) for temporary relief.

(b) Whenever temporary relief has been procured, the complaint ((which)) that has been the basis for the temporary relief ((shall)) must be heard expeditiously, and the case ((shall)) must be given priority over all other cases except cases of like character.

(c) A determination by the commission that temporary relief should not be sought at a particular time ((shall)) does not bar renewal of the motion for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.160(3) and 41.59.150. WSR 00-14-048, § 391-45-430, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-430, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.59.150. WSR 90-06-074, § 391-45-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-430, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-550 Collective bargaining—((Policy)) Agency determines mandatory subjects. It is the policy of the ((commission)) agency to promote ((bilateral)) collective bargaining negotiations between employers and the exclusive representatives of their employees. Parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. ((The commission deems the determination as to)) Whether a particular

subject is mandatory or nonmandatory (~~(to be)~~) is a question of law and fact to be determined by the (~~(commission, and which)~~) agency and is not subject to waiver by the parties by their action or inaction. It is the policy of the (~~(commission)~~) agency that a party which engages in collective bargaining with respect to a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.030(4), 41.59.020(2) and 53.18.015. WSR 00-14-048, § 391-45-550, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-550, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-45-002	Sequence and numbering of rules—Special provisions.
WAC 391-45-019	Special provision—Private sector employees.
WAC 391-45-394	Special provision—Marine employees.
WAC 391-45-552	Special provision—Educational employees.

OTS-3728.2

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-55-001 Scope—Contents—Other rules. This chapter governs proceedings (~~(before the public employment relations commission)~~) relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the (~~(commission. The provisions of this chapter should be read in conjunction with the provisions of:~~

(1) ~~Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

(2) ~~Chapter 391-25 WAC, which regulates representation proceedings.~~

(3) ~~Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.~~

~~(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-55-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-55-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-010 Impasses in contract negotiations—Request for contract mediation—Filing and service. A request for contract mediation may be ~~((made))~~ filed through the agency's online e-filing system, by email, or in writing~~((, by electronic telefacsimile transmission, or by telephone, but shall be confirmed in writing if made by telephone. The original request shall be submitted to the commission's))~~ to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed jointly, the party ~~((submitting))~~ filing the request shall serve a copy~~((, as required by WAC 391-08-120 (3) and (4),))~~ on the other party to the dispute, as required by WAC 391-08-120 (3) and (4). The party or parties requesting contract mediation shall provide the following ~~((information))~~ to the agency:

(1) The name, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative.

(2) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative.

~~((3))~~ ~~((The employer's principal business.~~

~~((4))~~ The parties' contractual relationship, indicating that:

(a) The parties~~((l))~~ have never had a contract; or

(b) The parties have had a contract, and a copy of the current or most recent ~~((applicable))~~ collective bargaining agreement is attached.

~~((5))~~ (4) A general description of the employee job classification(s) in the bargaining unit ~~((involved, specifying inclusions and exclusions)).~~

~~((6))~~ (5) The number of employees in the bargaining unit.

~~((7))~~ ~~The history of the bargaining unit, including at least the approximate date of its creation.~~

~~(8))~~ (6) The history of the current negotiations, including at least the number of meetings held, the date of the first meeting, and whether both parties concur in the request for mediation.

~~((9))~~ (7) Identification of the issues in dispute ~~((and the parties' positions on those issues))~~.

~~((10))~~ (8) The name(s), signature(s), and ~~((, if any,))~~ title(s), if any, of the ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).

(9) Any other information requested in the contract mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060 and 41.56.100. WSR 99-14-060, § 391-55-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 34.05.413 and 41.56.100. WSR 96-07-105, § 391-55-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-020 Grievance mediation—Request for grievance mediation—Filing and service. A request for appointment of a grievance mediator may be ~~((made))~~ filed through the agency's online e-filing system, by email, or in writing ~~((or by electronic telefacsimile transmission. The original request shall be submitted))~~ to the ~~((commission's))~~ agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed jointly, the party ~~((submitting))~~ filing the request shall serve a copy ~~((, as required by WAC 391-08-120 (3) and (4),))~~ on the other party to the collective bargaining agreement under which the dispute arises, as required by WAC 391-08-120 (3) and (4). The party or parties requesting grievance mediation shall provide the following ~~((information))~~ to the agency:

(1) Information identifying the parties to the dispute, including:

(a) The name, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative;

(b) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative;

(c) ~~((The employer's principal business;~~

~~((d))~~ A copy of the current or most recent applicable collective bargaining agreement;

~~((e))~~ (d) A general description of the employee job classification(s) in the bargaining unit ~~((involved, specifying inclusions and exclusions;~~

~~((f))~~ The number of employees in the bargaining unit;

~~(g) The agreement of the party or parties making the request that any unresolved issues shall be submitted to an arbitrator for a final and binding decision; and~~

~~(h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to grievance mediation).~~

(2) Identification of the grievance to be resolved in grievance mediation.

(3) ~~((Designation of the request as:~~

~~(a) A request for appointment of a member of the agency staff as grievance mediator; or~~

~~(b) A request for the submission of a list containing a specified number of names from the dispute resolution panel created by WAC 391-55-110.~~

~~(4)) The name(s), signature(s), and(~~(, if any,))~~ title(s), if any, of the ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).~~

(4) Any other information requested in the grievance mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-020, filed 7/1/99, effective 8/1/99.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-55-030 Assignment of mediator. (1) Upon submission of a request under WAC 391-55-010 or 391-55-020 ~~((~~(3)(a))~~),~~ a member of the agency staff ~~((shall))~~ will be assigned as mediator at the discretion of the executive director. If the parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request ~~((shall))~~ will be considered in making the assignment.

(2) ~~((Upon submission of a request for a list under WAC 391-55-020 (3)(b), names shall be referred and a grievance mediator shall be selected under WAC 391-55-120.))~~ For negotiations involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), if an agreement has not been reached by June 1st of the year in which negotiations occurred, a mediator will be preassigned. The parties are encouraged to meet with the mediator as soon as practicable. For bargaining units eligible for interest arbitration under RCW 47.64.300, the parties may still mutually agree to waive mediation under RCW 47.64.230.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-55-030, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-032 Special provision—Educational employees. Upon submission of a unilateral request for mediation, the executive director shall consider the position of the other party (~~(other than the party making the request,)~~) and (~~(shall)~~) evaluate whether the parties have exchanged and considered (~~(the)~~) one another's proposals (~~(of one another)~~) and whether the intervention of the agency will have a beneficial impact on the negotiating process. (~~(Prior to)~~) Before making this determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the general authority conferred on the (~~(commission)~~) agency by RCW 41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-032, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-032, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-050 Submission of written proposals. Parties requesting the agency's mediation services (~~(of the agency)~~) are encouraged to submit to the assigned mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute as well as any written material supporting the identified proposals.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-070 Function of mediator. The mediator (~~(shall)~~) may meet with the parties or their representatives, or both, either jointly or separately, and (~~(shall)~~) may take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.030, 41.80.090. WSR 08-04-059, § 391-55-070, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-090 Confidential nature of mediation. Mediation meetings (~~shall not be~~) are not open to the public. Confidential information acquired by a mediator (~~shall~~) must not be disclosed to others outside of the mediation process for any purpose, and a mediator (~~shall~~) may not give testimony about the mediation in any legal or administrative proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 5.60.072. WSR 99-14-060, § 391-55-090, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-55-200 Interest arbitration—Certification of issues.

(1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(~~(-7))~~) (14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2) (c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that (~~his or her~~) further efforts will not result in an agreement, the following procedure (~~shall~~) will be implemented:

(a) The mediator shall notify the parties of (~~his or her~~) the mediator's intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and (~~serve on~~) the other party a written list (including article and section references to the parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest ar-

bitration under RCW 41.56.465 (1)(b), 41.56.475 (~~(+2)~~) (4)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration (~~(shall)~~) must be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward (~~(his or her)~~) a recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

[Statutory Authority: RCW 41.56.090, 41.58.050, 41.58.065, 47.64.300, and 74.39A.270. WSR 12-05-066, § 391-55-200, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.56.090, 41.58.050, and 74.39A.270. WSR 10-20-172, § 391-55-200, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270. WSR 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492. WSR 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492. WSR 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-205 Interest arbitration—Appointment of partisan arbitrators. For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496 and within seven days following the issuance of a certification of issues for interest arbitration under WAC 391-55-200, each party shall name one person who is available and willing to serve as its member of the arbitration panel(~~(7)~~) and shall notify the opposite party and the executive director of the name, email address, mailing address, and telephone number of the partisan arbitrator. The partisan arbitrators shall meet within seven days following the appointment of the later_ appointed member to attempt to choose a third member to act as the neutral chairperson of the arbitration panel.

(1) The use of partisan arbitrators (~~(shall be)~~) is deemed waived if neither party has notified the executive director of its appointee within (~~(fourteen)~~) 14 days following the issuance of a certification of issues for interest arbitration, and the parties' (~~(principal)~~) representatives shall then select the neutral chairperson.

(2) A party (~~(which)~~) that has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

(3) By mutual agreement, the parties may waive the provisions in this rule and the appointment of partisan arbitrators.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-205, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-205, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-205, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-210 Interest arbitration—Selection of neutral chairperson. (1) For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496, if the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve(~~(7)~~) and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the (~~(commission)~~) agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and (~~(shall)~~) may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the (~~(commission)~~) agency. Upon the submission of a request (~~(in compliance with this subsection)~~), the executive director shall appoint a neutral chairperson from the (~~(commission)~~) agency staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall (~~(proceed forthwith to)~~) request a panel of at least five arbitrators specifying(~~(: ")~~) that the request is for interest arbitration proceedings under RCW 41.56.450.(~~(")~~) Referrals and selection from the public employment relations commission's dispute resolution panel (~~(shall be)~~) must be made as provided in WAC (~~(391-55-120)~~) 391-75-020. Referrals and selection from other panels (~~(shall)~~) must be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within (~~(twenty-eight)~~) 28 days after certification of issues under WAC 391-55-200, the parties (~~(shall be)~~) are deemed to have waived the procedures in subsections (1) through (3) of this section. The (~~(executive director)~~) agency shall issue a list of dispute resolution panel members and the neutral

chairperson (~~(shall)~~) must be selected as provided in WAC (~~(391-55-120)~~) 391-75-020 unless the parties notify the executive director that by mutual agreement they have determined an alternative process for selecting a neutral chairperson.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-210, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-210, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-210, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-211 Special provision—Interest arbitration—Selection of neutral chairperson for state. (1) Preceding the commencement of negotiations for bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), but no later than February 1st of each even-numbered year, the parties shall utilize the following procedure to select a neutral chairperson unless an alternative process is specified by law or has been mutually agreed upon by the parties:

(a) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve and shall notify the executive director of the identity of the chairperson.

(b) If the parties agree to have the agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the agency. Upon the submission of a request, the executive director shall appoint a neutral chairperson from the agency staff.

(c) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall request a panel of at least five arbitrators specifying that the request is for interest arbitration proceedings under RCW 41.56.450. Referrals and selection from the public employment relations commission's dispute resolution panel must be made as provided in WAC 391-75-020. Referrals and selection from other panels must be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(d) If the parties have not notified the executive director of their selection of a neutral chairperson within 28 days after February 1st of each even-numbered year, or requested an extension of time to

complete the selection process, the parties are deemed to have waived the procedures in (a) through (c) of this subsection. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson must be selected as provided in WAC 391-75-020.

(2) Once a neutral chairperson is selected, the parties shall work with the neutral chairperson to select a mutually agreeable hearing date(s) and location. This information must be transmitted to the executive director within 30 days of it being finalized.

[]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections. Proceedings (~~shall~~) must be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, (~~shall be~~) is deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-215, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-215, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration. At least (~~fourteen~~) 14 days before the date of the hearing, or no later than the next business day after the issuance of the certification if the date between certification and hearing is less than 14 days, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties (~~shall not be~~) are not entitled to submit issues (~~which~~) that were not among the issues certified under WAC 391-55-200.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-220, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-225 Interest arbitration—Prehearing conference—Hearing. (1) The neutral chairperson may, upon ~~((his or her))~~ the chairperson's own motion or upon request of a party, convene a prehearing conference ~~((or conferences))~~.

(a) The purpose ~~((or purposes))~~ of a prehearing conference ~~((include))~~ is to consider any one or more of the following:

(i) Simplification of issues;

(ii) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents, which will avoid unnecessary proof;

(iii) Limitations on the number and consolidation of the examination of witnesses;

(iv) Procedural matters;

(v) Distribution of written testimony and exhibits to the parties prior to the hearing; and

(vi) ~~((Such))~~ Any other matters ~~((as))~~ that may aid in the disposition or settlement of the case.

(b) Prehearing conferences may be held by telephone conference call or other electronic means at a time and ~~((place))~~ location specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference ~~((r))~~ and the agreements made by the parties concerning all of the matters considered. If no objection is filed within ~~((ten))~~ 10 days after the date that the order is ~~((mailed))~~ issued, ~~((it shall))~~ the order controls the subsequent course of the case unless modified for good cause by subsequent order.

(2) The arbitration panel shall promptly establish a date, time, and place for a hearing and ~~((shall))~~ provide reasonable notice to the parties. For good cause shown, the neutral chairperson may adjourn the hearing upon the request of a party or upon ~~((his or her))~~ the chairperson's own initiative. The parties may waive oral hearing by written agreement.

(a) A ~~((tape))~~ recording of the hearing ~~((shall))~~ must be taken and ~~((shall be))~~ is the official record of the hearing, unless the parties agree to take a transcript. If the parties do not agree to take a transcript and share in its cost, a party may take a transcript at its own expense. If a copy of the transcript is provided to the neutral chairperson, all parties ~~((shall))~~ must have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party ~~((shall))~~ does not preclude another member of the same organization or firm from presenting the case at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-225, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-225, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-230 Interest arbitration—Order of proceedings and evidence. The order of presentation at the hearing (~~shall~~) must be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson (~~shall be~~) is the judge of the relevancy of the evidence. All evidence (~~shall~~) must be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit (~~shall~~) must be submitted to the neutral chairperson and copies (~~shall~~) must be provided to the partisan arbitrators and to the other parties. The exhibits (~~shall~~) must be retained by the neutral chairperson until an agreement has been signed or until any judicial review proceedings have (~~been~~) concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that (~~he or she~~) the chairperson may deem to be material.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-230, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-235 Interest arbitration—Arbitration in the absence of a party. The neutral chairperson may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute (~~shall~~) may not be made solely on the default of a party, and the neutral chairperson (~~shall~~) may require the participating party to submit evidence as may be required for making of the findings of fact and determining the issues.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-235, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-235, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-240 Interest arbitration—Closing of arbitration hearings. The neutral chairperson (~~shall~~) will declare the hearing closed after the parties have completed presenting (~~their~~) any tes-

timony (~~and/or~~) or exhibits and submission of briefs or closing arguments within (~~agreed~~) the time limits as mutually agreed upon.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-240, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-240, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-245 Interest arbitration—Award. The rulings and determination of the neutral chairperson (~~shall be~~) are controlling(~~r~~) and (~~shall~~) do not require concurrence(~~r~~) but may be accompanied by (~~the~~) any concurring (~~and/or~~) or dissenting opinions of the partisan arbitrators. The rulings and determinations (~~shall not be~~) are not subject to appeal to the commission, but the neutral chairperson shall submit a copy of the award to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-245, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-55-245, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-245, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-255 Interest arbitration—Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its arbitration panel member (~~of the arbitration panel~~), if any. The expenses of witnesses (~~shall~~) must be paid by the party producing them. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a recording or transcription of the proceedings, (~~shall~~) must be shared equally between the parties. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210(2), along with the costs of (~~tapes for a tape~~) a recording of the proceedings but not a transcription or the services of a court reporter, (~~shall~~) must be paid by the (~~commission~~) agency.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-255, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-255, filed 3/20/96, effective 4/20/96.]

Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings. (1) The executive director shall suspend the certification of some or all issues under WAC 391-55-200, as follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations ~~((and/or))~~ or mediation or both. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed ~~((illegality))~~ nonmandatory subject of bargaining, the objecting party must file ~~((and process))~~ a complaint charging unfair labor practices under chapter 391-45 WAC ~~((prior to))~~ before the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the ~~((the))~~ collective bargaining ~~((the))~~ obligations imposed by RCW 41.56.030(4) must file ~~((and process))~~ a complaint charging unfair labor practices under chapter 391-45 WAC ~~((prior to))~~ before the conclusion of the interest arbitration proceedings.

(c) If a ~~((preliminary ruling))~~ cause of action statement is issued under WAC 391-45-110 ~~((that an unfair practice violation could be found on))~~ for a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint ~~((shall))~~ must be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section ~~((shall))~~ must be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that ~~((the))~~ any suspended issue ~~((or issues was/were))~~ was unlawfully advanced or affected by unlawful conduct, the ~~((issue or issues shall))~~ issue(s) must be stricken from the certification issued under WAC 391-55-200, and the party advancing the proposal ~~((shall))~~ is only ~~((be))~~ permitted to advance ~~((such))~~ modified proposals ~~((as))~~ that are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that ~~((the))~~ any suspended issue ~~((or issues was/were))~~ was lawfully advanced, the suspension under this section ~~((shall))~~ must be terminated and the ~~((issue or issues shall))~~ issue(s) must be remanded to the interest arbitration panel for ruling on the merits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-265, filed 7/1/99, effective 8/1/99.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-300 Fact-finding. If a dispute has not been settled after bilateral negotiations and mediation, ~~((either))~~ fact-finding may be initiated. A party may request the appointment of a fact finder by giving written notice to the ~~((commission))~~ agency, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW who have made a request for the appointment of a fact finder, a period of ~~((ten))~~ 10 days of mediation must have elapsed. The parties may, by agreement made at any time ~~((prior to))~~ before the appointment of a fact finder, extend the period for mediation or ~~((place in the hands of))~~ authorize the mediator ~~((the determination of))~~ to determine when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding ~~((shall))~~ must be initiated if resolution is not reached through mediation by ~~((one hundred))~~ 100 days beyond the expiration date of a contract previously negotiated under that chapter or ~~((one hundred))~~ 100 days from the initiation of mediation if no such contract exists.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-300, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-310 Selection of fact finder. (1) Upon the submission of a timely request for fact-finding, ~~((the executive director shall furnish a list of members of the dispute resolution panel, and))~~ the parties shall meet within seven days ~~((following receipt of the list,))~~ to attempt to select a fact finder. ~~((Names shall be referred and any fact finder shall be selected under WAC 391-55-120.))~~

(a) The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and ~~((shall))~~ notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder within seven days, they shall immediately notify the executive director.

~~((d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).))~~

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder.

(a) For disputes under chapter 41.59 RCW, the fact finder ~~((shall))~~ must be a member of the ~~((commission))~~ agency staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and

((shall)) may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the ((~~commission~~)) agency.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the ((~~commission~~)) agency staff or ((~~may be~~)) a member of the agency's dispute resolution panel ((~~established in WAC 391-55-120~~)).

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-310, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-310, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-315 Conduct of fact-finding proceedings—Waiver of objections. Proceedings ((shall)) must be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party ((~~who~~)) that proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and ((~~who~~)) that fails to state its objection in writing((~~, shall be~~)) is deemed to have waived its right to object.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-315, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-315, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-320 Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties ((~~shall not be~~)) are not entitled to submit issues ((~~which~~)) that were not among the issues mediated under WAC 391-55-070.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-320, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and

41.59.120. WSR 99-14-060, § 391-55-320, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-321 Fact-finding prehearing conference. The fact finder may, upon the fact finder's own motion or upon request of a party, convene a prehearing conference.

(1) The purpose of a prehearing conference is to consider any one or more of the following:

(a) Simplification of issues;

(b) Identification of evidence or supporting documentation that either one party or both may be required to bring to the hearing;

(c) Limitations on the number and consolidation of the examination of witnesses;

(d) Procedural matters; and

(e) Any other matters that may aid in the disposition or settlement of the case.

(2) Prehearing conferences may be held by telephone conference call or other electronic means at a time and location specified by the fact finder.

[]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-325 Fact-finding hearing. The fact finder shall establish a date, time, and place for a hearing. The fact-finding hearing (~~shall be~~) is open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon (~~his or her~~) the fact finder's own initiative. The parties may waive oral hearing by written agreement.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-325, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-330 Order of proceedings and evidence. The order of presentation at the fact-finding hearing (~~shall~~) must be as agreed by the parties or as determined by the fact finder. The fact finder (~~shall be~~) is the judge of the relevancy of the evidence. All evidence (~~shall~~) must be taken in the presence of all parties, unless a

party is absent in default or has waived its right to be present. Each documentary exhibit (~~shall~~) must be submitted to the fact finder and copies (~~shall~~) must be provided to the other parties. The exhibits (~~shall~~) must be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-330, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-330, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-335 Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party (~~who~~) that, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations (~~shall~~) may not be made solely on the default of a party, and the fact finder (~~shall~~) may require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-335, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-335, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-340 Closing of fact-finding hearings. The fact finder (~~shall~~) will declare the hearing closed after the parties have completed presenting (~~their~~) any testimony (~~and/or~~) or exhibits and submission of briefs or closing arguments within (~~agreed~~) the time limits as mutually agreed upon.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-340, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-340, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-345 Findings of fact and recommendations. Within ~~((thirty))~~ 30 days after ~~((his or her))~~ appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder ~~((shall not be))~~ are not subject to appeal to the commission. Fact finders ~~((shall))~~ may rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties ~~((r))~~ and ~~((shall))~~ may not rule on whether a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-345, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-345, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-350 Responsibility of parties after fact-finding.

The parties are entitled to consider the fact finder's recommendations privately ~~((r))~~ before they are made public.

(1) For cases under chapter 41.59 RCW, within five days after the findings of fact and recommendations have been issued, the parties shall notify the ~~((commission))~~ agency and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within ~~((ten working))~~ 10 days after the findings of fact and recommendations have been issued, the parties shall notify the ~~((commission))~~ agency and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-350, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-355 Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses (~~(shall)~~) must be paid by the party producing them. The fees and expenses of a fact finder (~~(shall)~~) must be paid as follows:

(1) A fact finder appointed by the (~~(commission)~~) agency from the (~~(commission)~~) agency staff under WAC 391-55-310 (2) (a) (~~(shall)~~) must be paid by the (~~(commission)~~) agency.

(2) A fact finder selected from the dispute resolution panel or some other source (~~(shall)~~) must be paid by the parties, in equal shares.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-355, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-355, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-365 Advisory opinion. For bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2) (c), during negotiations for a successor agreement if a dispute arises concerning the scope of what is eligible to be bargained (i.e., mandatory or nonmandatory subjects of bargaining), either party may request an advisory opinion from the executive director through the following process:

(1) During the course of negotiations or mediation, upon receipt of any proposal that one party believes may constitute a nonmandatory subject of bargaining, the receiving party must put the other party on notice of the belief that the proposal submitted is nonmandatory.

(2) A cooling-off period must be invoked during which both parties must discuss the alleged nonmandatory proposal(s) in at least one subsequent bargaining or mediation session.

(3) If, after the cooling-off period, the offering party does not withdraw or modify the proposal(s) to eliminate any nonmandatory elements, either party may request an advisory opinion from the executive director. The request must be filed with the agency and served on all parties as required by WAC 391-08-120.

(4) With any request for an advisory opinion, the requesting party shall include only the following documentation and written materials:

(a) A copy of the proposal(s) alleged to be nonmandatory;

(b) A certification from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling-off period was invoked;

(c) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(d) A copy of any legal material supporting the alleged nonmandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(5) Within five business days of receipt of service of the request for an advisory opinion, the other party may file a response, which may include only the following documentation and written materials:

(a) A response from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;

(b) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(c) A copy of any legal material supporting the alleged mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(6) Upon filing of the materials outlined in subsections (4) and (5) of this section, the executive director shall review all materials and notify the parties if an advisory opinion will be issued. If the executive director determines it appropriate to issue an advisory opinion, it must be issued within 30 days of the filing of all materials outlined above. If the executive director determines it is not appropriate to issue an advisory opinion, the executive director shall notify the parties in writing.

(7) An advisory opinion is not a final agency decision and is not subject to appeal under WAC 391-45-350. Advisory opinions are not binding upon the agency and do not constitute evidence of an unfair labor practice in proceedings before the agency.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-55-002	Sequence and numbering of rules—Special provisions.
WAC 391-55-071	Special provision—State patrol personnel.
WAC 391-55-0715	Special provision—Public employees.
WAC 391-55-072	Special provision—Educational employees.
WAC 391-55-110	Dispute resolution panel—Membership.
WAC 391-55-120	Dispute resolution panel—Referral and selection procedures.
WAC 391-55-130	Disclosure.
WAC 391-55-150	Vacancies.
WAC 391-55-201	Special provision—Certification of issues—Public employees.

WAC 391-55-202 Special provision—Certification of
issues—Educational employees.

OTS-3729.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-65-001 Scope—Contents—Other rules. This chapter governs proceedings (~~before the public employment relations commission~~) relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement under all chapters of the Revised Code of Washington (RCW) administered by the (~~commission. The provisions of this chapter should be read in conjunction with the provisions of:~~

~~(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

~~(2) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings))~~ agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-65-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-65-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-65-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-010 Grievance arbitration request—Who may ((submit)) file. (~~Where there is an agreement~~) If the parties agree to arbitrate, a request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a col-

lective bargaining agreement may be (~~submitted~~) filed by the employer, the exclusive representative (~~or~~), their agents, or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-030 (~~(Grievance arbitration)~~) Request for grievance arbitration—Filing and service. A request for appointment of a grievance arbitrator may be (~~made~~) filed through the agency's online e-filing system, by email, or in writing (~~or by electronic telefacsimile transmission. The request shall be on a form furnished by the commission or prepared by the party or parties submitting the request in conformance with WAC 391-65-050. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2))~~) to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not (~~submitted~~) filed jointly, the party (~~submitting~~) filing the request shall serve a copy(~~, as required by WAC 391-08-120 (3) and (4),~~) on the other party to the collective bargaining agreement under which the dispute arises, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.50.413 and 41.56.125. WSR 96-07-105, § 391-65-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-050 (~~(Grievance arbitration)~~) Contents of request filing forms. Each (~~request for appointment of a grievance arbitrator shall contain~~) completed grievance arbitrator request filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(1) Information identifying the parties to the dispute, including:

(a) The name, email address, mailing address, and telephone number of the employer and (~~the name, address and telephone number of its principal~~) of the employer's representative;

(b) The name, email address, mailing address, and telephone number of the employee organization and (~~the name, address and telephone~~)

~~number of its principal)) of the employee organization's representative;~~

~~(c) ((The employer's principal business;~~

~~(d)) A copy of the current or most recent applicable collective bargaining agreement; and~~

~~((e)) (d) A general description of the employee job classification(s) in the bargaining unit ((involved, specifying inclusions and exclusions;~~

~~(f) The number of employees in the bargaining unit;~~

~~(g) The agreement of the party or parties making the request to accept the decision of the arbitrator as final and binding; and~~

~~(h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to arbitration)).~~

(2) Identification of the grievance to be resolved in arbitration.

(3) Designation of the request as:

(a) A request for appointment of a member of the agency staff as arbitrator; or

(b) A request for ~~((the submission of))~~ a list containing a specified number of names from the dispute resolution panel ~~((created by WAC 391-55-110))~~ maintained by the agency under WAC 391-75-010.

(4) The name(s), signature(s), and ~~((, if any,))~~ title(s), if any, of the ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).

(5) Any other information requested in the grievance arbitrator request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413 and 41.56.125. WSR 96-07-105, § 391-65-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-057 (Order 88-09), § 391-65-050, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-65-070 ((Grievance arbitration)) Appointment of staff arbitrator. Upon concurrence of the parties or upon the submission of a joint request, a member of the agency staff ~~((shall))~~ will be assigned as grievance arbitrator. The parties ~~((shall))~~ are not ~~((be))~~ permitted to select a grievance arbitrator from a list of agency staff members~~((,))~~ or to exercise a right of rejection on appointments made under this section~~((; but))~~. However, the parties may jointly express a preference for appointment of one or more staff members as their arbitrator, and their request ((shall)) will be considered in making the assignment. Upon the submission of a request by one party for the appointment of a member of the agency staff as grievance arbitrator, the

agency (~~shall~~) will determine whether the other party to the collective bargaining agreement concurs in the appointment of a staff arbitrator. In the absence of concurrence, the agency (~~shall~~) will notify the requesting party of the lack of concurrence and (~~shall~~) close the case if concurrence is not provided within a reasonable time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 00-14-048, § 391-65-070, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-65-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-090 (~~(Grievance arbitration)~~) Designation of panel of arbitrators. Upon the request of a party, the agency shall (~~furnish~~) provide a list of (~~members of~~) arbitrators from the dispute resolution panel in accordance with WAC 391-75-020(1). (~~Names shall be referred and an arbitrator shall be selected under WAC 391-55-120~~) The parties must select an arbitrator under the procedures specified in WAC 391-75-020(2).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-090, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-65-110 (~~(Grievance arbitration)~~) Conduct of proceedings. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff (~~shall~~) must be kept in the public files (~~of~~) maintained by the agency.

(2) Except as provided in subsection(~~s~~) (1) (~~and (2)~~) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

(3) Rulings, actions, and decisions issued by staff arbitrators under this chapter (~~shall~~) are not (~~be~~) subject to appeal to the commission (~~or the marine employees' commission~~).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.130, and 49.39.060. WSR 12-05-066, § 391-65-110, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.56.125. WSR 03-03-064, § 391-65-110, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-110, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-65-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-65-150 (~~(Grievance arbitration)~~) Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its arbitration panel member, if any(~~(of an arbitration panel)~~). The expenses of witnesses (~~(shall)~~) must be paid by the party producing them. The (~~(commission)~~) agency shall pay the salary and expenses of a staff member assigned under WAC 391-65-070, but the (~~(commission)~~) agency shall not pay any costs for recording (~~(and/or)~~) or transcription of proceedings(~~(r)~~) or any other expenses of the proceedings. The parties shall pay the fees and expenses of a dispute resolution panel member selected under WAC 391-65-090, as provided in WAC (~~(391-55-120)~~) 391-75-020.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-150, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-150, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-65-002	Sequence and numbering of rules—Special provisions.
WAC 391-65-075	Special provision—Marine employees.
WAC 391-65-130	Grievance arbitration—Award.

OTS-3730.3

**Chapter 391-75 WAC
DISPUTE RESOLUTION PANEL AND LAW ENFORCEMENT ARBITRATOR ROSTER**

NEW SECTION

WAC 391-75-001 Scope—Contents—Other rules. This chapter governs the maintenance of the dispute resolution panel and law enforcement arbitrator roster.

[]

NEW SECTION

WAC 391-75-010 Dispute resolution panel—Membership. The agency shall maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

(1) Applicants for membership on the dispute resolution panel shall demonstrate minimum background and experience equal to the minimum qualifications for the working level positions on the agency staff:

(a) A master's degree in labor relations, personnel management, industrial relations, or closely allied field, or a law degree;

(b) At least three years of experience in collective bargaining with major work assignments in negotiations, contract administration, or related work as a union or management representative, mediator, arbitrator, or educator in the above areas; and

(c) Additional qualifying experience may substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall provide at least five letters of recommendation supporting their acceptability as an impartial from:

(a) At least two management representatives;

(b) At least two union representatives; and

(c) At least one impartial arbitrator, mediator, or labor relations administrative agency official.

(3) All letters of recommendation submitted under subsection (2) of this section must be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter.

(4) Applicants for membership on the dispute resolution panel who desire to be referred for interest arbitration proceedings shall demonstrate their experience as an impartial in at least five grievance arbitration, fact-finding, or interest arbitration cases by submitting copies of arbitration awards which can be provided, upon request, to parties selecting an interest arbitrator.

(5) Applicants for membership on the dispute resolution panel shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications, and affiliations. All information submitted may be subject to administrative verification.

(6) Applications of persons appearing to be qualified for membership on the panel are forwarded to the commission for consideration and action. The commission shall review each application submitted to it, together with the supporting letters of recommendation, and notify the applicant of the determination made.

(7) No member of the commission appointed under RCW 41.58.010 may be an active member of the dispute resolution panel.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to statute. Only persons listed on the panel may be compensated by the agency under a personal service contract.

[]

NEW SECTION

WAC 391-75-020 Dispute resolution panel—Referral and selection procedures. (1) All referrals from the dispute resolution panel are made by random selection from among the panel members eligible for the type of proceeding involved, subject to the following:

(a) If the parties do not specify the number of names requested, the agency will supply seven names.

(b) Where the parties request a specific number of names, the agency will supply the number requested.

(c) The agency will post on its website at www.perc.wa.gov biographical information, including background, qualifications, and experience, for each of the arbitrators on the list supplied to the parties.

(d) The agency will supply the parties with a second list or additional name(s) upon submission of their joint written request.

(2) The parties may use any method agreed upon for selecting an impartial from the list provided by the agency. In the absence of agreement on any other method, they shall alternately strike names from the list, with the order of striking determined by lot.

(3) All contacts and arrangements between the parties and a selected dispute resolution panel member are the responsibility of the parties. The fees and travel expenses of the dispute resolution panel member must be paid by the parties under applicable rules or as agreed by the parties.

[]

NEW SECTION

WAC 391-75-040 Law enforcement arbitrator roster—Membership. The agency shall maintain a roster of nine to 18 individuals qualified to serve in an impartial capacity for disputes involving law enforcement personnel disciplinary actions that are submitted to binding grievance arbitration under an existing collective bargaining agreement.

(1) In addition to the qualifications set forth in RCW 41.58.070(4), applicants for membership on the law enforcement arbitrator roster shall provide at least five letters of recommendation supporting their acceptability as an impartial from:

(a) At least two management representatives;

(b) At least two union representatives; and

(c) At least one impartial arbitrator, mediator, or labor relations administrative agency official.

(2) All letters of recommendation submitted under subsection (1) of this section must be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter.

(3) Applicants for membership on the law enforcement arbitrator roster shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications, and affiliations. All information submitted may be subject to administrative verification.

(4) Applications of persons appearing to be qualified for membership on the roster are forwarded to the commission for consideration and action. The commission shall review each application submitted together with the supporting letters of recommendation. Individuals selected by the commission for appointment to the law enforcement arbitrator roster will be provided with a letter of appointment designating the expiration date of the appointee's term. Except as provided in RCW 41.58.070(6), a person appointed to the law enforcement arbitrator roster serves a three year term.

(a) If an appointee desires to be reappointed to the roster for an additional term, the appointee must notify the executive director of this desire in writing within 60 days before the expiration date of the appointee's current term. Any notice for reappointment will be transmitted to the commission for its consideration consistent with this section.

(b) If the appointee declines to seek reappointment or fails to request reappointment, the commission may then fill the vacancy on the roster consistent with RCW 41.58.070 and this section.

(5) No member of the commission appointed under RCW 41.58.010 may be an active member of the law enforcement arbitrator roster.

[]

NEW SECTION

WAC 391-75-050 Awards. Any arbitrator assigned or selected under this chapter for a dispute involving public employees shall, after sending the arbitration award to the parties, submit a copy to the executive director.

[]

NEW SECTION

WAC 391-75-060 Ethical standards. Whenever it appears to the commission that an applicant or member of the dispute resolution panel or law enforcement arbitrator roster has failed or refused to comply with applicable statutes, rules, and ethical standards, the application must be rejected or the member must be removed from the dispute resolution panel or law enforcement arbitrator roster. A member must

also be removed from the dispute resolution panel or law enforcement arbitrator roster if the member has:

- (1) Ceased accepting appointments as an impartial in the resolution of labor disputes;
- (2) Failed to keep the agency informed of the member's current email address, mailing address, and telephone number; or
- (3) Failed to follow ethical standards and procedures as set forth in the "Code of Professional Responsibility for Arbitrators of Labor Management Disputes" as approved by the National Academy of Arbitrators, the Federal Mediation and Conciliation Service, and the American Arbitration Association.

[]

NEW SECTION

WAC 391-75-070 Impartiality. Persons referred from the dispute resolution panel or law enforcement arbitrator roster shall be impartial. No active member of the dispute resolution panel or law enforcement arbitrator roster may serve in any capacity as an advocate or representative for either labor or management in labor relations matters. Any member of the panel or roster who intends to engage in advocacy work shall notify the executive director and will be placed on inactive status while their advocacy work continues.

[]

NEW SECTION

WAC 391-75-080 Disclosure. Before accepting an appointment as an arbitrator from either the dispute resolution panel or the law enforcement arbitrator roster, or as soon as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify that person from serving in the impartial capacity. Employment of the person or any member of their immediate family by any party is disqualifying. Each party to the proceeding shall immediately notify the executive director and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment must be vacated.

[]

WSR 22-17-170
PROPOSED RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed August 24, 2022, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-063.

Title of Rule and Other Identifying Information: Chapter 200-220
WAC, Use of the public areas of the capitol buildings and grounds.

Hearing Location(s): On September 27, 2022, from 2:00 to 4:00
p.m., virtual public hearing via Zoom. To attend the hearing: Join
from a PC, Mac, iPad, iPhone, or Android device [https://des-
wa.zoom.us/j/92108193714?pwd=aGNpMlhtRzhqWDIrbmhqVnF5S0FYZz09](https://des-wa.zoom.us/j/92108193714?pwd=aGNpMlhtRzhqWDIrbmhqVnF5S0FYZz09),
passcode 189959; or one tap mobile
8778535247,,92108193714#,,,,*189959# US toll-free,
8887880099,,92108193714#,,,,*189959# US toll-free; or join by phone.
Dial (for higher quality, dial a number based on your current loca-
tion) 877-853-5247 (toll free) or 888-788-0099 (toll-free), Webinar ID
921 0819 3714, Passcode 189959. International numbers available
<https://des-wa.zoom.us/j/92108193714?pwd=aGNpMlhtRzhqWDIrbmhqVnF5S0FYZz09>.

Date of Intended Adoption: October 6, 2022.

Submit Written Comments to: Jack Zeigler, online at [https://
des.wa.gov/about/policies-laws-rules/rulemaking](https://des.wa.gov/about/policies-laws-rules/rulemaking) Use of the Public
Areas of the Capitol Buildings and Grounds, by 5:00 p.m., September
30, 2022.

Assistance for Persons with Disabilities: Jack Zeigler, email
jack.zeigler@des.wa.gov, by September 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The purpose of this update of the rules
is to:

- Align the rules with current RCW for clarification and clean-up purposes;
- Make technical edits for clarification and clean up purposes. This includes clarifying that Washington state patrol (WSP) does have delegated authority from the department of enterprise services (DES) for enforcement on the campus and that the extra step of a DES complaint is not a prerequisite; and
- Establish a process for appealing campus exclusion in the enforcement section.

Reasons Supporting Proposal: The campus use rules are designed to balance the conduct of government business, public access and expression of free speech, public and employee safety and welfare, the stewardship of the capitol buildings and grounds, and civic education. The capitol campus is a traditional public forum for free speech. Protecting the right to assemble and exercise free speech is a top priority for DES and WSP. However, it is important to understand that free speech laws do not extend to protecting unlawful conduct.

Exclusion is an administrative process that can be used instead of citing someone for criminal trespass, which is a misdemeanor. Right now, we don't have the option to use this civil process due to the gap in the rules. DES and WSP use overall public safety as a guide in seeking compliance with rules and laws. Our general approach is to use the lowest level enforcement action, starting with seeking voluntary compliance, whenever possible.

When enforcement is needed, proper tools are important. There has been a change in tenor and tone of activities on the campus over the past several years, with a steady degradation of the expectation of civil and safe behavior. When groups motivated by conflict come to the campus, tactical challenges and response needs increase, and risk to campus visitors and those working on the campus intensifies.

Statutory Authority for Adoption: RCW 43.19.125 and 46.08.150.

Statute Being Implemented: RCW 43.19.125 and 46.08.150.

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

Name of Proponent: DES, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Jones, 1500 Jefferson [Street S.E.], Olympia, WA, 360-407-8153; Implementation: David Rooth, 1500 Jefferson [Street S.E.], Olympia, WA, 360-407-8153; and Enforcement: Matt Jones, 1500 Jefferson [Street S.E.], Olympia, WA, 360-742-6348.

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. DES is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, DES does not voluntarily make section 201 applicable to this rule adoption, nor to date has the joint administrative rules review committee made section 201 applicable to this rule adoption.

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.

August 24, 2022

Jack Zeigler

Rules and Policy Manager

OTS-4057.1

AMENDATORY SECTION (Amending WSR 15-23-062, filed 11/13/15, effective 12/14/15)

WAC 200-220-030 Definitions. For purposes of these rules, these words or phrases have the following meaning:

(1) "Activity" means one or more people gathering for a common purpose or cause.

(2) "Applicant," "I," "you" or "your" refers to any person(s) or organization(s) seeking permission to use the public areas of the capitol buildings and grounds.

(3) "Banners and signs" means pieces of material presented publicly to display a message, slogan, advertisement, or other similar information. Government-recognized flags are not considered banners or signs for purposes of these rules.

(4) "Capitol buildings and grounds" means those buildings and grounds over which the department of enterprise services exercises custody and control under RCW 43.19.125.

(a) "Buildings" means enclosed buildings and adjoining structures. Buildings include, but are not limited to, the Legislative Building, the Temple of Justice, the Old Capitol Building, and the Natural Resources Building.

(b) "Grounds" means exterior spaces including, but not limited to, walkways, plazas, lawns, plantings and parks.

The grounds include such locations as the capitol campus, Heritage Park, Marathon Park, Centennial Park, Sylvester Park, the surface and shores of Capitol Lake, and Deschutes Parkway.

(5) "Commercial activity" means an activity that promotes, creates, or exchanges commercial products or services. Commercial activities include, but are not limited to, advertising, fund-raising, buying or selling any product or service, encouraging paid membership in any group, association or organization, or the marketing of commercial activities. Commercial activities do not include such activities by or for government entities.

(6) "Director" means the director of the department of enterprise services.

(7) "Enterprise services," "department," "us," or "we" refers to the department of enterprise services.

(8) "Exhibit" or "display" means an object or collection of objects presented publicly with the intention to communicate facts, a particular impression, a viewpoint or an opinion. Exhibits or displays include, but are not limited to, paintings, sculpture, ceramics, photographs, video or computer screens, informational booths and tables, or other similar objects and arrangements. Exhibits and displays do not include equipment used in the performance of medical or therapeutic services during a permitted activity, such as a blood drive, delivering flu shots, or administering a therapeutic massage.

~~((8))~~ (9) "Free speech and assembly activity" means an activity for the purpose of communicating information or ideas to others that will draw the attention, attendance, or participation of others. Free speech and assembly activities include, but are not limited to, assemblies, marches, rallies, performances, community events, press conferences, demonstrations, celebrations, ceremonies, speeches and other similar expressive activities.

~~((9) "Enterprise services," "department," "us," or "we" refers to the department of enterprise services.)~~

(10) "Permit" means a written permit issued by the department of enterprise services authorizing the use of public areas of the capitol buildings and grounds as required by these rules.

(11) "Private activity" means an activity sponsored by a private individual, business or organization that is not open to the general public. Private activities include, but are not limited to, banquets, receptions, award ceremonies, weddings, concerts, dances, and seminars.

(12) "Public area" means those areas of the capitol buildings and grounds that are generally open to the public, such as a building's primary public entrance lobby; rotundas and adjoining public mezzanines; and exterior plazas and lawns. Public areas do not include offices, meeting rooms, and other work areas that are ordinarily reserved for or primarily devoted to conducting the business and operations of state government; the governor's mansion; and any area which

is identified by a sign pursuant to WAC 200-200-450 indicating that the area is not open to the public.

(13) "Service animal" means an animal, including guide dogs, trained to do work or perform tasks for the benefit of a person with a disability, as defined by applicable state and/or federal laws.

[Statutory Authority: RCW 43.19.011, 43.19.620, 43.19.985, 43.19.742, 43.19.769, 39.26.080, 39.26.090, 39.26.251, 39.26.255, and 39.26.271. WSR 15-23-062, § 200-220-030, filed 11/13/15, effective 12/14/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-220-030, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.125 and 46.08.150. WSR 09-22-059, § 236-17-030, filed 10/30/09, effective 11/30/09.]

ENFORCEMENT, EXCLUSION, AND APPEAL

NEW SECTION

WAC 200-220-600 Authority to enforce. Statutes, rules, and policies regulating the use of the capitol campus may be enforced by enterprise services, the Washington state patrol, and by any law enforcement agency with appropriate jurisdiction. Prior coordination with or complaint by enterprise services is not a prerequisite for enforcement actions by agencies with enforcement authority.

[]

NEW SECTION

WAC 200-220-610 Warning of potential exclusion from capitol campus or areas thereof. (1) An officer of the Washington state patrol or a designated enterprise services employee may issue a warning of potential exclusion from the capitol campus or a designated area thereof under the authority of this section, if the issuer has a reasonable belief based upon the facts and circumstances to believe that the person through acts or omissions has violated one or more of the rules applicable to the capitol campus under chapters 200-200 through 200-299 WAC, or an applicable statute, regulation, or policy while on the capitol campus.

(2) A warning of potential exclusion shall:

(a) Be in writing, signed by the person issuing it, identify the issuer's name and title, and identify the person subject to the warning, if known.

(b) Contain the date of issuance and effective date, the violation(s) that the person is alleged to have committed, and a citation to any rule or statute violated.

(c) Warn that a future violation of one or more of the rule or statute violated under the warning of potential exclusion may be grounds for the issuance of a notice of exclusion from the capitol campus or a designated area, in addition to any other legal citation, liability, or remedy provided under the law.

(d) Set out the method of appealing the warning, which shall also include the address where the appeal should be sent.

(3) A person subject to a warning need not be charged, tried, or convicted of any crime or be issued an infraction or have an infraction found committed in order for a warning of potential exclusion to be issued or effective. The issuing person need only establish that probable cause existed to support the issuance of the warning.

(4) A person subject to a warning of potential exclusion may appeal the warning to the director as provided on the notice by submitting an appeal together with a copy of the warning within 10 days of receipt of the warning. The director or a designee shall decide the appeal as a brief adjudicative appeal under RCW 34.05.482 through 34.05.494. The deciding officer shall base the final order on a "more probable than not" standard whether the violation identified in the warning did or did not occur. In the event the director denies the appeal, the decision is appealable under the provisions of chapter 34.05 RCW.

[]

NEW SECTION

WAC 200-220-620 Exclusion from capitol campus or areas thereof.

(1) An officer of the Washington state patrol or a designated enterprise services employee may exclude a person from the capitol campus or a designated area thereof under the authority of this section, if the issuer has reasonable belief based upon the facts and circumstances to believe that the person through acts or omissions has violated one or more of the rules applicable to the capitol campus under chapters 200-200 through 200-599 WAC or an applicable statute, regulation, or policy while on the capitol campus.

(2) A notice of exclusion shall not be issued unless:

(a) The alleged violator who engaged in the conduct in question was informed that the conduct is a violation of an applicable statute, rule, or policy, was requested to cease or correct that conduct, and the person did not upon request and information promptly cease or correct the conduct, including, if applicable, removing any objects or materials that are in violation; or

(b) The alleged violator has been given a warning of potential exclusion for the conduct in question; or

(c) The alleged violation has resulted in or creates a substantial risk of damage to property or injury to a person.

(3) A notice of exclusion shall:

(a) Be in writing, signed by the person issuing it, identify the issuer's name and title, and identify the person subject to the order, if known.

(b) Reasonably identify the ground or grounds for the exclusion. To the extent practicable, if ground in subsection (2)(b) of this section is relied upon, identify the date of a prior warning, and if ground in subsection (2)(c) of this section is relied upon, describe

the basis for finding damage or a substantial risk of damage to state property or injury or a substantial risk of injury to a person.

(c) Contain the date of issuance and a citation to the rule(s) and/or statute(s) the person is alleged to have violated.

(d) Contain the date the exclusion begins and ends. If the exclusion duration is longer than the standard period of exclusion, the notice shall provide a description of the nature of the violation warranting a deviation from the standard.

(e) Specify the locations from which the individual will be excluded, which the issuer may, if appropriate, limit to areas of the capitol campus where similar conduct might occur. Exclusions do not apply to public rights-of-way and public sidewalks along such rights-of-way that are not closed to the public. Further, exclusions do not apply to direct transit along a direct route through the capitol campus for the sole purpose of attending a public hearing, a legislative session, or a prearranged meeting with a state official unless the notice of exclusion specifically states that such areas are subject to the exclusion and provides the reasons therefore.

(f) Set out the method of appealing the notice, which shall also include the address where an appeal should be sent.

(g) Prominently display a warning of the consequences for failure to comply with the notice and state that a violation of the terms of the notice will constitute criminal trespass under chapter 9A.52 RCW.

(4) The person subject to exclusion need not be charged, tried, or convicted of any crime or be issued an infraction or have an infraction found committed in order for a notice of exclusion to be issued or effective. The issuing person need only establish that probable cause exists that a violation occurred and that one or more of the conditions in subsection (2) of this section are satisfied.

(5) The standard period of exclusion shall be as follows and shall apply unless the issuing person deems a longer period of exclusion is warranted based on the nature of the violation:

(a) First violation: Forty-eight hour exclusion.

(b) Second violation: Thirty day exclusion.

(c) Third violation: One year exclusion.

(6) A person subject to exclusion pursuant to this section may appeal the exclusion to the director as provided on the notice by submitting the appeal together with a copy of the exclusion within 10 days of receipt of the notice of exclusion. The director or a designee shall decide the appeal as a brief adjudicative appeal under RCW 34.05.482 through 34.05.494. The presiding officer shall base the final order on a "more probable than not" standard whether (a) a condition in subsection (2) of this section was or was not present and (b) the violation did or did not occur. The presiding officer may modify the terms of the exclusion to reduce the period and/or area of exclusion. The decision of the presiding officer may be appealed under the provisions of chapter 34.05 RCW.

(7) Unless the appellant requests and obtains a stay from the presiding officer or the exclusion is otherwise invalidated, removed, or modified, the exclusion will remain in effect until its expiration date. A stay request must be accompanied by a statement of the grounds for the stay and identify the evidence setting forth the factual basis for the request. A stay will not be granted unless the deciding presiding officer finds that the appellant is likely to prevail on the appeal or that the appellant has raised a substantial question whether the exclusion should be reversed and has shown a likelihood that the appellant will suffer irreparable harm due to the exclusion.

(8) An individual who has received an exclusion notice may petition the director of enterprise services (of its designee) for an exemption from the exclusion notice to allow entry on specific days and times for specific purposes. A request for an exemption must:

(a) Be made in writing, provide the individual's current address, enclose a copy of the exclusion notice from which the individual is requesting an exemption, and be mailed to the department of enterprise services at (address);

(b) Be received by the department of enterprise services within 25 days after the individual has been served with an exclusion notice or not later than five business days prior to the requested period of exemption; and

(c) Identify: (i) The specific location the individual wants to visit; (ii) the date and time when the individual wants to visit; (iii) the purpose of the visit and whether the individual asserts that the exemption is for the purpose of exercising rights under the first amendment of the U.S. Constitution.

After receiving a request for an exemption, the director of the department of enterprise services or a designee must review the request and issue a decision on the request within three business days. The decision must specify the reasons why the presiding officer granted or denied the request.

In the event the presiding officer grants the request, the decision must specify the location, date, and time of the exemption to the exclusion notice. The department of enterprise services must immediately transmit a copy of the decision to the Washington state patrol's special operations division by email, and regular mail, or other shared systems.

In the event the presiding officer denies the request, the decision is appealable under the provisions of chapter 34.05 RCW.

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WSR 22-17-171

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 24, 2022, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-098.

Title of Rule and Other Identifying Information: Chapter 308-10A WAC, Data privacy.

Hearing Location(s): September 27, 2022, at 2:00 p.m. This hearing will take place on Zoom. Join Zoom meeting <https://dol-wa.zoom.us/j/87001652246?pwd=U3A3MnJLT2ZCVHJYRWRVQTFVW1NDZz09>, meeting ID 870 0165 2246, passcode 220124; one tap mobile +12532158782,,87001652246#,,,,*220124# US (Tacoma), +17193594580,,87001652246#,,,,*220124# US. Find your local number <https://dol-wa.zoom.us/j/87001652246?pwd=U3A3MnJLT2ZCVHJYRWRVQTFVW1NDZz09>. If you are having trouble accessing Zoom at the time of the public hearing, please call 360-902-3846.

Date of Intended Adoption: September 28, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by September 26, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by September 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Primarily, this WAC is for the implementation of SSB 5152. Additionally, WAC 308-104-150 is being updated to make it consistent with existing laws.

Statutory Authority for Adoption: RCW 48.01.110.

Statute Being Implemented: RCW 46.22.010.

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: Not applicable.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Dunn, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0136.

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 Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-3846, email rulescoordinator@dol.wa.gov.

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

Is exempt under RCW 46.22.010 (3)(iv).

Explanation of exemptions: RCW 46.22.010 (3)(ii)-(iii) requires that data recipients be audited for both data security and permissible use. Subsection [(3)](iv) requires that the department of licensing (DOL) not be responsible for the costs of the audits. Therefore, DOL must pass on all audit costs to the recipients of the data. DOL has made changes to the proposed rule to minimize the cost of the audits as much as possible for small businesses. Please see the small business economic impact statement for details.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The following WAC are exempt from this requirement per RCW 46.22.010

(3) (iv): WAC 308-10A-201, 308-10A-401, and 308-10A-402.

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

Small Business Economic Impact Statement

Please email rulescoordinator@dol.wa.gov for a copy of the full SBEIS.

A copy of the statement may be obtained by contacting Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-3846, email rulescoordinator@dol.wa.gov.

August 23, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3980.2

Chapter 308-10A WAC DATA PRIVACY

NEW SECTION

WAC 308-10A-100 Definitions. For the purposes of RCW 46.22.010, the following definitions apply:

(1) "Access period" is a duration of time under the term of this agreement when recipient is granted access and use of protected personal information.

(2) "Agent" means a representative, or representatives, of a requestor that is under contract with the recipient or subrecipient to request driving records on the requestor's behalf. "Agent" includes insurance pools established under RCW 48.62.031 of which the authorized recipient is a member.

(3) "Authorized legal representative" means someone legally authorized under federal or state law to make decisions for the beneficiary. An authorized legal representative is someone who:

(a) Can provide documentation that they have power of attorney; legal guardianship or conservatorship for the beneficiary; executor, etc.; or

(b) Is a custodial parent of a beneficiary who is under the age of 18.

(4) "Authorized use" means a permissible use granted to a recipient in a fully executed data sharing agreement with the department.

(5) "Bona fide research organization" means an entity, such as a university, that conducts noncommercial research using established scientific methods. There must be an intention to publish the research findings for wider scientific and public benefit, without restrictions

or delay. Bona fide research organizations do not use protected personal information for commercial purposes.

(6) "Breach" or "breaches" means an unauthorized acquisition, loss of control or exposure to an unauthorized person or business, or misuse of protected personal information. Ransomware and unauthorized offshoring of protected personal information are included in this definition.

(7) "Course of business" or other similar term means activities that pertain to the use of protected personal information as authorized by the recipient's data sharing agreement with the department.

(8) "Customers" means those entities that the recipient is providing services to using protected personal information but is not receiving protected personal information from the recipient. "Customers" does not include those entities receiving statistical reports.

(9) "E-service" means a data service hosted by the department enabling approved users access to data through a secure access Washington (SAW) or license express account. E-services include, but are not limited to, driver and plate search (DAPS), driver adjudication and information system (DIAS), contracted plate search (CPS), driver record request (DRR), abandoned vehicle report (AVR).

(10) "Governmental entity" means a federal agency, a state agency, board, commission, unit of local government, or quasi-governmental entities.

(11) "Incident" means an event that confirms, or is reasonably thought to be, the unauthorized access to, or misuse of, protected personal information. Ransomware attacks are included in this definition.

(12) "Independent third party" means any entity other than a member of the recipient or any of its stockholders, or any entity controlled by or under common control with any of the stockholders or the company group.

(13) "Individual registered or legal vehicle or vessel owner" or "individual vehicle or vessel owner" means a single vehicle or vessel owner, for the purposes of RCW 46.12.630.

(14) "List" means multiple records containing protected personal information, regardless of the method recipient uses to request or obtain records.

(15) "Misuse" means the access, disclosure or use of protected personal information without the express, written authorization from the department in a data sharing agreement. "Misuse" also includes a violation of any privacy requirement outlined in a data sharing agreement.

(16) "Offshoring" means the electronic or hard copy transmission, accessing, viewing, capturing images, storage, or processing of protected personal information outside the United States.

(17) "Per incident," for the purposes of RCW 46.22.010(4), means each time protected personal information is accessed or used by an unauthorized entity or individual. "Per incident" does not refer to individual records.

(18) "Permissible use" means authorized or required uses as outlined in federal or state law, and authorized in the data sharing agreement.

(19) "Protected personal information" means collectively personal information and identity information, as defined by RCW 46.04.209, 19.255.005, and 42.56.590, authorized for disclosure by the federal Driver Privacy Protection Act and state law.

(20) "Recipient" means an entity directly receiving protected personal information from the department through a data sharing agreement.

(21) "Requestor" means an entity with an authorized permissible use to receive protected personal information from the department. A requestor may be an agent, subrecipient, or a recipient.

(22) "Regulatory bodies," for the purposes of RCW 46.52.130, means a body established by federal or state law and is responsible for regulating compliance with adopted rules or laws.

(23) "Statement of compliance" means a statement signed by an executive of an organization attesting to the recipient's full compliance with requirements in its data sharing agreement with the department.

(24) "Subrecipient" means any entity outside your immediate organization that receives or has access to protected personal information including, but not limited to, subsidiaries, subcontractors, requestors, or agents.

[]

NEW SECTION

WAC 308-10A-201 Recipient compliance requirements. (1) Audits -

For a recipient receiving protected personal information:

(a) A recipient receiving recurring lists of data must undergo audits as outlined in the data sharing agreement.

(b) A recipient receiving a one-time list containing multiple records must demonstrate security controls are in place to protect the data and may be required to undergo an audit prior to receiving protected personal information.

(c) A recipient receiving data through an e-service is subject to an audit when the department has cause to investigate a breach or misuse.

(d) The cost of all audits, including actual costs incurred by the department to conduct, process, and review each audit, is the responsibility of the recipient. The department will provide an estimated cost of the audit in advance. The department will minimize the cost of the audit whenever possible.

(e) The department may suspend or terminate a recipient's access to data if the recipient fails to provide an acceptable audit by the due date established by the department.

(f) The department will only accept third-party audits that meet department audit standards and are performed by auditors that meet independent third-party auditor qualifications. Washington state agency internal audit programs that satisfy certification requirements of the office of financial management are considered independent third-party auditors for purposes of this section.

(2) Subrecipient lists - A recipient must provide the department with a list of:

(a) All subrecipients and secondary subrecipients that received protected personal information originating from the recipient in the time frame requested; and

(b) All customers for whom the recipient processes protected personal information.

[]

NEW SECTION

WAC 308-10A-202 Vetting of subrecipients. Before giving a subrecipient access to protected personal information, that the recipient must validate that the subrecipient demonstrates the following minimum requirements:

(1) The subrecipient has a permissible use under federal or Washington state laws, whichever is more restrictive.

(2) The subrecipient is a qualified recipient under federal or Washington state laws.

(3) The subrecipient has sufficient protections in place to secure the privacy of the protected personal information in accordance with the data sharing agreement.

[]

NEW SECTION

WAC 308-10A-203 Subrecipient disqualification. When the department notifies a recipient that its subrecipient is ineligible to receive protected personal information, the recipient must immediately:

(1) Terminate the subrecipient's access to protected personal information; and

(2) Require the subrecipient destroy all protected personal information it obtained through the recipient.

[]

NEW SECTION

WAC 308-10A-204 Subrecipient audit requirements. (1) A recipient must have procedures to audit subrecipients for compliance with the terms and conditions of its contract with the subrecipient.

(2) The audit methodologies must be sufficient for a reasonable person to conclude a subrecipient is compliant with requirements in the contract between recipient and subrecipient.

[]

NEW SECTION

WAC 308-10A-205 Required written consent audits. (1) Recipients who provide protected personal information to subrecipients, when a person must sign a release form under RCW 46.52.130, must establish processes to hold all subrecipients accountable for:

- (a) Obtaining and maintaining the release form prior to requesting protected personal information;
 - (b) Verifying the release form is properly executed before requesting the protected personal information; and
 - (c) The consent is rightfully executed by the named individual or their authorized legal representative.
- (2) The process for requesting driving records must include verifying the consent forms contain the required information in WAC 308-10A-901.
- (3) The recipient must make records available to the department demonstrating the process for obtaining consent is in use and is effective. The department will establish minimum requirements for such processes in its data sharing agreement with the recipient.

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NEW SECTION

WAC 308-10A-301 Contract with subrecipient. (1) A recipient must have a written agreement with a subrecipient before giving the subrecipient access to protected personal information.

(2) The written agreement must include those requirements that the department has identified in the recipient's data sharing agreement as those to be passed on to subrecipient.

(3) A recipient is subject to the penalties described in RCW 46.22.010(4) if they give a subrecipient access to protected personal information without a data sharing agreement that includes those requirements that the department has identified in the recipient's data sharing agreement as those to be passed on to subrecipient.

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NEW SECTION

WAC 308-10A-401 Standards for audits of recipients. When the department requires an audit under this section, it may accept an audit performed in the previous 12 months when it meets recipient audit standards and is performed by an auditor that meets independent third-party auditor qualifications, and for recipients receiving lists of protected personal information:

(1) Auditor procedures must test for the presence of required policies and administrative, technical, or physical controls to reasonably conclude the controls are effective and in use by the recipient.

(2) Audit reports must provide documentation on the procedures, and the results of such procedures, used to determine whether controls align with requirements in the data sharing agreement.

(3) For recipients receiving individual records of protected personal information, audit reports must demonstrate reasonable procedures were used to conclude each recipient is compliant with requirements in the data sharing agreement.

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NEW SECTION

WAC 308-10A-402 Selection of an auditor. If the department chooses not to perform an audit, the recipient must select a qualified independent third-party auditor to conduct the audit.

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NEW SECTION

WAC 308-10A-403 Independent third-party auditor qualifications. Independent third-party auditors conducting data security audits must, at a minimum, hold one of the following certifications:

- (1) American Institute of Certified Public Accountants (AICPA);
- (2) Certified Information Privacy Professional (CIPP);
- (3) ANSI-ASQ National Accreditation Board (ANAB); or
- (4) Other nationally recognized information technology auditing certification.

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NEW SECTION

WAC 308-10A-404 Statement of compliance. (1) The recipient will:

- (a) Perform a self-assessment to determine compliance with the requirements of the data sharing agreement.
 - (b) Confirm in writing to the department that it complies with requirements in the data sharing agreement.
 - (c) Document instances of noncompliance with the data sharing agreement and include a corrective action plan to correct all deficiencies.
 - (d) Include a declaration with their statement of compliance that affirms protected personal information is only used as authorized.
- (2) The frequency of the statement of compliance will be outlined in the data sharing agreement.

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NEW SECTION

WAC 308-10A-405 Corrective action plans. (1) When notifying the department of any noncompliance with the data sharing agreement, the notification must include a corrective action plan for each deficiency.

(2) The corrective action plan must identify the anticipated date the recipient will complete each action to either bring the recipient into compliance or eliminate the deficiency.

(3) The department may accept the recipient's action, and close the action item, or may require additional action.

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NEW SECTION

WAC 308-10A-500 Pertaining to RCW 46.12.630. (1) For the purposes of RCW 46.12.630(1): The sharing of protected personal information will be in accordance with the following vehicle and vessel regulations as they existed on January 1, 2022:

- (a) For vehicles:
 - (i) Titles I and IV of the Anti-Car Theft Act of 1992;
 - (ii) The Automobile Information Disclosure Act (15 U.S.C. Sec. 1231 et seq.);
 - (iii) The Clean Air Act (42 U.S.C. Sec. 7401 et seq.); and
 - (iv) 49 U.S.C. Secs. 30101-30183, 30501-30505, and 32101-33118;
- (b) For vessels:
 - (i) 46 U.S.C. Sec. 4310; and
 - (ii) Any relevant section of the Code of Federal Regulations adopted by the United States Coast Guard.

(2) For the purposes of RCW 46.12.630(2):

(a) Whenever the recipient grants a request for protected personal information to an attorney or private investigator, the recipient shall provide notice to the vehicle or vessel owner, as required under RCW 46.12.635, and as outlined in its data sharing agreement with the department.

(b) "Federal, state, or local agency," "local governmental entity," "governmental agency," and "government agency" have the same meaning as "governmental entity." (See WAC 308-10A-805.)

(c) For the purposes of section RCW 46.12.630 (2)(e), the permissible use is restricted only to a governmental agency or its agent, as authorized by the Driver Privacy Protection Act 18 U.S.C. Chapter 123.

(d) For purposes of section RCW 46.12.630 (2)(h), "other applicable authority" includes out-of-state or Canadian entities legally authorized to operate a toll facility.

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NEW SECTION

WAC 308-10A-700 Research. (1) The department will disclose protected personal information for research purposes to governmental entities and bona fide research organizations only when:

(a) The research cannot reasonably be conducted without the protected personal information, the recipient provides adequate information for the department to reasonably determine that the disclosure of protected personal information will not harm individuals, the benefits to be derived from the disclosure are clearly in the public interest, and the results are not of a commercial interest; or

(b) The research purpose has been approved in writing by an authorized official in the department, legislature, or governor's office.

(2) The department may disclose pseudonymized data for research purposes on the condition the recipient will make no attempt to re-identify individuals.

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NEW SECTION

WAC 308-10A-801 Agents. Where agents are permitted, a requestor may access protected personal information through a chain of agents. For example, an employer (requestor) may use an employment agency (agent #1) to request records on its behalf. In turn, the employment agency may request the record through a data broker (agent #2).

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NEW SECTION

WAC 308-10A-802 Offshoring. Unless otherwise explicitly authorized in statute, or with prior written authorization from the department, recipients must:

(1) Only transmit, access, view, store, or process protected personal information within the United States.

(2) Maintain the primary, backup, disaster recovery, and other sites for storage of protected personal information within the United States.

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NEW SECTION

WAC 308-10A-803 Cost recovery fees. Pursuant to RCW 42.56.120, the department's fees for providing customized services are the actual hourly rate of department staff multiplied by the actual hours, and fractions thereof, it takes to respond to the request.

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NEW SECTION

WAC 308-10A-804 Notification of incident/breach. In the event of an incident or breach the recipient must:

(1) Notify the department of an incident or breach, or upon receiving notice from a subrecipient of an incident or breach, as outlined in its data sharing agreement with the department;

(2) Comply with all department requirements in managing the incident or breach.

(a) The subrecipient must notify the recipient of an incident or breach.

(b) All notices to the department must be made before notice to any individual or the public.

(c) Recipients and subrecipients are responsible to make notifications as required by RCW 19.255.010 or 42.56.590, as applicable.

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NEW SECTION

WAC 308-10A-805 Applications for data. (1) An application must be submitted to the department when requesting data.

(a) The department may reject incomplete applications.

(b) The department may close the application if the applicant does not provide sufficient information to complete the application process within 90 days of request.

(c) The department may close an approved application to receive data if the applicant does not execute the data sharing agreement within 30 days of department sending the agreement to the applicant for signature.

(2) In the event of a declared emergency, the department may allow a governmental entity to execute a data sharing agreement prior to submitting a formal application. The government entity must submit the application by a date designated by the department. The department may waive the requirement for an application.

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NEW SECTION

WAC 308-10A-806 Consent. For the purposes of disclosing protected personal information, an individual's authorized legal representative may authorize the disclosure.

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NEW SECTION

WAC 308-10A-901 Authorization to request a driving abstract.

(1) When the subject of a driver's abstract must authorize the release of the abstract under RCW 46.52.130, the party requesting the driver's abstract under the terms of a data sharing agreement may use the department's release form, or its own version of the release form provided it contains the information required by federal and state law, and the department. The party requesting the driver's abstract under the terms of a data sharing agreement must verify that its release form is consistent with federal and state law, and department requirements.

(2) If a recipient or subrecipient uses its own version of the release form, the form must not bear the department logo or otherwise indicate it is an official Washington state document.

(3) The release form may be signed in ink or electronically.

(4) A release form must:

(a) Include the name and signature of the person whose record is being requested, or the name and signature of their authorized legal representative.

(b) Include the date the signature was made.

(c) Be signed by the employer or volunteer organization, attesting to:

(i) For employment/prospective employment, driving is a condition of employment or otherwise at the direction of the employer, or the employee or prospective employee handles or will be handling heavy equipment or machinery.

(ii) For volunteering, the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization.

(iii) For employee/prospective employee releases.

(A) Include a statement that any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain this information on their behalf, unless required by federal regulation or law; and

(B) Provide instructions for how someone can demonstrate that an adjudication contained in the abstract is subject to a court order sealing the juvenile record.

(I) The name(s) of the agent(s) authorized to obtain the information on the requestor's behalf.

(II) Include information on where to send the form after it is properly executed.

(5) When the subject of a driver's abstract must authorize the release of the abstract under RCW 46.52.130, the party requesting the driver's abstract under the terms of a data sharing agreement must retain the signed release form for at least six years.

(6) The signed release form may be used for employment or volunteering purposes during the period the subject of the driver's abstract is under continuous employment or volunteering. The employer or volunteering organization must process a new release form for the subject of the driver's abstract when there is a break in employment or volunteering.

(7) For the purposes of prospective employment or volunteering, the release form and the driving record must be disposed of after six months from the date the record was obtained, or as otherwise required by law, if the subject of the driver's abstract is not placed into a position with the employer or volunteer organization that involves driving as a function of the position.

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NEW SECTION

WAC 308-10A-902 Fair Credit Reporting Act (15 U.S.C. Section 1681, as amended). The recipient or subrecipient must not use the statute of limitations for legal action under the Fair Credit Reporting Act (FCRA), or similar federal or state law, as a basis for record retention. The recipient must establish and maintain data retention policies based on using records as authorized in the data sharing agreement and when the business use of the data has been fulfilled,

with the intent of destroying the record as soon as the record is no longer needed for the permissible use.

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OTS-3994.1

AMENDATORY SECTION (Amending WSR 00-18-070, filed 9/1/00, effective 10/2/00)

WAC 308-104-150 Address requests—Terms and fees. (~~Where not otherwise prohibited~~) When authorized by law (~~or rule~~), the department may make available the address of a person whose driving record or identocard record is maintained by the department. A request for an address must be in writing (~~(r)~~) and must include the full name and the driver's license number or date of birth of the person whose address is requested. The department may request other information from the entity to validate the authenticity of the entity and its permissible use.

The department shall collect in advance of disclosure a (~~fee of~~) two-dollar(~~s~~) fee for each address (~~requested in a single listing~~) included in the request, up to and including (~~ten~~) 10 addresses, and (~~fifteen~~) 15 cents for each additional address on (~~that single listing: Provided, That~~) the request. The department will provide addresses (~~will be provided~~) to all governmental agencies without charge.

[Statutory Authority: RCW 46.01.110. WSR 00-18-070, § 308-104-150, filed 9/1/00, effective 10/2/00; WSR 82-03-046 (Order 668 DOL), § 308-104-150, filed 1/19/82.]