WSR 23-01-031
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed December 12, 2022, 8:16 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040.

Title of Rule and Other Identifying Information: Amend Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article IV, Section 4.04(A), Article V, Section 5.02(I), and Article X, Section 10.15 (A) and (B).

Hearing Location(s): On Thursday, February 2, 2023, at 9:30 a.m., in-person at 1610 South Technology Boulevard, #101, Spokane, WA 99224; online Zoom URL link provided on board meeting agenda. Comment period from January 1, 2023, to February 2, 2023, ending at close of public hearing.

Date of Intended Adoption: February 2, 2023.

Submit Written Comments to: Margee Chambers, 1610 South Technology Boulevard, #101, Spokane, WA 99224, email PublicComment@spokanecleanair.org, fax 509-477-6828, by February 2, 2023, close of hearing; submit comments by January 24, 2023, to be included in board packet.

Assistance for Persons with Disabilities: Contact Mary Kataoka, phone 509-477-4727 ext. #100, fax 509-477-6828, email mkataoka@spokanecleanair.org, by January 30, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SRCAA is proposing to remove marijuana producers and processors from the agency annual registration program. Proposed amendments include removing marijuana producers and processors from the source category list in Article IV, Section 4.04(A); removing marijuana producers and processors from the notice of construction exemption list in Article V, Section 5.02(I); and citing updates in Article X, Section 10.15 (A) and (B).

Reasons Supporting Proposal: The amendments will not affect SRCAA's ability to address future odor concerns from marijuana producers and marijuana processors. If adopted, marijuana producers and processors will not be part of the annual registration program, but they must still comply with SRCAA Regulation I, including but not limited to Article VI, Section 6.04 Emissions of an air contaminant detrimental to person, property, and Section 6.18 Standards for marijuana producers and processors. If a producer or processor has compliance issues with SRCAA Regulation I, the agency can pursue enforcement action and/or SRCAA's control officer can require registration under Article IV, Section 4.04 (A)(2)(c). The proposed amendments will allow SRCAA to reallocate staff to other programs. The proposed amendments will decrease the total local assessment cost that supplemented registration fees for marijuana producers and processors. The proposed amendments will not add new requirements for businesses and residents to meet.

Statutory Authority for Adoption: RCW 70A.15.2040.

Statute Being Implemented: Washington Clean Air Act, chapter 70A.15 RCW.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Margee Chambers, SRCAA, 1610 South Technology Boulevard, #101, Spokane,

509-477-4727; Implementation: Michelle Zernick, SRCAA, 509-477-4727; and Enforcement: Lori Rodriguez, SRCAA, 509-477-4727.

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 under RCW 34.05.328 does not apply to local air pollution control agencies per RCW 70A.15.2040.

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: Chapter 19.85 RCW applies to state agencies. Under RCW 70A.15.2040, local air pollution control agencies are not state agencies. SRCAA is a local air pollution control agency.

Scope of exemption for rule proposal:

Is fully exempt.

December 12, 2022
Margee Chambers
Rule Writer
SIP Planner

AMMENDATORY [AMENDATORY] SECTION IN ARTICLE IV

SECTION 4.04 STATIONARY SOURCES AND SOURCE CATEGORIES SUBJECT TO REGISTRATION

(A) Subject to Registration. The following stationary sources and source categories are subject to registration. Emission rates in SRCAA Regulation I, Article IV, Section 4.04 are based on uncontrolled PTE emissions, unless otherwise noted.

(1) Stationary sources or source categories subject to state requirements:

(a) Any stationary source that qualifies as a new major stationary source, or a major modification (173-400-820 WAC).

(b) Any modification to a stationary source that requires an increase either in a facility-wide emission limit or a unit specific emission limit.

(c) Any stationary source with significant emissions as defined in WAC 173-400-810.

(d) Any stationary source where the owner or operator has elected to avoid one or more requirements of the operating permit program established in Chapter 173-401 WAC, by limiting its PTE (synthetic minor) through an order issued by the Agency.

(2) Any stationary sources or source categories:

(a) Required to obtain an Order of Approval under Regulation I, Article V.

(b) Subject to GOA under Article V and WAC 173-400-560.

(c) For which the Control Officer determines that emissions of the stationary source, including fugitive emissions, are likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(3) Stationary sources with the following operations:

(a) Abrasive blasting operations, except portable blasting operations operating at a construction site, or at a site for less than thirty (30) days in any running twelve (12) month period and abrasive blasting operations that do not exhaust or release fugitive emissions to the ambient air.

(b) Acid production plants, including all acids listed in Chapter 173-460 WAC.

(c) Agricultural chemicals, manufacturing, mixing, packaging or other related air contaminant emitting operations (fertilizer concentrates, pesticides, etc.).

(d) Agricultural drying and dehydrating operations.

(e) Alumina processing operations.

(f) Ammonium sulfate manufacturing plants.

(g) Asphalt and asphalt products production operations (asphalt roofing and application equipment excluded).

(h) Brick and clay products manufacturing operations (tiles, ceramics, etc). Noncommercial operations are exempt.

(i) Cattle feedlots with an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season.

(j) Chemical manufacturing operations.

(k) Coffee roasting operations.

(l) Composting operations except noncommercial agricultural and noncommercial residential composting activities.

(m) Concrete production operations and ready mix plants.

(n) Flexible polyurethane foam, polyester resin, and styrene production operations.

(o) Flexible vinyl operations and urethane coating operations.

(p) Fuel refining operations, blending operations, production operations, including alternative commercial fuel production facilities (e.g. ethanol, bio-diesel, etc.)

(q) Gasoline and aviation gas storage and dispensing, including:

1. Gasoline dispensing facilities, subject to Chapter 173-491 WAC, and aviation gas dispensing facilities with total gasoline storage capacities greater than 10,000 gallons; and

2. Bulk gasoline, and aviation gas terminals, bulk gasoline and aviation gas plants, and gasoline and aviation gas loading terminals.

(r) Grainhandling; seed, pea, and lentil processing facilities. Registration shall be in accordance with Article IV, Section 4.03.

(s) Haycubing or pelletizing operations established at a dedicated collection and processing site.

(t) Insulation manufacturing operations.

((~~(u) Marijuana producers.~~

~~(v) Marijuana processors with direct processing of the marijuana plant and plant material (dry, cure, extract, compound, convert, package and label usable marijuana and marijuana concentrates.)~~))

(u)((~~(w)~~)) Metal casting facilities and foundries, ferrous.

(v)((~~(x)~~)) Metal casting facilities and foundries, nonferrous.

(w)((~~(y)~~)) Metal plating and anodizing operations.

(x)((~~(z)~~)) Metallurgical processing operations.

(y)((~~(aa)~~)) Mills; grain, seed, feed and flour production, and related operations.

(z)((~~(bb)~~)) Mills; lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, grass/stubble pressboard, pelletizing, or any combination thereof.

(aa)((~~(cc)~~)) Mills; wood products manufacturing operations (including, but not limited to, cabinet works, casket works, furniture, and wood by-products).

(bb)((~~(dd)~~)) Mineral processing (metallic and nonmetallic), including, but not limited to, rock crushing, sand and gravel mixing op-

erations, except stand-alone rock, soil, or wood screening/conveying operations and blasting operations.

(cc)((~~(ee)~~)) Mineralogical processing operations.

(dd)((~~(ff)~~)) Natural gas transmission and distribution (SIC 4923/NAICS 486210 and 221210, respectively).

(ee)((~~(gg)~~)) Paper manufacturing operations, except Kraft and sulfite pulp mills.

(ff)((~~(hh)~~)) Perchloroethylene dry cleaning operations.

(gg)((~~(ii)~~)) Pharmaceuticals production operations.

(hh)((~~(jj)~~)) Plastics and fiberglass fabrication, including gel-coat, polyester resin, or vinylester coating operations using more than 55 gals/yr of all materials containing volatile organic compounds or toxic air pollutants.

(ii)((~~(kk)~~)) Portland Cement production facilities.

(jj)((~~(ll)~~)) Refuse systems (SIC 4953/NAICS 562213, 562212, 562211, and 562219, respectively), including municipal waste combustors; landfills with gas collection systems or flares; hazardous waste treatment, storage, and disposal facilities; and wastewater treatment plants other than POTWs.

(kk)((~~(mm)~~)) Rendering operations.

(ll)((~~(nn)~~)) Semiconductor manufacturing operations.

(mm)((~~(oo)~~)) Sewerage systems, POTWs with a rated capacity of more than one million gallons per day (SIC 4952/NAICS 221320).

(nn)((~~(pp)~~)) Stump and wood grinding established at a dedicated collection and processing site.

(oo)((~~(qq)~~)) Surface coating, adhesive, and ink manufacturing operations.

(pp)((~~(rr)~~)) Surface coating operations:

1. All motor vehicle or motor vehicle component surface coating operations; and

2. General surface coating operations with PTE emissions greater than 100 lbs/yr or with PTE toxic air pollutant emissions that exceed any SQER listed in Chapter 173-460 WAC.

(qq)((~~(ss)~~)) Synthetic fiber production operations.

(rr)((~~(tt)~~)) Synthetic organic chemical manufacturing operations.

(ss)((~~(uu)~~)) Tire recapping operations.

(tt)((~~(vv)~~)) Wholesale meat/fish/poultry slaughter and packing plants.

(4) Stationary sources with the following equipment:

(a) Fuel burning equipment, including but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs greater than or equal to:

1. 500,000 Btu/hr using coal or other solid fuels with less than or equal to 0.5% sulfur;

2. 500,000 Btu/hr using used/waste oil, per the requirements of RCW 70.94.610;

3. 1,000,000 Btu/hr using kerosene, #1, #2 fuel oil, or other liquid fuel, including alternative liquid fuels (i.e., biodiesel, biofuels, etc) except used/waste oil;

4. 4,000,000 Btu/hr using gaseous fuels, such as, natural gas, propane, methane, LPG, or butane, including but not limited to, boilers, dryers, heat treat ovens and deep fat fryers; or

5. 400,000 Btu/hr, wood, wood waste.

(b) Incinerators, including human and pet crematories, burn-out ovens, and other solid, liquid, and gaseous waste incinerators.

(c) Internal combustion engines

1. Used for standby, back-up operations only, and rated at or above 500 bhp.

2. Stationary internal combustion engines, other than those used for standby or back-up operations, rated at 100 bhp or more and are integral to powering a stationary source. This includes but is not limited to, rock crushing, stump and woodwaste grinding, and hay cubing operations.

(d) Particulate control at materials handling and transfer facilities that generate fine particulate and exhaust more than 1,000 acfm to the ambient air. This may include pneumatic conveying, cyclones, baghouses, or industrial housekeeping vacuuming systems.

(e) Storage tanks within commercial or industrial facilities, with capacities greater than 20,000 gallons and storing organic liquids with a vapor pressure equal to or greater than 1.5 psia at 68°F.

(5) Any stationary source or stationary source category not otherwise identified above, with uncontrolled emissions rates above those listed in (a)-(d):

(a) Any single criteria pollutant, or its precursors, as defined in 40 CFR 51.165, exceeding emission rates of 0.5 tons/yr, or in the case of lead, emissions rates greater than or equal to 0.005 tons/yr;

(b) TAPs with emission rates exceeding the SQER established in Chapter 173-460 WAC;

(c) Combined air contaminants (criteria pollutants, VOCs, or TAPs) in excess of one (1.0) ton/yr; or

(d) Combined TAPs and VOC emissions greater than 0.5 tons/yr.

(e) The criteria in Section 4.04 (A)(5)(a)-(d) applies to, but is not limited to the following stationary source categories:

1. Bakeries;

2. Bed lining or undercoating production or application operations;

3. Degreasers/solvent cleaners, not subject to 40 CFR Part 63, Subpart T (Halogenated Solvent Cleaners); including, but not limited to, vapor, cold, open top, and conveyorized cleaner;

4. Distilleries;

5. Dry cleaning non-perchloroethylene operations;

6. Evaporators;

7. General surface coating operations that only use non-spray application methods (e.g., roller coat, brush coat, flow coat, or prepackaged aerosol can);

8. Graphic art systems including, but not limited to, lithographic and screen printing operations;

((~~9. Marijuana processors;~~))

9.((~~10.~~)) Organic vapor collection systems within commercial or industrial facilities, including fume hoods;

10.((~~11.~~)) Ovens, furnaces, kilns and curing with emissions other than combustion emissions;

11.((~~12.~~)) Plasma or laser cutters;

12.((~~13.~~)) Soil and groundwater remediation operations;

13.((~~14.~~)) Sterilizing operations, including, but not limited to EtO and hydrogen peroxide, and other sterilizing operations;

14.((~~15.~~)) Utilities, combination electric and gas, and other utility services (SIC 493/NAICS 221111 through 221210, not in order given);

15.((~~16.~~)) Welding, brazing, or soldering operations; or

16.((~~17.~~)) Wood furniture stripping and treatment operations (commercial only).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMMENDATORY [AMENDATORY] SECTION IN ARTICLE V

SECTION 5.02 NEW SOURCE REVIEW APPLICABILITY AND WHEN REQUIRED

(A) Purpose. SRCAA Regulation I, Article V contains the new source review requirements for stationary and portable sources in Spokane County.

(B) Applicability. Article V applies to all stationary sources, portable sources and source categories listed in Article IV, Section 4.04, unless specifically exempted Article V, Section 5.02(I).

(C) NOC Required for New or Modified Stationary Sources. A NOC application must be filed by the owner or operator and an Order of Approval issued by the Agency prior to the establishment of any of the following stationary source or source categories:

(1) New stationary sources and source categories subject to the applicability criteria in Article IV, Section 4.04;

(2) Establishment of a new major stationary source as defined in WAC 173-400-710 and 173-400-810;

(3) Modifications to an existing stationary source which results in an increase in actual emissions or that requires an increase in either a facility-wide or a unit specific emission limit;

(4) A major modification to an existing major stationary source as defined in WAC 173-400-710 and 173-400-810;

(5) Any stationary source with emissions that exceed the SQER in Chapter 173-460 WAC;

(6) Like-kind replacement of existing emissions unit(s);

(7) Existing stationary source replacement or substantial alteration of control equipment;

(8) A stationary source or emission unit(s) resuming operation after it has been closed per Article IV, Section 4.05;

(9) An existing stationary source that is relocated;

(10) A stationary source that applies for coverage under a GOA issued by the Agency under WAC 173-400-560 in lieu of filing a NOC application under Article V, Section 5.02; or

(11) Any stationary source the Agency determines must file a NOC application and obtain an Order of Approval in order to reduce the potential impact of air emissions on human health and safety, prevent injury to plant, animal life, and property, or which unreasonably interferes with enjoyment of life and property.

(D) PSP Required for New or Modified Portable Sources. A PSP application must be filed by the owner or operator and a Permission to Operate issued by the Agency prior to the establishment of any portable sources which locate temporarily at locations in Spokane County, unless specifically exempted in 5.08(D).

(E) Modification Review. New source review of a modification is limited to the emissions unit(s) proposed to be added or modified at an existing stationary source and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(F) AOP Integrated Review. An owner or operator seeking approval to construct or modify an air operating permit source, may elect to integrate review of the air operating permit application or amendment,

required under RCW 70.94.161, and the NOC application required by Article V. A NOC application designated for integrated review must be processed in accordance with the provisions in Chapter 173-401 WAC.

(G) New Major Stationary Source or Major Modification in Nonattainment Areas. The proposed project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860 if:

(1) It is a new major stationary source or major modification, located in a designated nonattainment area;

(2) The project emits the air pollutant or its precursors for which the area is designated nonattainment; and

(3) The project meets the applicability criteria in WAC 173-400-820.

(H) PSD Permitting with New Major Stationary Source or Major Modification. If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(I) Stationary Sources Exempt from Article V.

(1) The following stationary sources are exempt from the requirement to file a NOC application and obtain an Order of Approval, provided that the source has registered with the per Article IV, prior to placing the source in operation:

(a) Batch coffee roasters with a maximum rated capacity of five (5) kg per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.

((~~(b) Marijuana producers and marijuana processors.~~))

(b) ((~~(c)~~)) Motor vehicle or motor vehicle component surface coating operations with PTE emissions less than one hundred (100) lbs/yr and with PTE toxic air pollutant emissions that do not exceed any SQER listed in Chapter 173-460 WAC.

(2) Exemption documentation. The owner or operator of any stationary source exempted under Article V must maintain documentation in order to verify the stationary source remains entitled to the exemption status and must present said documentation to an authorized Agency representative upon request. If an owner or operator of any source that is exempt from new source review under Article V as a result of the exemption in Section 5.02 (I)(1) exceeds the emission thresholds in those exemptions, the owner or operator must immediately notify the Agency of the exceedance and submit and NOC application and receive an Order of Approval from the Agency.

(3) Compliance with SRCAA Regulation I. An exemption from new source review under Section 5.02 (I)(1) is not an exemption from registration under Article IV or any other provision of Regulation I. Portable sources are exempt from registration [Section 4.03 (A)(3)].

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMMENDATORY [AMENDATORY] SECTION IN ARTICLE X

SECTION 10.15 MARIJUANA PRODUCTION AND MARIJUANA PROCESSING REGISTRATION AND APPLICATION FEES

(A) Initial Registration Fee. Each source required by SRCAA Regulation I, Article IV, ((~~Exhibit R~~)) Section 4.01 to be registered is required to pay an initial registration fee for the first calendar year or portion of calendar year that the source is part of the Agency registration program. The owner or operator will be responsible for

payment of the initial registration fee. After the first year, the owner or operator will pay an annual registration fee under Section 10.15(B).

(1) The initial registration fee is determined by each unique LCB number, license type, and tier level. A separate initial registration fee is required for each unique LCB license number regardless of location. The initial registration fee will be determined by the fee table below:

Registration Fee Categories	LCB Producer Tier Size		
	LCB Tier 1	LCB Tier 2	LCB Tier 3
Producer with processor license	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Processor only	Per the Fee Schedule		
Producer only	Per the Fee Schedule		

LCB = WA State Liquor and Cannabis Board

(B) Annual Registration Fee. Each source required by Article IV, ((~~Exhibit R~~)) Section 4.01 to be registered is required to pay an annual registration fee for each calendar year or portion of each calendar year during which it operates. The owner or operator will be responsible for payment of the annual registration fee. Fees received as part of the marijuana registration program will not exceed the actual costs of program administration.

(1) The annual registration fee is required for each LCB licensed producer and LCB licensed processor. The fee is determined by each unique LCB number, license type, and tier level. A separate registration fee is required for each unique LCB license number regardless of location. The annual fee will be determined by the fee table below:

Registration Fee Categories	LCB Producer Tier Size		
	LCB Tier 1	LCB Tier 2	LCB Tier 3
Producer indoor only	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Producer outdoor only	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Producer indoor and outdoor	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Producer w/Agency granted production exemption	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Processor with producer license	Per the Fee Schedule		
Processor only	Per the Fee Schedule		

LCB = WA State Liquor and Cannabis Board

(2) Calculating Marijuana Annual Registration Fee without Required Registration Information. When registration information required in Article IV, Section 4.02 is not provided, the annual registration fee will be based on fees listed in Section 10.15 (B)(1), plus an additional fee equal to two (2) times the amount of original fee assessed. This method will be used:

(a) When registration information is not received within ninety (90) days of request, or

(b) Prior to the registration fee invoice date, whichever is later.

WSR 23-01-039
WITHDRAWAL OF PROPOSED RULES
EXECUTIVE ETHICS BOARD
(By Office of the Code Reviser)
[Filed December 13, 2022, 1:21 p.m.]

WAC 292-100-020, 292-110-020, 292-110-060, 292-130-020, 292-130-050, and 292-130-100, proposed by the executive ethics board in WSR 22-11-075, appearing in issue 22-11 of the Washington State Register, which was distributed on June 1, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 23-01-040
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
(By Code Reviser's Office)
[Filed December 13, 2022, 1:39 p.m.]

WAC 220-200-100, proposed by the department of fish and wildlife in WSR 22-11-092, appearing in issue 22-11 of the Washington State Register, which was distributed on June 1, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 23-01-058
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed December 14, 2022, 12:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-066.

Title of Rule and Other Identifying Information: WAC 388-829B-200 What definitions apply to this chapter?, 388-829B-300 Who may DDA enroll in the enhanced case management program?, 388-829B-400 How often must the case manager visit the enhanced case management program client?, and 388-829B-600 May a client appeal an enrollment decision for the enhanced case management program?

Hearing Location(s): On January 24, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than January 25, 2023.

Submit Written Comments to: DSHS Rules Coordinator, 1115 Washington Street S.E., Olympia, WA 98504, email DSHSRPAURulesCoordinator@DSHS.wa.gov, fax 360-664-6185, by 5:00 p.m., January 24, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by January 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments is to expand enhanced case management program (ECMP) capacity as directed by the legislature and clarify appeal rights regarding enrollment onto the ECMP caseload.

Reasons Supporting Proposal: These amendments will comply with direction from the legislature, will help identify clients who might be at increased risk of abuse and neglect, and will serve an increased number of clients on the enhanced case management caseload. This chapter is how the developmental disabilities administration (DDA) enrolls a client on the caseload, how often the case resource manager must visit the client, and when DDA may disenroll a client from the caseload.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.320; and chapter 43.382 RCW.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Heather Lum, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1526.

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) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party. Clients and others have no obligations under the chapter that could be violated.

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)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses, so a small business economic impact statement is not required. ECMP is a program that offers clients increased contact with a case manager. There are no costs to clients or contracted providers.

Scope of exemption for rule proposal:

Is fully exempt.

December 14, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4954.4

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

WAC 388-829B-200 What definitions apply to this chapter? The following definitions apply to this chapter.

((**"CARE assessment"** means an inventory and evaluation of a client's strengths and limitations based on an in-person interview in the client's home or place of residence.))

"Caregiver" means a person contracted with the developmental disabilities administration (DDA) to provide ((medicaid or waiver)) personal care((,)) services or respite care((, or attendant care services)).

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020((~~(5)~~)) and has been determined eligible to receive services by DDA under chapter 71A.16 RCW.

"Collateral contact" means a person or agency that is involved in the client's life, such as a legal guardian, family member, provider, or friend.

"DDA assessment" means an inventory and evaluation, under chapter 388-828 WAC, of a client's strengths and limitations based on an interview with the client. For the purposes of this chapter, the DDA assessment includes the "DDA assessment details."

"Independent supports" means an adult, other than the client's paid caregiver, who observes the care a client receives from their paid caregiver.

[Statutory Authority: RCW 71A.12.030 and chapters 71A.12, 43.382 RCW. WSR 18-07-073, § 388-829B-200, filed 3/19/18, effective 4/19/18.]

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

WAC 388-829B-300 Who may DDA enroll in the enhanced case management program? The developmental disabilities administration (DDA) may enroll a client in the enhanced case management program if the client ((~~is largely dependent on a paid caregiver in the client's home~~)) is currently assessed to be eligible for medicaid personal care or community first choice (CFC) services in their home under chapter 388-106 WAC and meets criteria under subsection (1), (2), or (3) of this section.((~~:~~))

(1) The client's DDA assessment indicates that the home environment may jeopardize the client's health or safety.

((~~(1)~~)) (2) The client's ((~~CARE~~)) DDA assessment indicates the client:

(a) ((~~Is not always able to supervise their~~)) Has difficulty communicating their needs and wants to their caregiver or inform someone when their needs are not being met;

(b) Has ((~~communication barriers~~)) a limited ability to advocate for themselves or express themselves, and has few documented collateral contacts; and

(c) Lacks additional, independent supports that regularly help the client monitor the care being provided in their home.((~~; or~~

~~(2) The client lives with the paid caregiver and:~~

~~(a) The client has been the subject of an adult protective services or child protective services referral in the past year; or~~

~~(b)~~)) (3) DDA has concerns that the ((~~home environment or~~)) quality of care may jeopardize the client's health or safety((~~.~~)) for reasons such as:

(a) The client has been the subject of an adult protective services referral in the past year;

(b) The client has been the subject of a child protective services referral in the past year;

(c) The client's DDA assessment indicates the client is underweight;

(d) The client's DDA assessment indicates that the primary caregiver is age 65 or older or states that they are "very stressed," and the caregiver states that the caregiving situation is at "serious risk of failure" or there is concrete evidence of reduced care; or

(e) The client has experienced a destabilizing event, such as a loss of a primary caregiver, hospitalization, or victimization.

[Statutory Authority: RCW 71A.12.030 and chapters 71A.12, 43.382 RCW. WSR 18-07-073, § 388-829B-300, filed 3/19/18, effective 4/19/18.]

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

WAC 388-829B-400 How often must the case manager visit the enhanced case management program client? (1) The client's case manager must visit each enhanced case management program client at least once every four months at the client's home, including unannounced visits as needed. Each required visit must not occur more than four months apart.

(2) An unannounced visit may replace a scheduled visit.

(3) ((~~If a client declines a visit, announced or unannounced, the case manager must document the declined visit in the enhanced case management program section in the comprehensive assessment reporting and evaluation (CARE) tool.~~

~~(4)~~)) If the case manager is unable to meet with the client for a ((~~required~~)) visit, the case manager must:

(a) ((~~s~~)) Schedule a follow-up visit as soon as possible and no later than ((~~thirty~~)) 30 days((~~.~~)); and

(b) Document that the visit did not occur.

[Statutory Authority: RCW 71A.12.030 and chapters 71A.12, 43.382 RCW. WSR 18-07-073, § 388-829B-400, filed 3/19/18, effective 4/19/18.]

NEW SECTION

WAC 388-829B-600 May a client appeal an enrollment decision for the enhanced case management program? A client does not have a right to appeal:

(1) A decision whether or not to enroll on the enhanced case management program; or

(2) A decision to transfer off the enhanced case management program.

[]

WSR 23-01-074
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Behavioral Health Administration)
[Filed December 15, 2022, 1:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-078.

Title of Rule and Other Identifying Information: Amending WAC 388-880-010 Definitions, 388-880-056 How SCC considers a resident for release to an LRA, and 388-880-059 Communicating and coordinating resident discharge and conditional release related matters; repealing 388-880-055 How SCC processes recommendations related to releases, discharges, and revocations, 388-880-057 How SCC considers a resident's revocation of LRA status, and 388-880-058 How SCC considers a recommendation for a resident's unconditional discharge; and possible other sections as required.

Hearing Location(s): On January 24, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than January 25, 2023.

Submit Written Comments to: Rules and Policies Assistance Unit Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by January 24, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by January 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department recognizes these WAC have not been updated since 2013 and, since then, there have been policy and RCW changes that require an update. The department has decided to combine WAC 388-880-056 through 388-880-058 into one WAC. This will help clarify expectations of the senior clinical team and how the special commitment center (SCC) reviews residents whose less restrictive alternative status is revoked. WAC 388-880-059 is being amended to clarify communication expectations for SCC when a resident is conditionally released or discharged. WAC 388-880-010 Definitions will also be updated to ensure consistency as WAC are updated.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71.09.070, 71.09.090, and 71.09.097.

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: Emma Palumbo, P.O. Box 45090, Olympia, WA, 360-972-6214.

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. Not a significant legislative rule. RCW 34.05.328 (5)(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

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

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

Is exempt under RCW 34.05.328 (5)(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

December 14, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4955.3

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Appropriate facility" means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

"Authorized third party" means a person approved in writing by the resident on a DSHS Form 17-063 (Authorization to disclose records), who may request and have access to the resident clinical file under chapter 71.09 RCW or the resident's medical records under chapter 70.02 RCW.

"Care" means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

"Chief executive officer (CEO)" means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC. Also referred to as "superintendent of the special commitment center" and "superintendent" under chapter 71.09 RCW.

"Control" means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

"Department" means the department of social and health services or DSHS.

"Escorted leave" means a leave of absence under the continuous supervision of an escort from a facility housing persons who are court-detained or civilly committed under chapter 71.09 RCW.

"Evaluation" means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder, ((~~and/or~~)) mental abnormality, or both, which renders

the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The four types of evaluations that occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

• The **initial evaluation** occurs before the person is detained at the SCC, usually occurring while the person is in prison, ((~~juvenile rehabilitation administration (JRA),~~)) a state mental hospital, a county jail, or in the community following commission of a recent overt act.

• **Supplemental evaluations**, as required by RCW 71.09.040, are performed for civil commitment trial purposes.

• **Annual review evaluations** occur only after a person has been civilly committed under RCW 71.09.070.

• **Post commitment evaluations**, as required by RCW 71.09.090, when the person qualifies for a conditional or unconditional release trial.

"Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

"Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

"Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

"Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

"Immediate family" includes a resident's parents, stepparents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

"Indigent" refers to the financial status of a resident who has maintained a total balance of ((~~forty dollars~~)) $40 or less, combined, in ((~~his/her~~)) their resident trust and resident store accounts for the past ((~~thirty~~)) 30 days, after paying court ordered legal financial obligations, child support, or cost-of-care reimbursement, and who swears or affirms under penalty of perjury that ((~~he/she has~~)) they have no additional outside resources, including but not limited to pension income, business income, and a spouse's or registered domestic partner's employment or other income.

"Individual treatment plan (ITP)" means an outline the SCC staff persons develop detailing how control, care, and treatment services are provided to a civilly committed person or to a court-detained person.

"Legal mail" means a resident's written communications, to or from: Courts/court staff regarding a legal action currently before a court, a licensed attorney, a public defense agency, a licensed private investigator retained by private counsel representing a resident or appointed by a court, an expert retained by an attorney representing a resident or appointed by a court, and a law enforcement agency.

"Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

"Less restrictive alternative facility (LRA)" means a secure community transition facility as defined under RCW 71.09.020(16).

"Mental abnormality" means a congenital or acquired condition affecting the person's emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

"Native format" means the format in which a record subject to public disclosure was originally produced.

"Oversight" means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

"Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

"Predatory" means acts a person directs toward:

(1) Strangers;

(2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or

(3) Persons of casual acquaintance with whom no substantial personal relationship exists.

"Professionally qualified person":

(1) **"Psychiatrist"** means a person licensed as a physician in this state, in accordance with chapters 18.71 and 18.57 RCW. In addition, the person ((~~shall~~)) must:

(a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and

(b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

(2) **"Psychologist"** means a person licensed as a doctoral level psychologist in this state, in accordance with chapter 18.83 RCW.

"Relapse prevention plan (RPP)" details static and dynamic risk factors particular to the resident and contains a written plan of interventions for the purpose of reducing the risk of sexual offending.

"Resident" means a person court-detained or civilly committed pursuant to chapter 71.09 RCW.

"Resident trust account" means the custodial bank account, held by the state, which represents the resources of the individual resident which is held for the individual resident's use.

"Responsivity" refers to the delivery of treatment in a manner that is consistent with the abilities and learning style of the ((~~offender~~)) resident. Responsivity can be conceptualized within the following categories: Physical limitations and sensory impairments, cognitive and learning impairments, mental health symptoms and behavioral disorders, cultural and subcultural differences to the extent that these differences may interfere with treatment participation.

"Risk factors" means resident characteristics, supported by empirical evidence, shown to increase the likelihood an individual will engage in sexual offending behavior.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Secure community transition facility (SCTF)" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure commun-

ity transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.((~~201~~))250 and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

"SCTF residential community transition team ((~~CTT-SCTF~~)) (RCTT)" means a team made up of three key individuals who will be closely involved with day to day decision making related to the transition activities of a resident residing in an SCTF operated by the department of social and health services. These three individuals include the department of corrections (DOC) ((~~community corrections officer~~)) correctional specialist, the certified sex offender treatment provider employed by ((~~the department~~)) DSHS or who has been contracted by SCC, and the SCTF manager, the chief of clinical ((~~director~~)) services or designee may substitute for the SCTF manager. The ((~~CTT-SCTF~~)) RCTT must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, ((~~the department~~)) DSHS through its SCTF manager may consider budgetary constraints when approving or supporting discretionary activities such as community shopping or recreation, or personal activities such as visiting family and friends.

"Secure facility" means a residential facility for persons court-detained or civilly committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

"Senior clinical team" means a body of clinical, medical, and administrative professionals as described ((~~below~~)) in this section which has been designated by the ((~~superintendent~~)) chief executive officer (CEO) to meet regularly to:

• Make decisions about the implementation of the sex ((~~offender~~)) offense treatment program.

• ((~~Review for the purposes of approval or denial, treatment team recommendations for phase promotions or demotions.~~))

• Make clinical recommendations about residents in community less restrictive alternative (LRA) settings.

• Provide general consultation regarding resident treatment and behavioral management issues.

• Conduct outreach to program areas of SCC including staffing and consultation of residents in sex ((~~offender~~)) offense treatment.

• As requested, provide guidance and advice to the ((~~clinical director, the superintendent~~)) chief of clinical services, the CEO, and the treatment teams.

Members of the senior clinical team are expected to ((~~take into account~~)) consider all available relevant information, including contextual and situational factors, to make optimal, clinically supportable decisions.

The senior clinical team shall consist of a team of professionally qualified persons employed by the department which are designated by the ((~~superintendent~~)) CEO. The team may include either a SCC contracted community-based psychologist with advanced forensic assessment and treatment expertise, ((~~and/or~~)) a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment, or both.

The senior clinical team ((~~shall~~)) may not include the following persons, ((~~:~~)) unless needed at the request of the ((~~clinical director~~)) chief of clinical services for consultation on a specific issue(s):

• The resident's attorney;

• The prosecuting agency;

• Any representative from DOC;

• Potential certified sex offender treatment providers (CSOTPs) or community providers of any type who may treat the resident; or

• Any other party who may serve to financially gain from the resident's release.

"((~~Sexual predator~~)) Sex offense specific treatment program" means a department-administered and operated program including the special commitment center (SCC) established for:

(1) A court-detained person's custody and evaluation; or

(2) Control, care, and treatment of a civilly committed person defined as a sexually violent predator under chapter 71.09 RCW.

"Sexually violent offense" means an act defined under chapter 9A.28 RCW, RCW 9.94A.030 and 71.09.020.

"Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

((~~**"Superintendent"** means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC.~~))

"Special commitment center (SCC)" means the department operated secure facility that provides supervision and sex offender treatment services in a total confinement setting for individuals committed under RCW 71.09.

"Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-010, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-010, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-010, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-010, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-010, filed 12/1/97, effective 1/1/98. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-010, filed 8/21/90, effective 9/21/90.]

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-056 How SCC considers a resident for release to an LRA. When the department((~~, based on a forensic evaluation or progress in sex offender treatment,~~)) considers a ((~~SCC~~)) resident in total confinement for a less restrictive alternative, modification or

revocation of a less restrictive alternative, ((~~placement under RCW 71.09.090(1), or considers a resident currently residing in a secure community transition facility (SCTF) on a conditional release for further transition into a nonSCTF less restrictive alternative,~~)) or unconditional discharge, ((~~the clinical director shall schedule~~)) the senior clinical team ((~~to~~)) must review the matter and formulate a clinical recommendation to the ((~~superintendent~~)) chief executive officer (CEO). When the department, based on a forensic evaluation that opined that a resident no longer meets the definition of a sexually violent predator, the senior clinical meeting must occur within 30 days and provide a recommendation to the CEO.

The senior clinical meeting will provide ((~~an adequate staffing of the case, to include the resident's~~)) a review of the resident's case, to include:

(1) Participation and progress in sex ((~~offender~~)) offense treatment.

(2) Behavior.

(3) ((~~Latest~~)) Progress since most recent annual forensic evaluation.

(4) ((~~Relapse prevention plan~~)) Manifestation and management of risk factors.

(5) ((~~Any other relevant information such as: medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessments results, etc.~~

~~(6) When the resident is being considered for a LRA placement in a nonstate sponsored setting such as a private home or apartment option, the team shall also consider the resident's finances such as savings, benefits, eligibility for social services, housing options, employment or employability, absence or availability of community supports, family supports, etc.~~)) Barriers to discharge.

(6) Other factors related to an LRA recommendation, if applicable, including:

(i) The resident's transition activity;

(ii) The factors surrounding the situation(s)/behavior(s) causing the revocation review;

(iii) The ability of SCC and department of corrections (DOC) to adequately manage the resident in the community given existing resources;

(iv) The ability of SCC and DOC to adequately assure for the public's safety and the resident's compliance with less restrictive alternative conditions if the resident remains in the community or is allowed community access.

(7) Any other relevant information which may include, but is not limited to: medication compliance, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, penile plethysmograph (PPG) assessment results, etc.

The CEO or designee will notify the prosecuting attorney, the resident's corrections specialist (CS), certified sex offender treatment provider (CSOTP), and local law enforcement of SCC's position pertaining to the resident's less restrictive alternative or unconditional release status.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-056, filed 6/22/10, effective 7/23/10.]

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-059 Communicating and coordinating resident discharge and conditional release related matters. (1) **Communication with the department.**

(a) ((~~The SCC clinical director, or designee serves as the principal party at SCC responsible to communicate discharge and release matters internally within SCC.~~

~~(b) When a resident's request for advancement to community transition status is approved by the superintendent, the superintendent shall inform the DSHS secretary.~~

~~(c) If the SCC superintendent endorses the resident's request to petition the court for conditional release to either a secure community transition facility or other type of less restrictive alternative, the superintendent (as the secretary's designee) shall formally authorize the resident, in writing, to petition the court for a less restrictive alternative hearing in accordance with RCW 71.09.090.~~)) If the SCC CEO endorses the resident's request to petition the court for conditional release to either a secure community transition facility or other type of less restrictive alternative, the CEO (as the secretary's designee) must formally authorize the resident, in writing, to petition the court for a less restrictive alternative hearing in accordance with RCW 71.09.090.

((~~(d)~~)) (b) Once the ((~~superintendent~~)) CEO has made a decision to support a resident's request to petition the court, the ((~~superintendent shall~~)) CEO must notify the ((~~clinical director~~)) chief of clinical services of that decision. ((~~At that point the clinical director or designee shall serve as the principal party at~~)) SCC ((~~to~~)) staff will communicate discharge and release matters to the resident, to external stakeholders which, among others, ((~~shall~~)) must include the state attorney general's criminal justice division's sexually violent predator unit, and the King County prosecuting attorney's sexually violent predator unit, and to organize the necessary activities in support of that discharge or conditional release.

(2) **Responsibility to communicate court related activities.**

(a) The resident's attorney is responsible to coordinate the court hearing.

(b) When the court orders a resident to be conditionally released to a less restrictive alternative, ((~~the~~)) SCC ((~~clinical director or designee shall~~)) must:

(i) Manage the release process, including community notification to the appropriate law enforcement agency at least ((~~thirty~~)) 30 days prior to the resident's release to the court-approved LRA.

(ii) Keep internal SCC stakeholders apprised of the status of the case.

(iii) Coordinate the transition with the:

(A) DOC end of sentence review committee program manager;

(B) Assigned DOC ((~~community~~)) correction((~~s officer~~))al specialist, if applicable;

(C) Court-approved certified sex offender treatment provider, if applicable;

(D) Appropriate SCTF manager, if applicable; and

(E) Other court-approved providers or persons for the resident's court-approved living setting.

(iv) The coordination will address civil commitment issues, community safety, and the court-ordered conditions of release.

(3) **When the secretary or designee objects to a pending release.**

When the ((~~DSHS~~)) secretary or designee objects to a pending release under RCW 71.09.090, before the scheduled less restrictive alternative court hearing or following the hearing such as in the case of newly discovered information, that objection ((~~shall~~)) must be presented to the court in writing and ((~~shall be~~)) signed by the secretary or designee.

(4) **When a less restrictive alternative placement is approved by the court.**

When a resident ((~~of~~)) from SCC or a resident already conditionally released is approved to transfer to a less restrictive alternative placement ((~~or a resident of a secure community transition facility is approved to transfer to an alternative less restrictive alternative placement~~)), that placement will occur ((~~no sooner than thirty~~)) within 30 days following the day the court approves that placement but not before the department of corrections files the Less Restrictive Alternative Court Special. This ((~~thirty~~)) 30 day period will allow SCC to fulfill its law enforcement notification obligations under RCW 9A.44.130 and the affected county sheriff to fulfill their public notification obligations under RCW 4.24.550.

(5) **When a resident is unconditionally released by the court.**

When a resident of the SCC total confinement facility or a secure community transition facility is determined by the court to no longer meet the criteria of a sexually violent predator under chapter 71.09 RCW, and the court orders that the resident ((~~shall~~)) be unconditionally released, SCC ((~~shall~~)) must release the person within ((~~twenty-four~~)) 24 hours of the court's decision.

(6) **When a resident or attorney proposes ((~~an alternative~~)) a different less restrictive alternative placement.**

(a) When a resident or attorney proposes ((~~an alternative~~)) a different less restrictive alternative placement other than what SCC recommends or supports, the resident or the attorney ((~~shall~~)) must bear the responsibility to locate and identify that alternative.

(b) The department ((~~shall~~)) may not reimburse attorneys or other parties for assisting residents in finding ((~~an alternative~~)) a different less restrictive alternative placement unless otherwise ordered by the commitment court for good cause.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-059, filed 6/22/10, effective 7/23/10.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-880-055	How SCC processes recommendations related to releases, discharges and revocations.
WAC 388-880-057	How SCC considers a resident's revocation of LRA status.
WAC 388-880-058	How SCC considers a recommendation for a resident's unconditional discharge.

WSR 23-01-078
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed December 15, 2022, 3:42 p.m.]

Continuance of WSR 22-13-125.

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

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

Date of Intended Adoption: March 15, 2023.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This represents a notice of continuance of the proposed rules filed under WSR 22-13-125. Commerce is reviewing public comments and considering changes to the proposed rules presented at public hearings on July 26 and 27, 2022. Commerce is updating administrative rules that implement the Growth Management Act so that local governments have clear guidance before the next round of county and city periodic updates to comprehensive plans and development regulations, required under RCW 36.70A.130. Updates are necessary to reflect recent legislative changes to the periodic update deadline, the buildable lands program, potable water requirements, and school siting provisions. Commerce made other changes to provide clarity on requirements and recommendations to implement the Growth Management Act, with a large focus on the designation and protection of critical areas and natural resource lands.

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

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

Statute Being Implemented: Chapter 36.70A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Dave Andersen, 10 North Post Street, Suite 445, Spokane, WA 99201, 509-434-4491; Implementation: Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 509-434-4491; and Enforcement: Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-664-9160.

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

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

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

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

December 15, 2022
Amanda Hathaway
Rules Coordinator

OTS-3751.1

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

WAC 365-190-030 Definitions. (1) "Agricultural land" is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

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

(3) "Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

(4) "Critical areas" include the following:

(a) Wetlands;

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

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

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

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

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

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

(7) "Forest land" is land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

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

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

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

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the ((~~twenty-year~~)) 20-year planning period, if adequate-

ly conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

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

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

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

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

(16) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

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

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

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

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

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

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

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

(24) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted by the county or city.

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

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

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

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

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

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

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

(b) State agency classification schemes are available for specific critical area types, including the wetlands rating systems for eastern and western Washington from the Washington state department of ecology, the priority habitats and species categories and recommendations from the Washington state department of fish and wildlife, and the high quality ecosystem and rare plant categories and listings from the department of natural resources, natural heritage program. The

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

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

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

(i) The classification scheme;

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

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

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

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

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

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

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

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

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

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

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

(a) Public participation program:

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

(ii) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

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

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

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

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

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

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

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

(vi) Adopt definitions, classifications, and standards;

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

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

(c) Intergovernmental coordination.

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

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

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

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

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

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

(10) Designation amendment process.

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

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

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

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

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

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

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

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

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

(11) Use of innovative land use management techniques.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas;

(vi) Predominant parcel size;

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

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby;

(x) Land values under alternative uses; and

(xi) Proximity to markets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) History of land development permits issued nearby.

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

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

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

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

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

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

(3) Classification criteria.

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

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

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

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

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

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

(iii) Projected life of the resource;

(iv) Resource availability in the region; and

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

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

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

(ii) The effects of proximity to population areas and the possibility of more intense uses of the land in both the short and long-term, as indicated by the following:

(A) General land use patterns in the area;

(B) Availability of utilities, including water supply;

(C) Surrounding parcel sizes and surrounding uses;

(D) Availability of public roads and other public services; and

(E) Subdivision or zoning for urban or small lots.

(iii) Energy costs of transporting minerals.

(4) Designation of mineral resource lands.

(a) Counties and cities must designate known mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded. Priority land use for mineral extraction should be retained for all designated mineral resource lands.

(b) In designating mineral resource lands, counties and cities should determine if adequate mineral resources are available for projected needs from currently designated mineral resource lands.

(c) Counties and cities may consult with the department of transportation and the regional transportation planning organization to determine projected future mineral resource needs for large transportation projects planned in their area.

(d) In designating mineral resource lands, counties and cities must also consider that mining may be a temporary use at any given mine, depending on the amount of minerals available and the consumption rate, and that other land uses can occur on the mine site after mining is completed, subject to approval.

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

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-070, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-070, filed 3/15/91, effective 4/15/91.]

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

WAC 365-190-080 Critical areas. (1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the functions and values of critical areas to ensure no net loss of ecological functions and values. The department provides additional recommendations for adopting critical areas regulations in WAC 365-196-485.

(2) Counties and cities must include the best available science as described in chapter 365-195 WAC, when designating critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties and cities are encouraged to also protect both surface and groundwater resources, because these waters often recharge wetlands, streams and lakes.

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

(a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.

(b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-080, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-080, filed 3/15/91, effective 4/15/91.]

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

WAC 365-190-090 Wetlands. (1) The wetlands of Washington state are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs and property losses.

(2) In designating wetlands for regulatory purposes, counties and cities must use the definition of wetlands in RCW 36.70A.030. Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they existed on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology, including the management recommendations based on the best available science, mitigation guidance, and provisions addressing the option of using wetland mitigation banks.

(3) Wetlands rating systems. Wetland functions vary widely.

(a) When designating wetlands, counties and cities should use a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.

(c) If a county or city chooses to use an alternative rating system, it must include the best available science.

(d) A rating system should evaluate, at a minimum, the following factors:

(i) Wetlands functions and values;

(ii) Degree of sensitivity to disturbance;

(iii) Rarity;

(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and

(v) The ability to replace the functions and values through compensatory mitigation.

(4) Counties and cities may use the National Wetlands Inventory and a landscape-scale watershed characterization as information sources for determining the approximate distribution and extent of wetlands. The National Wetlands Inventory is an inventory providing maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior Fish and Wildlife Service. A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology,

and hydrology. Regardless, any potential locations of wetlands ((~~based on the National Wetlands Inventory or landscape-scale watershed characterization~~)) should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries delineated for regulation consistent with the wetlands definition in RCW 36.70A.030.

(5) Counties and cities must use the methodology for regulatory delineations in the adopted state manual identified in RCW 36.70A.175.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-090, filed 1/19/10, effective 2/19/10.]

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

WAC 365-190-100 Critical aquifer recharge areas. (1) Potable water is an essential life sustaining element for people and many other species. Much of Washington's drinking water comes from groundwater. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems.

(2) The quality and quantity of groundwater in an aquifer is inextricably linked to its recharge area. Where aquifers and their recharge areas have been studied, affected counties and cities should use this information as the basis for classifying and designating these areas. Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas exist. To determine the threat to groundwater quality, existing land use activities and their potential to lead to contamination should be evaluated.

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability ((~~is~~)) may be indicated by hydrogeological conditions that facilitate degradation, particularly where combined with land uses that contribute, or may potentially contribute, directly or indirectly to contamination that may degrade groundwater((~~, and hydrogeologic conditions that facilitate degradation~~)). Low vulnerability ((~~is~~)) may be indicated by the combination of hydrogeological conditions that do not facilitate degradation and land uses that do not contribute, or are not likely to contribute, contaminants that will degrade groundwater((~~, and by hydrogeologic conditions that do not facilitate degradation~~)). Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to groundwater;

(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;

(iii) Soil (texture, permeability, and contaminant attenuation properties);

(iv) Characteristics of the vadose zone including permeability and attenuation properties; and

(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

(i) General land use;

(ii) Waste disposal sites;

(iii) Agriculture activities;

(iv) Well logs and water quality test results;

(v) Proximity to marine shorelines; and

(vi) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the groundwater, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if groundwater contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

(i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;

(ii) Areas established for special protection pursuant to a groundwater management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;

(iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and

(v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(c) Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat. Protecting adequate recharge of these aquifers may provide additional benefits in maintaining fish and wildlife habitat conservation areas.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-100, filed 1/19/10, effective 2/19/10.]

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

WAC 365-190-110 Frequently flooded areas. ((~~Frequently flooded areas.~~)) Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property.

(1) Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(2) Counties and cities should consider the following when designating and classifying frequently flooded areas:

(a) Effects of flooding on human health and safety, and to public facilities and services;

(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in RCW 36.70A.110;

(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;

(d) The potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;

(e) Greater surface runoff caused by increasing impervious surfaces.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-110, filed 1/19/10, effective 2/19/10.]

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

WAC 365-190-120 Geologically hazardous areas. (1) ((~~Geologically hazardous areas.~~)) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(3) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; or

(d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(4) Counties and cities should assess the risks and classify geologically hazardous areas as either:

(a) Known or suspected risk;

(b) No known risk; or

(c) Risk unknown - data are not available to determine the presence or absence of risk.

(5) Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas.

(6) Landslide hazard areas include areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

(ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than ((~~fifteen~~)) 15 percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or groundwater seepage.

(c) Areas that have shown movement during the holocene epoch (from ((~~ten thousand~~)) 10,000 years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than ((~~eighty~~)) 80 percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of ((~~forty~~)) 40 percent or steeper and with a vertical relief of ((~~ten~~)) 10 or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ((~~ten~~)) 10 feet of vertical relief.

(7) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the

past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type or thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(8) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(b) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-120, filed 1/19/10, effective 2/19/10.]

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

WAC 365-190-130 Fish and wildlife habitat conservation areas.

(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

(a) Areas where endangered, threatened, and sensitive species have a primary association;

(b) Habitats and species of local importance, as determined locally;

(c) Commercial and recreational shellfish areas;

(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

(e) Naturally occurring ponds under ((~~twenty~~)) 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

(f) Waters of the state;

(g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

(3) When classifying and designating these areas, counties and cities must include the best available science, as described in chapter 365-195 WAC.

(a) Counties and cities should consider the following:

(i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate;

(ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);

(iii) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;

(iv) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;

(v) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;

(b) Counties and cities may also consider the following:

(i) Potential for restoring lost and impaired salmonid habitat;

(ii) Potential for designating areas important for local and ecoregional biodiversity; and

(iii) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will persist over the long term. Counties and cities ((~~should~~)) must consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Recovery plans and management recommendations for many of these species are available from the Unites States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and wildlife. Additional information that must be consulted is ((~~also~~)) available from the Washington state department of natural resources, natural heritage program, and aquatic resources program.

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities ((~~should~~)) must consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also

provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington state department of natural resources' natural heritage program ((~~can provide a~~)) includes a list of high quality ecological communities and systems and rare plants that must be consulted.

(c) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should consider the Washington state department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities must classify kelp and eelgrass beds, identified by the Washington state department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

(e) Naturally occurring ponds under ((~~twenty~~)) 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(f) Waters of the state.

(i) Waters of the state are defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and ((~~water courses~~)) watercourses in Washington. Stream types are classified in Title 222 WAC, the forest practices regulations. Counties and cities may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on Washington state department of natural resources maps of these stream types for purposes of regulating land uses or establishing stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or nonfish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;

(B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);

(C) Historic presence of species of local importance;

(D) Existing surrounding land uses that are incompatible with salmonid habitat;

(E) Presence and size of riparian ecosystems;

(F) Existing water rights; and

(G) The intermittent nature of some waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the Washington state department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the Washington state department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington state department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-130, filed 1/19/10, effective 2/19/10.]

OTS-3750.1

AMENDATORY SECTION (Amending WSR 01-08-056, filed 4/2/01, effective 5/3/01)

WAC 365-195-900 Background and purpose. (1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. ((~~Every five years~~)) Periodically, they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of ((~~the Growth Management Act.~~)) RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1). The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW 36.70A.172(1).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of ((~~community, trade, and economic development~~)) commerce (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 01-08-056, § 365-195-900, filed 4/2/01, effective 5/3/01; WSR 00-16-064, § 365-195-900, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-905 Criteria for determining which information is the "best available science." (1) This section provides assessment criteria to assist counties and cities in determining whether information obtained during development of critical areas policies and regulations constitutes the "best available science."

(2) Counties and cities may use information that local, state or federal natural resource agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will ((~~make available a list of resources that state agencies have identified as meeting the criteria for best available science pursuant to this chapter~~)) work with state agencies to identify resources that meet the criteria for best available science. Such information should be reviewed for local applicability.

(3) The responsibility for including the best available science in the development and implementation of critical areas policies or regulations rests with the legislative authority of the county or city. ((~~However,~~)) Cities and counties must conduct a best available science review when updating critical area regulations. The complexity of the review should reflect the scope of the amendment. When feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability to the relevant critical areas. The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

(4) Whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of in-

terest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

(5) Scientific information can be produced only through a valid scientific process. To ensure that the best available science is being included, a county or city should consider the following:

(a) **Characteristics of a valid scientific process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process. When weighing scientific information contained in the record for inclusion, counties and cities must weigh the scientific information contained in the record based on its scientific validity. The characteristics generally to be expected in a valid scientific process are as follows:

1. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

3. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(b) **Common sources of scientific information.** Some sources of information routinely exhibit all or some of the characteristics listed in (a) of this subsection. Information derived from one of the follow-

ing sources may be considered scientific information if the source possesses the characteristics in Table 1. A county or city may consider information to be scientifically valid if the source possesses the characteristics listed in (a) of this subsection. The information found in Table 1 provides a general indication of the characteristics of a valid scientific process typically associated with common sources of scientific information.

Table 1	CHARACTERISTICS					
SOURCES OF SCIENTIFIC INFORMATION	Peer review	Methods	Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
A. Research. Research data collected and analyzed as part of a controlled experiment (or other appropriate methodology) to test a specific hypothesis.	**X**	**X**	**X**	**X**	**X**	**X**
B. Monitoring. Monitoring data collected periodically over time to determine a resource trend or evaluate a management program.		**X**	**X**	**Y**	**X**	**X**
C. Inventory. Inventory data collected from an entire population or population segment (e.g., individuals in a plant or animal species) or an entire ecosystem or ecosystem segment (e.g., the species in a particular wetland).		**X**	**X**	**Y**	**X**	**X**
D. Survey. Survey data collected from a statistical sample from a population or ecosystem.		**X**	**X**	**Y**	**X**	**X**
E. Modeling. Mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that cannot be directly observed.	**X**	**X**	**X**	**X**	**X**	**X**
F. Assessment. Inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.		**X**	**X**		**X**	**X**
G. Synthesis. A comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.	**X**	**X**	**X**		**X**	**X**
H. Expert Opinion. Statement of a qualified scientific expert based on his or her best professional judgment and experience in the pertinent scientific discipline. The opinion may or may not be based on site-specific information.			**X**		**X**	**X**

X = characteristic must be present for information derived to be considered scientifically valid and reliable
Y = presence of characteristic strengthens scientific validity and reliability of information derived, but is not essential to ensure scientific validity and reliability

(c) **Common sources of nonscientific information.** Many sources of information usually do not produce scientific information because they do not exhibit the necessary characteristics for scientific validity and reliability. Information from these sources may provide valuable information to supplement scientific information, but it is not an adequate substitute for scientific information. Nonscientific information should not be used as a substitute for valid and available scientific information. Common sources of nonscientific information include the following:

(i) Anecdotal information. One or more observations which are not part of an organized scientific effort (for example, "I saw a grizzly bear in that area while I was hiking").

(ii) Nonexpert opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are grizzly bears in that area").

(iii) Hearsay. Information repeated from communication with others (for example, "At a lecture last week, Dr. Smith said there were no grizzly bears in that area").

(6) Counties and cities are encouraged to monitor and evaluate their efforts in critical areas protection and incorporate new scientific information, as it becomes available.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-905, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-910 Criteria for obtaining the best available science. (1) Consultation with state and federal natural resources agencies and tribes can provide a quick and cost-effective way to develop scientific information and recommendations. State natural resource agencies provide numerous guidance documents and model ordinances that incorporate the agencies' assessments of the best available science. The department can provide technical assistance in obtaining such information from state natural resources agencies, developing model GMA-compliant critical areas policies and development regulations, and related subjects. ((~~The department will make available to interested parties a current list of the best available science determined to be consistent with criteria set out in WAC 365-195-905 as identified by state or federal natural resource agencies for critical areas.~~))

(2) A county or city may compile scientific information through its own efforts, with or without the assistance of qualified experts, and through state agency review and the Growth Management Act's required public participation process. The county or city should assess whether the scientific information it compiles constitutes the best available science applicable to the critical areas to be protected, using the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. If not, the county or city should identify and assemble additional scientific information to ensure it has included the best available science.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-910, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-920 Criteria for addressing inadequate scientific information. (1) Where there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas or uncertainty about the risk to critical area function of permitting development, counties and cities should use the following approach:

((~~(1)~~)) (a) A "precautionary or a no risk approach," in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved; and

((~~(2)~~)) (b) As an interim approach, an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives. Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their

effectiveness. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, counties and cities should be willing to:

((~~(a)~~)) (i) Address funding for the research component of the adaptive management program;

((~~(b)~~)) (ii) Change course based on the results and interpretation of new information that resolves uncertainties; and

((~~(c)~~)) (iii) Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting critical areas protection and anadromous fisheries.

(2) Ongoing permit implementation monitoring and adaptive management.

(a) In addition to the use of formal scientific approaches to monitoring and adaptive management program as an interim approach as described above, the department recommends counties and cities develop and maintain ongoing monitoring and adaptive management procedures to ensure implementation of critical area regulations is efficient and effective. Counties and cities should consult department guidance documents for information.

(b) Steps in developing permit implementation monitoring and adaptive management programs include:

(i) Determining the reasons for monitoring;

(ii) Establishing key objectives and study questions;

(iii) Designing the monitoring program;

(iv) Determining the monitoring time frame; and

(v) Evaluating results and making recommendations.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-920, filed 7/27/00, effective 8/27/00.]

OTS-3853.2

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

WAC 365-196-010 Background. Through the Growth Management Act, the legislature provided a new framework for land use planning and the regulation of development in Washington state. The act was enacted in response to problems associated with uncoordinated and unplanned growth and a lack of common goals in the conservation and the wise use of our lands. The problems included increased traffic congestion, pollution, school overcrowding, urban sprawl, and the loss of rural lands.

(1) Major features of the act's framework include:

(a) A requirement that counties with specified populations and rates of growth and the cities within them adopt comprehensive plans and development regulations under the act. Other counties can choose to be covered by this requirement, thereby including the cities they contain.

(b) A set of common goals to guide the development of comprehensive plans and development regulations.

(c) The concept that the process should be a "bottom up" effort, involving early and continuous public participation, with the central locus of decision-making at the local level, bounded by the goals and requirements of the act.

(d) Requirements for the locally developed plans to be internally consistent, consistent with ((~~county-wide~~)) countywide planning policies and multicounty planning policies, and consistent with the plans of other counties and cities where there are common borders or related regional issues.

(e) A requirement that development regulations adopted to implement the comprehensive plans be consistent with such plans.

(f) The principle that development and the providing of public facilities and services needed to support development should occur concurrently.

(g) A determination that planning and plan implementation actions should address difficult issues that have resisted resolution in the past, such as:

(i) The timely financing of needed infrastructure;

(ii) Providing adequate and affordable housing for all economic segments of the population;

(iii) Concentrating growth in urban areas, provided with adequate urban services;

(iv) The siting of essential public facilities;

(v) The designation and conservation of agricultural, forest, and mineral resource lands;

(vi) The designation and protection of environmentally critical areas.

(h) A determination that comprehensive planning can simultaneously address these multiple issues by focusing on the land development process as a common underlying factor.

(i) An intention that economic development be encouraged and fostered within the planning and regulatory scheme established for managing growth.

(j) A recognition that the act is a fundamental building block of regulatory reform. The state and local government have invested considerable resources in an act that should serve as the integrating framework for other land use related laws.

(k) A desire to recognize the importance of rural areas and provide for rural economic development.

(l) A requirement that counties and cities must periodically review and update their comprehensive plans and development regulations to ensure continued compliance with the goals and requirements of the act.

(2) The pattern of development established in the act. The act calls for a pattern of development that consists of different types of land uses existing on the landscape. These types generally include urban land, rural land, resource lands, and critical areas. Critical areas exist in rural, urban, and resource lands. Counties and cities must designate lands in these categories and develop policies governing development consistent with these designations. The act establishes criteria to guide the designation process and to guide the character of development in these lands.

(3) How the act applies to existing developed areas. The act is prospective in nature. It establishes a framework for how counties and cities plan for future growth. In many areas, the pattern called for in the act is a departure from the pattern that existed prior to the act. As a consequence, areas developed prior to the act may not clear-

ly fit into the pattern of development established in the act. In rural areas, comprehensive plans developed under the act should find locally appropriate ways to recognize these areas without allowing these patterns to spread into new undeveloped areas. In urban areas, comprehensive plans should find locally appropriate ways to encourage redevelopment of these areas in a manner consistent with the pattern of development envisioned by the act.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-010, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-030 Applicability. (1) Where these guidelines apply.

(a) This chapter applies to all counties and cities that are required to plan or choose to plan under RCW 36.70A.040.

(b) WAC 365-196-830 addressing protection of critical areas applies to all counties and cities, including those that do not fully plan under RCW 36.70A.040.

(c) As of May 1, 2009, the following counties and cities within them are not required to fully plan under RCW 36.70A.040: Adams, Asotin, Cowlitz, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, Skamania, and Whitman.

(2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches.

(3) How the growth management hearings board use these guidelines. The growth management hearings board must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, board must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

(4) When a county or city should consider the procedural criteria. Counties and cities should consider these procedural criteria when amending or updating their comprehensive plans, development regulations or ((~~county-wide~~)) countywide planning policies. Since adoption of the act, counties and cities and others have adopted a variety of agreements and frameworks to collaboratively address issues of local concern and their responsibilities under the act. The procedural criteria do not trigger an independent obligation to revisit those agreements. Any local land use planning agreements should, where possible, be construed as consistent with these procedural criteria. Changes to these procedural criteria do not trigger an obligation to review and update local plans and regulations to be consistent with these criteria.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-030, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-030, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-060 Goals. The act lists ((~~thirteen~~)) 13 overall goals in RCW 36.70A.020, plus the shoreline goal added in RCW 36.70A.480(1). Counties and cities should design comprehensive plans and development regulations to meet these goals.

(1) This list of ((~~fourteen~~)) 14 goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the ((~~fourteen~~)) 14 statutory goals.

(2) Balancing the goals in the act.

(a) The act's goals are not listed in order of priority. The ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. Differences in emphasis are expected from jurisdiction to jurisdiction. Although there may be an inherent tension between the act's goals, counties and cities must give some effect to all the goals. Balancing the act's goals must not be interpreted to allow a violation of statutory requirements. Counties and cities should consider developing a written record demonstrating that it considered the planning goals during the development of the comprehensive plan and development regulations.

(b) When there is a conflict between the general planning goals and more specific requirements of the act, the specific requirements control.

(c) In some cases, counties and cities may support activities outside their jurisdictional boundaries in order to meet goals of the act.

(d) Development regulations must be consistent with the goals and requirements of the act and the comprehensive plan. In most cases, if a comprehensive plan meets the statutory goals, development regulations consistent with the comprehensive plan will meet the goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-060, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-210 Definitions of terms as used in this chapter. The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) "Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(2) "Achieved density" means the density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

(4) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, includ-

ing utilities other than telephone, do not exceed ((~~thirty~~)) 30 percent of the household's monthly income.

(5) "Allowed densities" means the density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(6) "Assumed densities" means the density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(7) "Concurrency" or "concurrent with development" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above.

(8) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

(9) "Contiguous development" means development of areas immediately adjacent to one another.

(10) "Coordination" means consultation and cooperation among jurisdictions.

(11) "Cultural resources" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

(12) "Demand management strategies" or "transportation demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that:

(a) Shift demand outside of the peak travel time;

(b) Shift demand to other modes of transportation;

(c) Increase the average number of occupants per vehicle;

(d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

(13) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

(14) "Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

(15) "Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

(16) "Family day-care provider" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than ((~~twelve~~)) 12 children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide their services in the family living quarters of the day care provider's home.

((~~(15)~~)) (17) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which

will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

((~~(16)~~)) (18) "Growth Management Act" - See definition of "act."

((~~(17)~~)) (19) "Historic preservation" or "preservation" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

((~~(18)~~)) (20) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the tangible and material evidence of the human past, aged ((~~fifty~~)) 50 years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

((~~(19)~~)) (21) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

((~~(20)~~)) (22) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

((~~(21)~~)) (23) "Mitigation" or "mitigation sequencing" means a prescribed order of steps taken to reduce the impacts of activities on critical areas. As defined in WAC 197-11-768, mitigation means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(24) "Must," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

((~~(22)~~)) (25) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

((~~(23)~~)) (26) "Planning period" means the ((~~twenty-year~~)) 20-year period ((~~following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon~~)) starting on the relevant due date for the most recent periodic update specified in RCW 36.70A.130(5).

((~~(24)~~)) (27) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

((~~(25)~~)) (28) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

((~~(26)~~)) (29) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a region containing one or more counties which have common transportation interests.

((~~(27)~~)) (30) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

((~~(28)~~)) (31) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

((~~(29)~~)) (32) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

((~~(30)~~)) (33) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

((~~(31)~~)) (34) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

((~~(32)~~)) (35) "Sufficient land capacity for development" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the ((~~county-wide~~)) countywide planning policies.

((~~(33)~~)) (36) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

((~~(34)~~)) (37) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

((~~(35)~~)) (38) "Transportation system management" means the use of low cost solutions to increase the performance of the transportation system. Transportation system management (TSM) strategies include, but are not limited to, signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

((~~(36)~~)) (39) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

((~~(37)~~)) (40) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-210, filed 1/19/10, effective 2/19/10.]

PART THREE
URBAN GROWTH AREAS AND ((~~COUNTY-WIDE~~)) COUNTYWIDE PLANNING POLICIES

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

WAC 365-196-300 Urban density. (1) The role of urban areas in the act. The act requires counties and cities to direct new growth to urban areas to allow for more efficient and predictable provision of adequate public facilities, to promote an orderly transition of governance for urban areas, to reduce development pressure on rural and resource lands, and to encourage redevelopment of existing urban areas.

(2) How the urban density requirements in the act are interrelated. The act involves a consideration of density in three contexts:

(a) Allowed densities: The density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(b) Assumed densities: The density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(c) Achieved density: The density at which new development occurred in the period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) Determining the appropriate range of urban densities. Within urban growth areas, counties and cities must permit urban densities and provide sufficient land capacity suitable for development. The requirements of RCW 36.70A.110 and 36.70A.115 apply to the densities assumed in the comprehensive plan and the densities allowed in the implementing development regulations.

(a) Comprehensive plans. Under RCW 36.70A.070(1) and in RCW 36.70A.110(2), the act requires that the land use element identify areas and assumed densities sufficient to accommodate the ((~~twenty-year~~)) 20-year population allocation. The land use element should clearly identify the densities, or range of densities, assumed for each land use designation as shown on the future land use map. When reviewing the urban growth area, the assumed densities in the land capacity analysis must be urban densities.

(b) Development regulations. Counties and cities must provide sufficient capacity of land suitable for development.

(i) Development regulations must allow development at the densities assumed in the comprehensive plan.

(ii) Counties and cities need not force redevelopment in urban areas not currently developed at urban densities, but the development regulations must allow, and should not discourage redevelopment at urban densities. If development patterns are not occurring at urban densities, counties and cities should review development regulations for potential barriers or disincentives to development at urban densities. Counties and cities should revise regulations to remove any identified

barriers and disincentives to urban densities, and may include incentives.

(4) Factors to consider for establishing urban densities. The act does not establish a uniform standard for minimum urban density. Counties and cities may establish a specified minimum density in ((~~county-wide~~)) countywide or multicounty planning policies. Counties and cities should consider the following factors when determining an appropriate range of urban densities:

(a) An urban density is a density for which cost-effective urban services can be provided. Higher densities generally lower the per capita cost to provide urban governmental services.

(b) Densities should be higher in areas with a high local transit level of service. Generally, a minimum of seven to eight dwelling units per acre is necessary to support local urban transit service. Higher densities are preferred around high capacity transit stations.

(c) The areas and densities within an urban growth area must be sufficient to accommodate the portion of the ((~~twenty-year~~)) 20-year population that is allocated to the urban area. Urban densities should allow accommodation of the population allocated within the area that can be provided with adequate public facilities during the planning period.

(d) Counties and cities should establish significantly higher densities within regional growth centers designated in RCW 47.80.030; in growth and transportation efficiency centers designated under RCW 70.94.528; and around high capacity transit stations in accordance with RCW 47.80.026. Cities may also designate new or existing downtown centers, neighborhood centers, or identified transit corridors as focus areas for infill and redevelopment at higher densities.

(e) Densities should allow counties and cities to accommodate new growth predominantly in existing urban areas and reduce reliance on either continued expansion of the urban growth area, or directing significant amounts of new growth to rural areas.

(f) The densities chosen should accommodate a variety of housing types and sizes to meet the needs of all economic segments of the community. The amount and type of housing accommodated at each density and in each land use designation should be consistent with the need for various housing types identified in the housing element of the comprehensive plan.

(g) Counties and cities may designate some urban areas at less than urban densities to protect a network of critical areas, to avoid further development in frequently flooded areas, or to prevent further development in geologically hazardous areas. Counties or cities should show that the critical areas are present in the area so designated and that area designated is limited to the area necessary to achieve these purposes.

(5) Addressing development patterns that occurred prior to the act.

(a) Prior to the passage of the act, many areas within the state developed at densities that are neither urban nor rural. Inside the urban growth area, local comprehensive plans should allow appropriate redevelopment of these areas. Newly developed areas inside the urban growth area should be developed at urban densities.

(b) Local capital facilities plans should include plans to provide existing urban areas with adequate public facilities during the planning period so that available infrastructure does not serve as a limiting factor to redevelopment at urban densities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-300, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-305 ((~~County-wide~~)) Countywide planning policies.

(1) Purpose of ((~~county-wide~~)) countywide planning policies. The act requires counties and cities to collaboratively develop ((~~county-wide~~)) countywide planning policies to govern the development of comprehensive plans. The primary purpose of ((~~county-wide~~)) countywide planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of ((~~county-wide~~)) countywide planning policies is to facilitate the transformation of local governance in the urban growth area, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.

(2) Relationship to the act. ((~~County-wide~~)) Countywide planning policies must comply with the requirements of the act. ((~~County-wide~~)) Countywide planning policies may not compel counties and cities to take action that violates the act. ((~~County-wide~~)) Countywide planning policies may not permit actions that the act prohibits nor include exceptions to such prohibitions not contained in the act. If a ((~~county-wide~~)) countywide planning policy can be implemented in a way that is consistent with the act, then it is consistent with the act, even if its subsequent implementation is found to be out of compliance. RCW 36.70A.210(4) requires state agencies to comply with ((~~county-wide~~)) countywide planning policies.

(3) Relationship to comprehensive plans. The comprehensive plans of counties and cities must comply with both the ((~~county-wide~~)) countywide planning policies and the act. Any requirements in a ((~~county-wide~~)) countywide planning policy do not replace requirements in the act or any other state or federal law or regulation.

(4) Required policies. Consistent with RCW 36.70A.210(3) and 36.70A.215, ((~~county-wide~~)) countywide planning policies must cover the following subjects:

(a) Policies to implement RCW 36.70A.110, including:

(i) Designation of urban growth areas;

(ii) Selection ((~~and allocation~~)) of population projections, employment forecasts, and growth allocations between cities and counties as part of the review of an urban growth area;

(iii) Procedures governing amendments to urban growth areas, including the review required by RCW 36.70A.130(3);

(iv) Consultation between cities and counties regarding urban growth areas; and

(v) If desired, policies governing the establishment of urban service boundaries or potential annexation areas.

(b) Promoting contiguous and orderly development and provision of urban services to such development;

(c) Siting public facilities of a ((~~county-wide~~)) countywide or statewide nature, including transportation facilities of statewide significance;

(d) ((~~County-wide~~)) Countywide transportation facilities and strategies;

(e) The need for affordable housing such as housing for all economic segments of the population and parameters for its distribution;

(f) Joint city/county planning in urban growth areas;

(g) ((~~County-wide~~)) Countywide economic development and employment;

(h) An analysis of fiscal impact; and

(i) Where applicable, policies governing the buildable lands review and evaluation program.

(5) Recommended policies. ((~~County-wide~~)) Countywide planning policies should also include policies addressing the following:

(a) Procedures by which the ((~~county-wide~~)) countywide planning policies will be reviewed and amended; and

(b) A process for resolving disputes regarding interpretation of ((~~county-wide~~)) countywide planning policies or disputes regarding implementation of the ((~~county-wide~~)) countywide planning policies.

(6) Framework for adoption of ((~~county-wide~~)) countywide planning policies. Prior to adopting ((~~county-wide~~)) countywide planning policies, counties and cities must develop a framework. This framework should be in written form and agreed to by the county and the cities within those counties. The framework may be in a memorandum of understanding, an intergovernmental agreement, or as a section of the ((~~county-wide~~)) countywide planning policies. This framework must include the following provisions:

(a) Desired policies;

(b) Deadlines;

(c) Ratification of final agreements and demonstration; and

(d) Financing, if any, of all activities associated with developing and adopting the ((~~county-wide~~)) countywide planning policies.

(7) Forum for ongoing coordination. Counties and cities should establish a method for ongoing coordination of issues associated with implementation of the ((~~county-wide~~)) countywide planning policies and comprehensive plans, which should include both a forum for county and city elected officials and a forum for county and city staff responsible for implementation. Cities and counties should review adopted countywide policies to determine whether they are effectively achieving their objectives. These forums may also include special purpose districts, transit districts, port districts, federal agencies, state agencies, and tribes.

(8) Multicounty planning policies.

(a) Multicounty planning policies must be adopted by two or more counties, each with a population of ((~~four hundred fifty thousand~~)) 450,000 or more, with contiguous urban areas. They may also be adopted by other counties by a process agreed to among the counties and cities within the affected counties.

(b) Multicounty planning policies are adopted by two or more counties and establish a common region-wide framework that ensures consistency among county and city comprehensive plans adopted pursuant to RCW 36.70A.070, and ((~~county-wide~~)) countywide planning policies adopted pursuant to RCW 36.70A.210.

(c) Multicounty planning policies provide a framework for regional plans developed within a multicounty region, including regional transportation plans established under RCW 47.80.023, as well as plans of cities, counties, and others that have common borders or related regional issues as required under RCW 36.70A.100.

(d) Multicounty planning policies should address, at a minimum, the same topics identified for ((~~county-wide~~)) countywide planning as identified in RCW 36.70A.210(3), except for those responsibilities assigned exclusively to counties. Other issues may also be addressed.

(e) Because of the regional nature of multicounty planning policies, counties or cities should use an existing regional agency with the same or similar geographic area, such as a regional transportation planning organization, pursuant to RCW 47.80.020, to develop, adopt, and administer multicounty planning policies.

(f) In order to provide an ongoing multicounty framework, a schedule for reviewing and revising the multicounty planning policies may be established. This schedule should relate to the review and revision deadlines for county and city comprehensive plans pursuant to RCW 36.70A.130.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-305, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-310 Urban growth areas. (1)(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the ((~~one hundred-year~~)) 100-year flood plain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of ((~~one thousand~~)) 1,000 or more cubic feet per second as determined by the department of ecology.

(b) Subsection (1)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;

(ii) Urban growth areas where expansions are precluded outside flood plains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or

(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;

(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; stormwater facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase stormwater runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under (a)(i) of this subsection, "((~~one hundred-year~~)) 100-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(2) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a ((~~county-wide~~)) county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding ((~~twenty-year~~)) 20-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to

be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, according to the time schedule specified in RCW 36.70A.130(5), periodically its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (see WAC 365-196-610).

(i) The purpose of the urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding ((~~twenty-year~~)) 20-year planning period.

(ii) This review should be conducted jointly with the affected cities.

(iii) In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(3) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the ((~~county-wide~~)) countywide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or ((~~county-wide~~)) countywide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(4) Recommendations for meeting requirements.

(a) Selecting and allocating ((~~county-wide~~)) countywide growth forecasts. This process should involve at least the following:

(i) The total ((~~county-wide~~)) countywide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area. Cities and counties should use consistent growth forecasts, allocations, and planning horizons. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5) and encompass a minimum of 20 years.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low ((~~twenty-year~~)) 20-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total ((~~county-wide~~)) countywide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that ((~~twenty-year~~)) 20-year growth forecasts and designated urban growth areas be updated at a minimum during the periodic review of comprehensive plans and development regulations (WAC 365-196-610). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the ((~~twenty-year~~)) 20-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the ((~~twenty-year~~)) 20-year forecasts selected.

(iv) Selection of a ((~~county-wide~~)) countywide employment forecast. Counties, in consultation with cities, should adopt a ((~~twenty-year county-wide~~)) 20-year countywide employment forecast to be allo-

cated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The ((~~county-wide~~)) countywide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a ((~~county-wide~~)) countywide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a ((~~county-wide~~)) countywide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the ((~~twenty-year~~)) 20-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the ((~~twenty-year~~)) 20-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and utilities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of

previously developed urban areas during the ((~~twenty-year~~)) 20-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the ((~~twenty-year~~)) 20-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next ((~~twenty~~)) 20 years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are

characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas ((~~issues~~)) and wildfires. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. Counties and cities should also consider the potential risk of wildland fires when expanding the urban growth area into areas where structures and other development intermingles with undeveloped wildland or vegetative fuels. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the ((~~one hundred-year~~)) 100-year flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of ((~~one thousand~~)) 1,000 or more cubic feet per second.

(vii) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding ((~~twenty-year~~)) 20-year period. Counties and cities should identify revenue sources and develop a reasonable financial plan to support operation and maintenance of existing facilities and services, and for new or expanded facilities to accommodate projected growth over the 20-year planning period. The plan should ensure consistency between the land use element and the capital facilities plan, and demonstrate that probable funding does not fall short of the projected needs to maintain and operate public facilities, public services, and open space. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has ((~~county-wide~~)) countywide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with ((~~county-wide~~)) countywide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing ((~~county-wide~~)) countywide planning policies, resolving regional issues, and adjusting growth boundaries.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-310, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-310, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-310, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-315 Buildable lands review and evaluation. (1) Purpose. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions contained in the countywide planning policies and comprehensive plans with actual development and determining if actual development is consistent with the ((~~comprehensive~~)) adopted plans. It also determines if there is sufficient commercial, industrial and housing capacity within the adopted urban growth area to accommodate the county's ((~~twenty-year~~)) 20-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cities must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency between what was envisioned in adopted countywide planning policies, comprehensive plans and development regulations, and actual development that has occurred. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

(a) The following counties, and the cities located within those counties, must establish and maintain a buildable lands program as required by RCW 36.70A.215:

(i) Clark;

(ii) King;

(iii) Kitsap;

(iv) Pierce;

(v) Snohomish; ((~~and~~))

(vi) Thurston; and

(vii) Whatcom.

(b) If another county or city establishes a program containing features of the buildable lands program, they are not obligated to meet the requirements of RCW 36.70A.215.

(3) ((~~County-wide~~)) Countywide planning policies and supportive documents.

(a) Buildable lands programs must be established in ((~~county-wide~~)) countywide planning policies.

(b) The buildable lands program must contain policies that establish a framework for implementation and continued administration.

(c) The buildable lands program's framework for implementation and administration may be adopted administratively. The program's framework must contain policies or procedures to:

(i) Provide guidance for the collection and analysis of data;

(ii) Provide for the evaluation of the data no later than ((~~one year~~)) the date specified in RCW 36.70A.215, prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, commonly referred to as the buildable lands report;

(iii) Provide for the establishment of methods to resolve disputes among jurisdictions regarding inconsistencies in collection and analysis of data; and

(iv) Provide for the amendment of the ((~~county-wide~~)) countywide policies and county and city comprehensive plans as needed to remedy inconsistencies identified through the evaluation required by this section, or to bring these policies and plans into compliance with the requirements of the act.

(d) The program's framework for implementation and administration should, in addition to the above, address the following:

(i) Establishment of the lead agency responsible for the overall coordination of the program;

(ii) Establishment of criteria and timelines for each county or city to:

(A) Make a determination as to consistency or inconsistency between what was envisioned in adopted ((~~county-wide~~)) countywide planning policies, comprehensive plans and development regulations and actual development that has occurred;

(B) Determine whether there is sufficient suitable land to accommodate the countywide population projection, and the subsequent population allocations within the county and between the county and its cities;

(C) Adopt and implement reasonable measures, if necessary;

((~~(C)~~)) (D) Report on the monitoring of the effectiveness of reasonable measures that have been adopted and implemented. Such reporting could be included in the subsequent buildable lands report;

((~~(D)~~)) (E) Transmit copies of any actions taken under (d)(ii)(A), ((~~(B)~~)) (C) and ((~~(C)~~)) (D) of this subsection to the department.

(iii) Providing opportunities for the public to review and comment on the following:

(A) Refinement of data collection and analysis methods for the review and evaluation elements of the program;

(B) Determinations as to consistency or inconsistency between what was envisioned in adopted ((~~county-wide~~)) countywide planning policies, comprehensive plans and development regulations and actual development that has occurred; and

(C) Adoption of reasonable measures, and reports on the monitoring of their effectiveness.

(iv) Public involvement may be accommodated during review and evaluation of a county or city comprehensive plan in consideration of the buildable land report information. This would generally include public review and comment opportunities before the planning commission or legislative body during the normal local government planning process.

(4) Buildable lands program reporting.

(a) No later than ((~~one year~~)) the date specified in RCW 36.70A.215, prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, the buildable

lands program must compile and publish an evaluation, known as the buildable lands report. Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the ((~~county-wide~~)) countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred since the adoption of the comprehensive plan or the last required buildable lands report. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "*Buildable Lands Program Guidelines*," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency. ((~~(a)~~)) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3). At a minimum, the evaluation component of the program shall determine whether there is sufficient land suitable for development or redevelopment within the 20-year planning period:

((~~(i)~~)) (a) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110; the zoned capacity of land alone is not a sufficient standard to deem land suitable for development or redevelopment within the 20-year planning period.

((~~(ii)~~)) (b) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for commercial, industrial and residential land uses with the assumed densities that were envisioned in the applicable ((~~county-wide~~)) countywide planning policies, and the comprehensive plan, including:

(i) A review and evaluation of the land use designation and zoning/development regulations; environmental regulations (such as tree retention, stormwater, or critical area regulations) impacting development; and other regulations that could prevent assigned densities from being achieved; infrastructure gaps (including, but not limited to, transportation, water, sewer, and stormwater); and

(ii) Use of a reasonable land market supply factor when evaluating land suitable to accommodate new development or redevelopment of land for residential development and employment activities. The reasonable market supply factor identifies reductions in the amount of land suitable for development and redevelopment. The methodology for conducting a reasonable land market factor shall be determined through the guidance developed in RCW 36.70A.217.

((~~(iii)~~)) (c) Evaluation under RCW 36.70A.215 (3)(c) should ((~~determine, based on actual development densities determined in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan.~~

~~(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation~~)) provide an analysis of county and/or city development assumptions, targets, and ob-

jectives contained in the countywide planning policies and the county and city comprehensive plans when growth targets and assumptions are not being achieved. It is not appropriate to make a finding that assumed growth contained in the countywide planning policies and the county or city comprehensive plan will occur at the end of the current comprehensive planning 20-year planning cycle without rationale;

(d) Evaluation under RCW 36.70A.215 (3)(d) should determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by RCW 36.70A.215(1); and

(e) Evaluation under RCW 36.70A.215 (3)(e) should, based on the actual density, along with current trends and other documented factors relevant to patterns of actual growth and development as determined under RCW 36.70A.215 (3)(b), review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the 20-year planning period used in the most recently adopted comprehensive plan.

(6) Measures to address inconsistencies.

(a) The legislative bodies of counties and cities are responsible for the adoption of reasonable measures requiring legislative action to amend their individual comprehensive plans and development regulations. Counties, in consultation with cities, are responsible for amending the ((~~county-wide~~)) countywide planning policies reasonably likely to increase consistency. Annual monitoring and reporting is the responsibility of the adopting jurisdiction, but may be carried out by either the adopting jurisdiction or other designated agency or person.

(b) If a county or city determines an inconsistency exists, the county or city should establish a timeline for adopting and implementing measures that are reasonably likely to increase consistency during the succeeding review and evaluation period. The responsible county or city may utilize its annual review or periodic update under RCW 36.70A.130((~~(2)~~)) to make adjustments to its comprehensive plan and development regulations that are necessary to implement reasonable measures. Information regarding the adoption, implementation, and monitoring of reasonable measures should be made available to the public. Counties and cities may not rely on expansion of the urban growth area as a measure to address the inconsistency.

(i) Each county or city is responsible for implementing reasonable measures within its jurisdiction and must adopt measures that are designed to remedy the inconsistency within the remaining planning horizon of the adopted comprehensive plan;

(ii) Each county or city adopting reasonable measures is responsible for documenting its methodology and expectations for monitoring to provide a basis to evaluate whether the adopted measures have been effective in increasing consistency during the subsequent review and evaluation period;

(iii) If the monitoring of reasonable measures fails to show increased consistency relative to adopted policies, plans and development regulations during the subsequent review and evaluation period, the county or city should evaluate whether the measures in question should be revised, replaced, supplemented or rescinded;

(iv) If monitoring of reasonable measures demonstrates that such measures have remedied the inconsistency, the adopting county or city may discontinue monitoring;

(v) A copy of any action taken to adopt, amend, or rescind reasonable measures should be submitted to the department.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-315, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-315, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-320 Providing urban services. (1) Urban governmental services.

(a) Urban services are defined by RCW 36.70A.030(18) as those public services and public facilities at an intensity historically and typically provided in cities. Urban services specifically include:

(i) Sanitary sewer systems;

(ii) Storm drainage systems;

(iii) Domestic water systems;

(iv) Street cleaning services;

(v) Fire and police protection services;

(vi) Public transit services; and

(vii) Other public utilities associated with urban areas and normally not associated with rural areas.

(b) RCW 36.70A.030 (12) and (13) define public facilities and public services, which in addition to those defined as urban services, also include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, parks and recreational facilities, and schools, public health and environmental protection, and other governmental services.

(c) Although some of these services may be provided in rural areas, urban areas are typically served by higher capacity systems capable of providing adequate services at urban densities. Storm and sanitary sewer systems are the only services that are generally exclusively for urban growth areas. Outside of urban growth areas storm and sanitary sewer systems are appropriate in limited circumstances when necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

(d) At a minimum, adequate public facilities in urban areas should include sanitary sewer systems, and public water service from a Group A public water system under chapter ((~~70.119 or 70.119A~~)) 70A.120 or 70A.125 RCW because these services are usually necessary to support urban densities. The services provided must be adequate to allow development at urban densities and serve development at densities consistent with the land use element, and meet all regulatory obligations under state and federal law.

(e) If potable water demand is expected to exceed a public water system's available water rights within the 20-year planning horizon, cities and counties should develop strategies to obtain sufficient water to meet anticipated demand. Strategies may include, but are not limited to, decreasing water demand through conservation, securing additional water rights and establishing an intertie agreement with another water purveyor to purchase the necessary water.

(f) The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must

include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.

((~~(f)~~)) (g) The use of on-site sewer systems within urban growth areas may be appropriate in limited circumstances where there is no negative effect on basic public health, safety and the environment; and the use of on-site sewer systems does not preclude development at urban densities. Such circumstances may include:

(i) Use of on-site sewer systems as a transitional strategy where there is a development phasing plan in place (see ((~~WAC 365-195-330 [WAC 365-196-330]~~)) WAC 365-196-330); or

(ii) To serve isolated pockets of urban land difficult to serve due to terrain, critical areas or where the benefit of providing an urban level of service is cost-prohibitive; or

(iii) Where on-site systems are the best available technology for the circumstances and are designed to serve urban densities.

(2) Appropriate providers. RCW 36.70A.110(4) states that, in general, cities are the units of government most appropriate to provide urban governmental services. However, counties, special purpose districts and private providers also provide urban services, particularly services that are regional in nature. Counties and cities should plan for a transformation of governance as urban growth areas develop, whereby annexation or incorporation occurs, and nonregional urban services provided by counties are generally transferred to cities. See WAC 365-196-305.

(3) Coordination of planning in urban growth areas.

(a) The capital facilities element and transportation element of the county or city comprehensive plan must show how adequate public facilities will be provided and by whom. If the county or city with land use authority over an area is not the provider of urban services, a process for maintaining consistency between the land use element and plans for infrastructure provision should be developed consistent with the ((~~county-wide~~)) countywide planning policies.

(b) If a city is the designated service provider outside of its municipal boundaries, the city capital facilities element must also show how urban services will be provided within their service area. This should include incorporated areas and any portion of the urban growth area that it is assigned as a service area or potential annexation area designated under RCW 36.70A.110(7). See WAC 365-196-415 for information on the capital facilities element.

(4) Level of financial certainty required when establishing urban growth areas.

(a) Any amendment to an urban growth area must be accompanied by an analysis of what capital facilities investments are necessary to ensure the provision of adequate public facilities.

(b) If new or upgraded facilities are necessary, counties and cities must amend the capital facilities and transportation elements to maintain consistency with the land use element.

(c) The amended capital facilities and transportation elements must identify those new or expanded facilities and services necessary to support development in new urban growth areas. The elements must also include cost estimates to determine the amount of funding necessary to construct needed facilities.

(d) The capital facilities and transportation elements should identify what combination of new or existing funding will be necessary

to develop the needed facilities. Funding goals should be based on what can be raised by using existing resources. Use of state and federal grants should be realistic based on past trends unless the capital facilities element identifies new programs or an increased amount of available funding from state or federal sources.

(e) If funding available from existing sources is not sufficient, counties and cities should use development phasing strategies to prevent the irreversible commitment of land to urban development before adequate funding is available. Development phasing strategies are described in WAC 365-196-330. Counties and cities should then implement measures needed to close the funding gap.

(f) When considering potential changes to the urban growth area, counties should require that any proposal to expand the urban growth area must include necessary information to demonstrate an ability to provide adequate public facilities to any potential new portions of the urban growth area.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-320, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable ((~~county-wide~~)) countywide planning policies and consistent with the ((~~twenty-year~~)) 20-year population forecast from the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets during the review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required no later than one year prior to the deadline for periodic review of comprehensive plans and development regulations required by RCW 36.70A.130, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and

cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the ((~~county-wide~~)) countywide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the ((~~county-wide~~)) countywide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the ((~~twenty-year~~)) 20-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the ((~~twenty-year~~)) 20-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This evaluation must occur as part of the urban growth area review required in RCW 36.70A.130 (3)(a) and as

part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-325, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-325, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-325, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-330 Phasing development within the UGA. (1) Purpose of development phasing. Development phasing is the sequencing of development subareas within a city or urban growth area over the course of the ((~~twenty-year~~)) 20-year planning period. Development phasing should be considered a way to achieve one or more of the following:

(a) Orderly development pursuant to RCW 36.70A.110(3), which states that urban growth should first be located in areas with existing urban development and existing service capacity; second in existing urban development areas where new services can be provided in conjunction with existing services; and third in the remainder of the urban growth area;

(b) Preventing the irreversible commitment of land to urban growth before the provision of adequate public facilities. Within the comprehensive plan, the capital facilities element, transportation element, and parks and recreation element each must contain a plan to provide urban areas with adequate public facilities. The comprehensive plan must identify those facilities needed to achieve and maintain adopted levels of service over the ((~~twenty-year~~)) 20-year planning period, but only requires a six-year financing plan. Development phasing is a tool to address those areas for which capital facility needs have been identified in the ((~~twenty-year~~)) 20-year plan, but financing has not yet been identified. Because no irreversible commitment of land has been made in the zoning ordinance, if provision of urban governmental services ultimately proves infeasible, the area can be removed from the urban growth area when reassessing the land use element if probable funding falls short;

(c) Preventing a pattern of sprawling low density development from occurring or vesting in these areas prior to the ability to support urban densities. Once this pattern has occurred, it is more difficult to serve with urban services and less likely to ultimately achieve urban densities;

(d) Serving as a means of developing more detailed intergovernmental agreements or other plans to facilitate the orderly transition of governance and public services.

(2) Recommended provisions for development phasing. Comprehensive plan and development regulation provisions for development phasing should include the following:

(a) Identification of the areas to be sequenced;

(b) The criteria required to develop these areas at the ultimate urban densities envisioned. Criteria may be based on adequacy of services, existing urban development, and provisions for transition of governance. Timelines may also be used for sequencing;

(c) The densities and uses allowed in identified areas that have not yet met the criteria. Densities and intensities more typical of rural development should be considered to avoid hindering future development at urban densities. Such requirements are not inconsistent with the obligation to permit urban densities if provisions are made for conversion to urban densities over the course of the ((~~twenty-year~~)) 20-year planning period. Regulations should ensure that interim uses do not preclude future development at urban densities; and

(d) The review process for transitioning to ultimate urban densities. This should involve changes to development regulations, and not require amendments to the comprehensive plan.

(3) Additional considerations.

(a) Comprehensive plans may include other tools selected to facilitate phasing.

(b) Counties and cities should coordinate the phasing of development within portions of urban growth areas assigned to cities, and throughout urban growth areas in which cities are located. Development phasing polices may be addressed in ((~~county-wide~~)) countywide planning policies.

(c) Counties and cities must still provide sufficient capacity of land suitable for development as required in RCW 36.70A.115, but lands subject to sequencing requirements should be included in this capacity as long as phasing is implemented during the planning period.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-330, filed 1/19/10, effective 2/19/10.]

NEW SECTION

WAC 365-196-350 Extension of public facilities and utilities to serve school sited in a rural area authorized. (1) Requirements: The Growth Management Act does not prohibit a county planning under RCW 36.70A.040 from authorizing the extension of public facilities and utilities to serve a school sited in a rural area that serves students from a rural area and an urban area so long as the following requirements are met:

(a) The applicable school district board of directors has adopted a policy addressing school service area and facility needs and educational program requirements;

(b) The applicable school district has made a finding, with the concurrence of the county legislative authority and the legislative authorities of any affected cities, that the district's proposed site is suitable to site the school and any associated recreational facilities that the district has determined cannot reasonably be collocated

on an existing school site, taking into consideration the policy adopted in (a) of this subsection and the extent to which vacant or developable land within the growth area meets those requirements;

(c) The county and any affected cities agree to the extension of public facilities and utilities to serve the school sited in a rural area that serves urban and rural students at the time of concurrence in (b) of this subsection;

(d) If the public facility or utility is extended beyond the urban growth area to serve a school, the public facility or utility must serve only the school and the costs of such extension must be borne by the applicable school district based on a reasonable nexus to the impacts of the school, except as provided in subsection (3) of this section; and

(e) Any impacts associated with the siting of the school are mitigated as required by the State Environmental Policy Act, chapter 43.21C RCW.

(2) The act does not prohibit either the expansion or modernization of an existing school in the rural area or the placement of portable classrooms at an existing school in the rural area.

(3) Where a public facility or utility has been extended beyond the urban growth area to serve a school, the public facility or utility may, where consistent with RCW 36.70A.110(4), serve a property or properties in addition to the school if the property owner so requests, provided that the county and any affected cities agree with the request and provided that the property is located no further from the public facility or utility than the distance that, if the property were within the urban growth area, the property would be required to connect to the public facility or utility. In such an instance, the school district may, for a period not to exceed 20 years, require reimbursement from a requesting property owner for a proportional share of the construction costs incurred by the school district for the extension of the public facility or utility.

(4) Counties and cities must identify lands useful for public purposes, such as schools in their comprehensive plan. (See RCW 36.70A.150.) As part of subdivision approval, permitting jurisdictions must ensure appropriate provisions are made for schools and school grounds. (See RCW 58.17.110.)

(5) Recommendations for meeting requirements.

(a)(i) School sites should be considered as communities are being planned, and specifically considered when permitting large developments. (See RCW 36.70A.110(2) and 36.70A.150.)

(ii) Cities, counties, and school districts should first work together to identify potential school sites within urban growth areas. To facilitate the siting of schools within urban areas, cities and counties should work with school districts to assess zoning, height limits, and other factors that may affect the ability of a school to site within an urban growth area, including joint-use facilities. County policies may address schools in the rural area, and set out locational, buffering or screening policies to protect rural character. As schools are considered in the rural area, the long-term plan for the area should be considered, but new school development should not be used to intentionally drive urban development in a rural area.

(b) Cities, counties and school districts should:

(i) Coordinate enrollment forecasts and projections with the city and county's adopted population projections.

(ii) Identify school siting criteria with the county, cities, and regional transportation planning organizations. Such criteria may be included in countywide planning policies.

(iii) Identify suitable school sites with the county and cities, with priority to siting schools in existing cities and towns in locations where students can safely walk and bicycle to the school from their homes and that can effectively be served by transit.

(iv) Consider playgrounds and fields associated with activities during the normal school day (e.g., recess and physical education) for new, expanded, or modernized school sites. Districts may consider joint use of recreational facilities as part of the proposal.

(c) If school impact fees are collected, a jurisdiction's capital facilities element must address school facility needs related to growth. (See RCW 82.02.050 and 82.02.090(7).) Cities and counties should work with school districts to review the relationship of school district enrollment projections with local population growth projections.

(d) A school district policy adopted pursuant to RCW 36.70A.213 may include criteria for siting schools, school grade configuration, educational programming, recreational facility co-location, feeder schools, transportation routes, or other relevant factors that may affect school siting decisions.

(e) If a county or affected city concurs with the school district's finding, the county and any affected cities should also at that time agree to the extension of public facilities and utilities to serve the school. If a county or affected city finds that it cannot concur with the school district's findings regarding the proposed school, the county or city should document the reasons in their decision.

[]

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

WAC 365-196-400 Mandatory elements. (1) Requirements.

(a) The comprehensive plan must include, at a minimum, a future land use map.

(b) The comprehensive plan must contain descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

(c) The comprehensive plan must be an internally consistent document and all elements shall be consistent with the future land use map.

(d) Each comprehensive plan must include each of the following:

(i) A land use element;

(ii) A housing element;

(iii) A capital facilities plan element;

(iv) A utilities element;

(v) A transportation element.

(e) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in

RCW 36.70A.130(5). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

(i) An economic development element; and

(ii) A parks and recreation element.

(f) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(g) Additionally, each county and city comprehensive plan must contain:

(i) A process for identifying and siting essential public facilities.

(ii) The goals and policies of the shoreline master program adopted by the county or city, either directly in the comprehensive plan, or through incorporation by reference as described in WAC 173-26-191.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the twenty-year period following the adoption of the comprehensive plan. Counties and cities should use consistent population projections and planning horizons. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5).

(b) The comprehensive plan should include or reference the statutory goals and requirements of the act as guiding the development of the comprehensive plan and should also identify any supplementary goals adopted in the comprehensive plan.

(c) Each county and city comprehensive plan should include, or reference, the ((~~county-wide~~)) countywide planning policies, along with an explanation of how the ((~~county-wide~~)) countywide planning policies have been integrated into the comprehensive plan.

(d) Each comprehensive plan must contain a future land use map showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The comprehensive plan should include a vision for the community at the end of the ((~~twenty-year~~)) 20-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

(f) Each county and city should include at the beginning of its comprehensive plan a section which summarizes, with graphics and a minimum amount of text, how the various pieces of the comprehensive plan fit together. A comprehensive plan may include overlay maps and other graphic displays depicting known critical areas, open space corridors, development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) Detailed recommendations for preparing each element of the comprehensive plan are provided in WAC 365-196-405 through 365-196-485.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-400, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-400, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-405 Land use element. (1) Requirements. The land use element must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and storm-water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant ((~~county-wide~~)) countywide planning policies and, where applicable, multicounty planning policies, into the local planning process, and ensure local goals and policies are consistent.

(b) Counties and cities should identify the existing general distribution and location of various land uses, the approximate acreage, and general range of density or intensity of existing uses.

(c) Counties and cities should estimate the extent to which existing buildings and housing, together with development or redevelopment of vacant, partially used and underutilized land, can support anticipated growth over the planning period. Redevelopment of fully built properties may also be considered.

(i) Estimation of development or redevelopment capacity may include:

(A) Identification of individual properties or areas likely to convert because of market pressure or because they are built below allowed densities; or

(B) Use of an estimated percentage of area-wide growth during the planning period anticipated to occur through redevelopment, based on likely future trends for the local area or comparable jurisdictions; or

(C) Some combination of (c)(i)(A) and (B) of this subsection.

(ii) Estimates of development or redevelopment capacity should be included in a land capacity analysis as part of a ((~~county-wide~~)) countywide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

(d) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands of long-term commercial significance.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ground water used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence the aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter ((~~70.116~~)) 70A.100 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

(C) Instream flow rules prepared by the department of ecology and limitations and recommendations therein that may inform land use decisions.

(iv) Areas adjacent to general aviation airports where incompatible uses should be discouraged, as required by RCW 36.70A.510 and 36.70.547, with guidance in WAC 365-196-455.

(v) Areas adjacent to military bases where incompatible uses should be discouraged, as required by RCW 36.70A.530 with guidance in WAC 365-196-475.

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

(vii) Where applicable, sites that are particularly well suited for industry. Counties and cities should consult WAC 365-196-310 (3)(c)(iv) for information on industrial land uses. For counties, the process described in WAC 365-196-465 and 365-196-470 may be relevant for industrial areas outside of an urban growth area.

(viii) Other features that may be relevant to this information gathering process may include view corridors, brownfield sites, national scenic areas, historic districts, or other opportunity sites, or other special characteristics which may be useful to inform future land use decisions.

(e) Counties and cities must review drainage, flooding, and stormwater runoff in the area or nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. Water quality information may be integrated from the following sources:

(i) Planning and regulatory requirements of municipal stormwater general permits issued by the department of ecology that apply to the county or city.

(ii) Local waters listed under Washington state's water quality assessment and any water quality concerns associated with those waters.

(iii) Interjurisdictional plans, such as total maximum daily loads.

(f) Counties and cities must obtain ((~~twenty-year~~)) 20-year population allocations for their planning area as part of a ((~~county-wide~~)) countywide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis, identify the amount of land suitable for development at a variety of densities consistent with the number and type of residential units likely to be needed over the planning period. At a minimum, cities must plan for the population allocated to them, but may plan for additional population within incorporated areas.

(g) Counties and cities should estimate the level of commercial space, and industrial land needed using information from the economic development element, if available, or from other relevant economic development plans.

(h) Counties and cities should identify the general location and estimated quantity of land needed for public purposes such as utility corridors, landfills or solid waste transfer stations, sewage treatment facilities, stormwater management facilities, recreation, schools, and other public uses. Counties and cities should consider corridors needed for transportation including automobile, rail, and trail use in and between planning areas, consistent with the transportation element and coordinate with adjacent jurisdictions for connectivity.

(i) Counties and cities should select land use designations and implement zoning. Select appropriate commercial, industrial, and residential densities and their distribution based on the total analysis of land features, population to be supported, implementation of regional planning strategies, and needed capital facilities.

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this meets the ((~~twenty-year~~)) 20-year population projection.

(ii) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(j) Wherever possible, counties and cities should consider urban planning approaches that promote physical activity. Urban planning approaches that promote physical activity may include:

(i) Higher intensity residential or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms supporting bicycle and pedestrian transportation.

(v) Policies supporting multimodal approaches to concurrency consistent with other elements of the plan.

(vi) Traditional or main street commercial corridors with street front buildings and limited parking and driveway interruption.

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical

activity for new or existing development should also be removed or lessened where feasible.

(k) Counties and cities may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(l) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element. WAC 365-196-330 provides additional information regarding development phasing.

(m) Counties and cities should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-405, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-405, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-410 Housing element. (1) Requirements. Counties and cities must develop a housing element ensuring vitality and character of established residential neighborhoods. The housing element must contain at least the following features:

(a) An inventory and analysis of existing and projected housing needs.

(b) A statement of the goals, policies, and objectives for the preservation, improvement, and development of housing, including single-family residences.

(c) Identification of sufficient land for housing((~~,~~)) including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, group homes and foster care facilities.

(d) Adequate provisions for existing and projected housing needs of all economic segments of the community.

(2) Recommendations for meeting requirements. The housing element shows how a county or city will accommodate anticipated growth, provide a variety of housing types at a variety of densities, provide opportunities for affordable housing for all economic segments of the community, and ensure the vitality of established residential neighborhoods. The following components should appear in the housing element:

(a) Housing goals and policies.

(i) The goals and policies serve as a guide to the creation and adoption of development regulations and may also guide the exercise of discretion in the permitting process.

(ii) The housing goals and policies of counties and cities should be consistent with ((~~county-wide~~)) countywide planning policies and, where applicable, multicounty planning policies.

(iii) Housing goals and policies should address at least the following:

(A) Affordable housing;

(B) Preservation of neighborhood character; and

(C) Provision of a variety of housing types along with a variety of densities.

(iv) Housing goals and policies should be written to allow the evaluation of progress toward achieving the housing element's goals and policies.

(b) Housing inventory.

(i) The purpose of the required inventory is to gauge the availability of existing housing for all economic segments of the community.

(ii) The inventory should identify the amount of various types of housing that exist in a community. The act does not require that a housing inventory be in a specific form. Counties and cities should consider WAC 365-196-050 (3) and (4) when determining how to meet the housing inventory requirement and may rely on existing data.

(iii) The housing inventory may show the affordability of different types of housing. It may provide data about the median sales prices of homes and average rental prices.

(iv) The housing inventory may include information about other types of housing available within the jurisdiction such as:

(A) The number of beds available in group homes, nursing homes and/or assisted living facilities;

(B) The number of dwelling units available specifically for senior citizens;

(C) The number of government-assisted housing units for lower-income households.

(c) Housing needs analysis.

(i) The purpose of the needs analysis is to estimate the type and densities of future housing needed to serve all economic segments of the community. The housing needs analysis should compare the number of housing units identified in the housing inventory to the projected growth or other locally identified housing needs.

(ii) The definition of housing needs should be addressed in a regional context and may use existing data.

(iii) The analysis should be based on the most recent ((~~twenty-year~~)) 20-year population allocation.

(iv) The analysis should analyze consistency with ((~~county-wide~~)) countywide planning policies, and where applicable, multicounty planning policies, related to housing for all economic segments of the population.

(d) Housing targets or capacity.

(i) The housing needs analysis should identify the number and types of new housing units needed to serve the projected growth and the income ranges within it. This should be used to designate sufficient land capacity suitable for development in the land use element.

(ii) Counties and cities may also use other considerations to identify housing needs, which may include:

(A) Workforce housing which is often defined as housing affordable to households earning between ((~~eighty to one hundred twenty~~)) 80 to 120 percent of the median household income.

(B) Jobs-to-housing balance, which is the number of jobs in a city or county relative to the number of housing units.

(C) Reasonable measures to address inconsistencies found in buildable lands reports prepared under RCW 36.70A.215.

(D) Housing needed to address an observed pattern of a larger quantity of second homes in destination communities.

(iii) The targets established in the housing element will serve as benchmarks to evaluate progress and guide decisions regarding development regulations.

(e) Affordable housing. RCW 36.70A.070 requires counties and cities, in their housing element, to make adequate provisions for existing and projected needs for all economic segments of the community.

(i) Determining what housing units are affordable.

(A) In the case of dwelling units for sale, affordable housing has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than ((~~thirty~~)) 30 percent of the owner's gross annual household income.

(B) In the case of dwelling units for rent, affordable housing has rent and utility costs, as defined by the county or city, that cost no more than ((~~thirty~~)) 30 percent of the tenant's gross annual household income.

(C) Income ranges used when considering affordability. When planning for affordable housing, counties or cities should use income ranges consistent with the applicable ((~~county-wide~~)) countywide or multicounty planning policies. If no such terms exist, counties or cities should consider using the United States Department of Housing and Urban Development (HUD) definitions found in 24 C.F.R. 91.5, which are used to draft consolidated planning documents required by HUD. The following definitions are from 24 C.F.R. 91.5:

(I) Median income refers to median household income.

(II) Extremely low-income refers to a household whose income is at or below ((~~thirty~~)) 30 percent of the median income, adjusted for household size, for the county where the housing unit is located.

(III) Low-income refers to a household whose income is between ((~~thirty percent and fifty~~)) 30 percent and 50 percent of the median income, adjusted for household size, for the county where the housing unit is located.

(IV) Moderate-income refers to a household whose income is between ((~~fifty percent and eighty~~)) 50 percent and 80 percent of the median income where the housing unit is located.

(V) Middle-income refers to a household whose income is between ((~~eighty percent and ninety-five~~)) 80 percent and 95 percent of the median income for the area where the housing unit is located.

(ii) Affordable housing requires planning from a regional perspective. ((~~County-wide~~)) Countywide planning policies must address affordable housing and its distribution among counties and cities. A county's or city's obligation to plan for affordable housing within a regional context is determined by the applicable ((~~county-wide~~)) countywide planning policies. Counties and cities should review ((~~county-wide~~)) countywide affordable housing policies when developing the housing element to maintain consistency.

(iii) Counties and cities should consider the ability of the market to address housing needs for all economic segments of the population. Counties and cities may help to address affordable housing by identifying and removing any regulatory barriers limiting the availability of affordable housing.

(iv) Counties and cities may help to address affordable housing needs by increasing development capacity. In such an event, a county or city affordable housing section should:

(A) Identify certain land use designations within a geographic area where increased residential development may help achieve affordable housing policies and targets;

(B) As needed, identify policies and subsequent development regulations that may increase residential development capacity;

(C) Determine the number of additional housing units these policies and development regulations may generate; and

(D) Establish a target that represents the minimum amount of affordable housing units that it seeks to generate.

(f) Implementation plan.

(i) The housing element should identify strategies designed to help meet the needs identified for all economic segments of the population within the planning area. It should include, but not be limited to, the following:

(A) Consideration of the range of housing choices to be encouraged including, but not limited to, multifamily housing, mixed uses, manufactured houses, accessory dwelling units, and detached houses;

(B) Consideration of various lot sizes and densities, and of clustering and other design configurations;

(C) Identification of a sufficient amount of appropriately zoned land to accommodate the identified housing needs over the planning period; and

(D) Evaluation of the capacity of local public and private entities and the availability of financing to produce housing to meet the identified need.

(ii) The housing element should also address how the county or city will provide for group homes, foster care facilities, and facilities for other populations with special needs. The housing element should provide for an equitable distribution of these facilities among neighborhoods within the county or city

(iii) The housing element should identify strategies designed to ensure the vitality and character of existing neighborhoods. It should show how growth and change will preserve or improve existing residential qualities. The housing element may not focus on one requirement (e.g., preserving existing housing) to the exclusion of the other requirements (e.g., affordable housing) in RCW 36.70A.070(2). It should explain how various needs are reconciled.

(iv) The housing element should include provisions to monitor the performance of its housing strategy. A monitoring program may include the following:

(A) The collection and analysis of information about the housing market;

(B) Data about the supply of developable residential building lots at various land-use densities and the supply of rental and for-sale housing at various price levels;

(C) A comparison of actual housing development to the targets, policies and goals contained in the housing element;

(D) Identification of thresholds at which steps should be taken to adjust and revise goals and policies; and

(E) A description of the types of adjustments and revisions that the county or city may consider.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-410, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, stormwater facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the periodic update required by RCW 36.70A.130(1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within the jurisdiction or among jurisdictions within the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising ((~~county-wide~~)) countywide population forecasts within the allowable range, or revising the ((~~county-wide~~)) countywide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities and intensities to accommodate the population and employment that is selected and allocated. The land uses and assumed densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the ((~~twenty-year~~)) 20-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facili-

ties required to ensure adequate water availability, capital facilities necessary to handle wastewater, and capital facilities necessary to manage stormwater.

(iii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(ii)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-415, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-415, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-420 Utilities element. (1) Requirements. The utilities element shall contain at least the following features: The general location, proposed location, and capacity of all existing and proposed utilities((~~,~~)) including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(2) Recommendations for meeting requirements. Counties and cities should consider the following:

(a) The general location and capacity of existing and proposed utility facilities should be integrated with the land use element. Proposed utilities are those awaiting approval when the comprehensive plan is adopted.

(b) In consultation with serving utilities, counties and cities should prepare an analysis of the capacity needs for various utilities over the planning period, to serve the growth anticipated at the locations and densities proposed within the jurisdiction's planning area. The capacity needs analysis should include consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The utility element should identify the general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes.

(d) Counties and cities should evaluate whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate siting process established under the comprehensive plan for such facilities.

(e) Counties and cities should evaluate whether any utility facilities within their planning area are subject to ((~~county-wide~~)) countywide planning policies for siting public facilities of a ((~~county-wide~~)) countywide or statewide nature.

(f) Counties and cities should include local criteria for siting utilities over the planning period, including:

(i) Consideration of whether a siting proposal is consistent with the locations and densities for growth as designated in the land use element.

(ii) Consideration of any public service obligations of the utility involved.

(iii) Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its service area.

(iv) Balancing of local design considerations against articulated needs for system-wide uniformity.

(g) Counties and cities should adopt policies that call for:

(i) Joint use of transportation rights of way and utility corridors, where possible.

(ii) Timely and effective notification of interested utilities about road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.

(iii) Consideration of utility permit applications simultaneously with the project permit application for the project proposal requesting service and, when possible, approval of utility permits when the project permit application for the project to be served is approved.

(iv) Cooperation and collaboration between the county or city and the utility provider to develop vegetation management policies and plans for utility corridors.

(A) Coordination and cooperation between the county or city and the utility provider to educate the public on avoiding preventable utility conflicts through choosing proper vegetation (i.e., "Right Tree, Right Place").

(B) Coordination and cooperation between the county or city and the utility provider to reduce potential critical areas conflicts through the consideration of alternate utility routes, expedited vegetation management permitting, coordinated vegetation management activities, and/or long-term vegetation management plans.

(h) Adjacent counties and cities should coordinate to ensure the consistency of each jurisdiction's utilities element and regional utility plan, and to develop a coordinated process for siting regional utility facilities in a timely manner.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-420, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should consider the adverse impact of wildfires when establishing rural densities. Counties may reduce rural densities in areas vulnerable to wildland fires as a mitigation strategy to protect natural resource lands, critical areas, water quality, or rural character.

(c) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur along with the urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage stormwater and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not

overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDs may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include

roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDs - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-425, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-425, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-425, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-430 Transportation element. (1) Requirements. Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ((~~ten-year~~)) 10-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least ((~~ten~~)) 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ((~~ten-year~~)) 10-year improvement

program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the ((~~ten-year~~)) 10-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements. Coordination of the land use and transportation elements should address how the implementation of the transportation element supports the desired land uses and form established in the land use element. Recognizing that there is a direct relationship between land use and how it is accessed.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans, active transportation plans, and recreation and conservation office state trails plan.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in ((~~county-wide~~)) countywide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is con-

sistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW ((~~70.94.527(5)~~)) 70A.15.4060. Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW ((~~70.94.528~~)) 70A.15.4030.

(b) The transportation element should contain goals and policies to guide the development and implementation of the transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including ((~~motorists, transit vehicles and riders, bicyclists, and~~)) pedestrians, bicyclists, transit vehicles and riders, and motorists;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and ((~~multimodal~~)) access to transit stations and stops by people walking, bicycling, or transferring from another vehicle;

(iii) Bicycle and pedestrian travel including measures of facility quality such as level of traffic stress (an indicator used to quantify the stress experienced by a cyclist or pedestrian on the segments of a road network), route directness, and network completeness;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and stormwater impacts on state-owned transportation facilities and services as development occurs.

(c) Inventory and analysis of transportation facilities and services. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory should include facilities for active transportation such as bicycle and pedestrian travel. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should identify transportation facilities which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties, cities, and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues.

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county or city, and should reference any relevant airport planning documents including airport master plans, airport layout plans or technical assistance materials made available by airport sponsor and in coordination with the Washington state department of transportation, aviation division.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455 and in accordance with the best practices recommended by the Washington state department of transportation, aviation division.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including ownership, and should reference any relevant ferry planning documents. The inventory should identify if a ferry route is subject to concurrency under RCW 36.70A.070 (6)(b). A ferry route is subject to concurrency if it serves counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, high occupancy vehicle lanes, business access and transit lanes, transit queue jumps, other transit priority features, bicycle facilities, sidewalks, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the Washington state department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, functional classification, and whether the highway is a state-designated highway of statewide significance, or state scenic and recreational highway designated under chapter 47.39 RCW. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The map should categorize routes by frequency and span of service. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use.

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of 1990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for all travel modes. Counties and cities may adopt level of service standards for ((~~other~~)) locally owned roads ((~~or travel modes at their discretion~~)) that are not classified as arterials.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for state-owned highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or

performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area. Level of service standards should also advance the state's vehicle miles per capita reduction goals as identified in RCW 47.01.440.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards for all transportation modes. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes ((~~(motor vehicle, public transportation, bicycle, and pedestrian)~~)) (pedestrian, bicycle, public transportation, motor vehicle), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and ((~~safety levels for users~~)) user stress based on facility attributes, traffic speed, traffic volume, number of lanes, frequency of parking turnover, ease of intersection crossings and others. Utilizing additional level of services standards can help make these modes accessible to a broad share of the population.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least ((~~ten~~)) 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a ((~~ten-year~~)) 10-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the ((~~twenty-year~~)) 20-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency. Counties and cities should use the most current traffic forecasting methodologies that better account for the different traffic generating characteristics of different land use patterns. Traffic forecasts are one piece of information and should be balanced with other data and goals in the formation of the transportation element.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards. Such actions and requirements identified should include improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required ((~~ten-year~~)) 10-year forecasting period. If counties and cities use a ((~~twenty-year~~)) 20-year forecasting period, they should also identify needs for the entire ((~~twenty-year~~)) 20-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's ((~~ten-year~~)) 10-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of ((~~vehicular, transit, bicycle, and pedestrian facilities~~)) pedestrian, bicycle, transit, vehicular facilities; ADA transitions; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(x) State policy goals as outlined in RCW 47.04.280. Growth in travel demand should first be met through improvements to active

transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications. This approach is consistent with statewide goals to reduce per capita vehicle miles traveled and greenhouse gas emissions.

(xi) The transportation element may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070 (6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(A) Multiple modes of transportation with peak and nonpeak hour capacity performance standards for locally owned transportation facilities; and

(B) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the Washington state department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of motor vehicle, ((~~and, as information becomes available,~~)) bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period. Cities and counties should work with the Washington state department of transportation to understand the limits of state facilities throughout the planning period and should avoid increasing vehicle demand beyond planned capacity of state facilities.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walking and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local, regional, ((~~and~~)) state pedestrian and bicycle planning documents, and ADA transition plans if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local

designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions. This map should also identify the level of traffic stress for each of the facilities. Jurisdictions are encouraged to consider demographic groups that may have special transportation needs, such as older adults, youth, people with low incomes, people with disabilities, and people with limited English proficiency when identifying and designating planned improvements.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services. The plan should consider route directness, network completeness, and level of traffic stress.

(v) The pedestrian and bicycle component should also ((~~review existing pedestrian and bicycle collision data to~~)) plan pedestrian facilities that improve pedestrian and bicycle safety following a safe systems approach and consider existing pedestrian and bicycle collision data, vehicle speeds and volumes, and level of separation of modes.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified multimodal transportation facilities and services and strategies throughout the ((~~twenty-year~~)) 20-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the ((~~ten-year~~)) 10-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(I) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the life-cycle cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(l) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3), and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use of transportation system management or transportation demand management strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length by encouraging mixed-use developments to increase the share of people who can walk, bicycle, or take transit to meet daily needs, or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures. Counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of Washington state department of transportation standards or the ((~~American Association of State Highway and~~)) National Association of City Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce or eliminate vehicle parking minimum requirements, provide vehicle parking maximums and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

(v) Access management ordinances;

(vi) ((~~Nonmotorized~~)) Active transportation funding programs;

(vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;

(viii) Subdivision standards to reflect multimodal goals, including providing complete and connected networks, particularly for bicycle and pedestrian travel; and

(ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-430, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-430, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-435 Economic development element. (1) Requirements.

(a) The economic development element should establish local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. An economic development element should include:

(i) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate;

(ii) A summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and

(iii) An identification of policies, programs, and projects to foster economic growth and development and to address future needs. Identification of these policies, programs, and projects should include a summary of each.

(b) A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(c) The requirement to include an economic development element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting the requirements. Counties and cities should consider using existing economic development plans developed at the county and regional level and may adopt them by reference as a means of including an economic development element within their comprehensive plan. Counties and cities should consider developing partnerships with organizations within the community and with state and federal agencies and the private sector. Because labor markets typically encompass at least one county and may encompass a multicounty region, counties and cities should coordinate economic development activities on a regional basis. The department recommends counties and cities consider the following in preparing an economic development element:

(a) A summary of the local economy.

(i) Economic development begins with information gathering. The purpose of information gathering is to provide a summary of the local

economy. Much of this information is available from regional, state or federal agencies.

(ii) Counties and cities should use population information consistent with the information used in the land use element and the housing element.

(iii) Counties and cities are not required to generate original data, but can rely on available data from the agencies who report the information. Employment, payroll, and other economic information is available from state and federal agencies, such as the Washington state department of employment security, the Bureau of Labor Statistics and the Census Bureau. Some of this information may not be available at the city level, but may be available only at the ((~~county-wide~~)) countywide level. Government agencies that report this data may be prohibited from releasing certain data to avoid disclosing proprietary information. Local governments should also consult with their associate development organization, economic development council and economic development districts. Counties and cities may also use data such as permit volume, local inventories of available land and other data generated from their activities that is useful for economic development planning.

(b) Summary of strengths and weaknesses of the local economy.

(i) Counties and cities should consult with their associated development organization, economic development council and/or economic development district to help with identifying appropriate commercial and industrial sectors.

(ii) Shift-share analysis is one method of identifying strengths and weaknesses of the local economy. This method identifies industrial sectors that have a relatively greater proportion of the local area's employment than exists in the national economy. It is one method of identifying sectors with a local competitive advantage. This is a method that can be employed using readily available existing data.

(iii) Identification of industry clusters is another method of identifying strengths and weaknesses of the local economy. State and local economic development organizations, including some associated development organizations and the department, have identified a number of industry clusters in the state. An industry cluster is a group of related firms that provide interdependent specialized goods or services. The presence of existing suppliers of specialized services and a specialized work force makes attracting additional economic activity in the cluster easier.

(iv) Identifying strong industry sectors or clusters can help determine strengths and weaknesses, help a city or county develop a realistic profile of land and infrastructure needs, and identify ways to focus economic development activities. It does not confer preferred status on any particular firm or industry. Counties and cities should still treat all individuals and firms as equal under the law.

(v) Counties and cities may also refer to information and public input collected during public participation to identify strengths and weaknesses based on community perception of their community. Counties and cities may conduct a separate visioning exercise to help identify strengths and weaknesses.

(vi) Counties and cities may employ asset mapping, which builds from the information gathered. Asset mapping is similar to traditional strengths, weaknesses, opportunities, and threats (SWOT) analysis with several significant distinctions. Under the SWOT analysis, strength and opportunity factors may not be linked together.

(c) Identification of policies, programs, and projects to foster economic growth and development and to address future needs.

(i) After identifying strengths and weaknesses, the economic development element may identify policies, programs and projects that foster economic growth and development and address future needs. The programs and policies should be targeted at addressing weaknesses or capitalizing on strengths identified in the community.

(ii) Counties and cities should consider using specific, quantified, and time-framed performance targets that provide a measurement of the success of an economic development element and serve as a reference point in the economic development process.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-435, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-465 Major industrial developments. (1) General authority for major industrial developments. A county required or choosing to plan under the act may establish, in consultation with cities under the ((~~county-wide~~)) countywide planning policies outlined in RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(2)(a) "Major industrial development" means a master planned location for specific manufacturing, industrial, or commercial businesses that:

(i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or

(ii) Is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent.

(b) The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(3) Establishment of a review process required. Before reviewing an application for a major industrial development, counties, in consultation with cities, must establish a process for reviewing and approving applications.

(4) Criteria for approving a major industrial development. A major industrial development may be approved outside an urban growth area if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The major industrial development plan is consistent with the county's development regulations for critical areas;

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(5) Amendment to the comprehensive plan.

(a) Final approval of an application for a major industrial development is an amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, designating the major industrial development site on the land use map as an urban growth area. The major industrial development is considered urban growth. Urban services may be provided at any scale and intensity. Major industrial developments are not required to be consistent with rural character or limited to the scale and intensity of an existing rural location.

(b) An application for a major industrial development may be considered at any time and is an exception to the general rule that amendments should be considered no more frequently than once per year.

(6) Public participation.

(a) Counties should address public participation procedures for major industrial developments when establishing the process for approval of major industrial developments. Counties should use existing public participation procedures for amending the comprehensive plan and amending the urban growth area as a starting point and modify these procedures, if necessary, to address considerations and requirements particular to major industrial developments.

(b) The public participation process should identify how a project proposal meets the statutory criteria for siting a major industrial development. However, the act does not require these proposals to undergo a greater degree of public participation than any other action.

(7) RCW 36.70A.070 (5)(e) does not prohibit the location of a major industrial development within or adjacent to an existing limited area of more intense rural development (LAMIRD) provided it is approved consistent with RCW 36.70A.365.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-465, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-470 Industrial land banks. (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish a process for designating an industrial land bank consisting of no more than two master planned locations for major industrial activity outside urban growth areas.

(a) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in RCW 36.70A.367 (4)(a), suitable for manufacturing, industrial, or com-

mercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(b) The process of designating industrial land banks must occur in consultation with cities consistent with the ((~~county-wide~~)) countywide planning policies and, where applicable multicounty planning policies.

(c) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3)(f) of this section.

(2) Counties eligible to create an industrial land bank. Only counties that meet one of the following criteria may designate an industrial land bank:

(a) Has a population greater than ((~~two hundred fifty thousand~~)) 250,000 and is part of a metropolitan area that includes a city in another state with a population greater than ((~~two hundred fifty thousand~~)) 250,000;

(b) Has a population greater than ((~~one hundred forty thousand~~)) 140,000 and is adjacent to another country;

(c) Has a population greater than ((~~forty thousand~~)) 40,000 but less than ((~~seventy-five thousand~~)) 75,000 and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent and is:

(i) Bordered by the Pacific Ocean;

(ii) Located in the Interstate 5 or Interstate 90 corridor; or

(iii) Bordered by Hood Canal.

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia River to the east;

(e) Has an average population density of less than ((~~one hundred~~)) 100 persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than ((~~forty thousand~~)) 40,000 but fewer than ((~~eighty thousand~~)) 80,000;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(g) A county's authority to create an industrial land bank expires on the due date for the next periodic update found in RCW 36.70A.130(4) occurring prior to December 31, 2014. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(3) How to create an industrial land bank.

(a) Creation of an industrial land bank requires an amendment to a county's comprehensive plan and the adoption of development regulations.

(b) The comprehensive plan amendment that designates an industrial land bank must be accompanied by or contain an analysis that:

(i) Identifies locations suited to major industrial development due to proximity to transportation or resource assets. This should be based on an inventory of developable land as provided in RCW

36.70A.365. See WAC 365-196-465 for recommendations on major industrial developments.

(ii) Identifies the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section.

(iii) Gives priority to locations that are adjacent to, or in close proximity to, an urban growth area. This should include an analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) The environmental review for amendment of the comprehensive plan should be at the programmatic level.

(d) A comprehensive plan amendment creating an industrial land bank may be considered at any time and is an exception to the requirement in RCW 36.70A.130(1) that the comprehensive plan may be amended no more often than once per year.

(e) Once the industrial land bank is created through the comprehensive plan amendment, approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(f) Development regulations. A county must also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The development regulations governing the master plan process shall ensure, at a minimum, that:

(i) Urban growth will not occur in adjacent nonurban areas;

(ii) Development is consistent with the county's development regulations adopted for protection of critical areas;

(iii) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(iv) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(v) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(vi) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(vii) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development do not exceed ((~~ten~~)) 10 percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(viii) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided

concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(ix) Buffers are provided between the major industrial development and adjacent rural areas;

(x) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(xi) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least ((~~thirty~~)) 30 days before the hearing date and mailed to all property owners within one mile of the site.

(g) Required procedures. In addition to other procedural requirements that may apply, a county seeking to designate an industrial land bank under this section must:

(i) Provide ((~~county-wide~~)) countywide notice, in conformance with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than ((~~thirty~~)) 30 days prior to commencement of consideration by the county legislative body; and

(ii) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-470, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-475 Land use compatibility with military installations. (1) Military installations are of particular importance to the economic health of the state of Washington. It is a priority of the state to protect the land surrounding military installations from incompatible development. Military training, testing, and operating areas are also critical to the mission viability of Washington's military installations.

(2) A comprehensive plan, amendment to a comprehensive plan, a development regulation, or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A county or city may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(3) As part of the requirements of RCW 36.70A.070(1), each county or city planning under the act that has a federal military installation, other than a reserve center, that employs ((~~one hundred~~)) 100 or more personnel and is operated by the United States Department of Defense within or adjacent to its border, must notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to the military installation to ensure those lands are protected from incompatible development.

(4) The notice must request from the commander of the military installation a written recommendation and supporting facts relating to

the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice must provide ((~~sixty~~)) 60 days for a response from the commander. If the commander does not submit a response to such request within ((~~sixty~~)) 60 days, the county or city may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the military installation.

(5) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in subsection (4) of this section, notice shall be provided to the commander of the military installation consistent with subsection (3) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide ((~~sixty~~)) 60 days for a response from the commander to the requesting government. If the commander does not submit a response to such request within ((~~sixty~~)) 60 days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation.

(6) Counties must provide written notification to the Department of Defense upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least 115,000 volts. Counties should consider comprehensive plan policies or development regulations to ensure compliance with the notice requirements in RCW 36.01.320.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-475, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-480 Natural resource lands. (1) Requirements.

(a) In the initial period following adoption of the act, and prior to the development of comprehensive plans, counties and cities planning under the act were required to designate natural resource lands of long-term commercial significance and adopt development regulations to assure their conservation. Natural resource lands include agricultural, forest, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and, where necessary, altered to ensure consistency.

(b) Counties and cities planning under the act must review their natural resource lands designations, comprehensive plans, policies, and development regulations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(c) Counties and cities not planning under RCW 36.70A.040 must review their natural resource lands designations, and if necessary revise those designations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(d) Forest land and agricultural land located within urban growth areas shall not be designated as forest resource land or agricultural

resource land unless the county or city has enacted a program authorizing transfer or purchase of development rights.

(e) Mineral lands may be designated as mineral resource lands within urban growth areas. There may be subsequent reuse of mineral resource lands when the minerals have been mined out. In cases where designated mineral resource lands are likely to be mined out and closed to further mining within the planning period, the surface mine reclamation plan and permit from the department of natural resources division of geology should be reviewed to ensure it is consistent with the adopted comprehensive land use plan.

(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

(2) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of natural resource lands. In all cases, counties and cities must address inconsistencies between plan policies, development regulations and previously adopted natural resource land provisions.

(b) The department issued guidelines for the classification and designation of natural resource lands which are contained in chapter 365-190 WAC. In general, natural resource lands should be located beyond the boundaries of urban growth areas; and urban growth areas should avoid including designated natural resource lands. In most cases, the designated purposes of natural resource lands are incompatible with urban densities. For inclusion in the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance.

(c) As noted in subsection (1)(f) of this section, mineral resource lands are a possible exception to the requirement that natural resource lands be designated outside the urban growth area. This guidance is based on the significant cost savings from using minerals close to their source, and the potential for reusing the mined out lands for other purposes after mining is complete. Counties and cities should consider the potential loss of access to mineral resource lands if they are not designated and conserved, and should also consider the consumptive use of mineral resources when designating specific mineral resource lands.

(d) Counties and cities may also consider retaining local agricultural lands in or near urban growth areas as part of a local strategy promoting food security, agricultural education, or in support of local food banks, schools, or other large institutions.

(e) The review of existing designations should be done on ((~~an area-wide~~)) a countywide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or

timber, or for the extraction of minerals. Counties and cities must defer reviews of resource lands until they are able to conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10).

(f) Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands. Guidance on development regulations ensuring the conservation of designated resource lands is found in WAC 365-196-815.

(g) Counties and cities are encouraged to use a coordinated program that includes nonregulatory programs and incentives to supplement development regulations to conserve natural resource lands. Guidance for addressing the designation of natural resource lands is located under WAC 365-190-040 through 365-190-070.

(h) When adopting comprehensive plan policies on siting energy facilities on or adjacent to natural resource lands, counties and cities must ensure that development does not result in conversion to a use that removes the land from resource production, or interferes with the usual and accustomed operations of the natural resource lands. Counties and cities are encouraged to adopt policies and regulations regarding the appropriate location for siting energy facilities on or adjacent to natural resource lands. Policies and regulations may emphasize dual-use strategies that preserve or improve natural resource lands, provide clarity to developers, and support renewable energy goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-480, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-485 Critical areas. (1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and stormwater runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include, but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas ((~~should~~)) must be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process((~~.~~)); however, counties and cities must address the requirements to include the best available science in reviewing designations and developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process ((~~should~~)) must take this information into account unless the jurisdiction provides a reasoned, science-based justification for departure.

(e) The department recommends counties and cities review plan, regulation and permit implementation monitoring results and, where ap-

plicable, incorporate adaptive management measures to ensure regulations are efficient and effective at protecting critical area functions and values.

(f) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the ((~~one hundred-year~~)) 100-year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated. RCW 36.70.110(8) prohibits expansion of the urban growth area into the ((~~one hundred-year~~)) 100-year flood plain in some cases. See WAC 365-196-310.

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-485, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-485, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-500 Internal consistency. (1) Comprehensive plans must be internally consistent. This requirement means that differing parts of the comprehensive plan must fit together so that no one feature precludes the achievement of any other.

(2) Use of compatible assumptions. A county or city must use compatible assumptions in different aspects of the plan.

(a) A county or city should use common numeric assumptions to the fullest extent possible, particularly in the long-term growth assumptions used in developing the land use, capital facilities and other elements of the comprehensive plan.

(b) If a county or city relies on forecasts, inventories, or functional plans developed by other entities, these plans might have been developed using different time horizons or different boundaries. If these differences create inconsistent assumptions, a county or city should include an analysis in its comprehensive plan of the differen-

ces and reconcile them to create a plan that uses compatible assumptions.

(3) The development regulations must be internally consistent and be consistent with and implement the comprehensive plan.

(4) Consistency review. Each comprehensive plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent. At a minimum, any amendment to the comprehensive plan or development regulations must be reviewed for consistency. The review and update processes required in RCW 36.70A.130 (1) and (3) should include a review of the comprehensive plan and development regulations for consistency.

(5) See WAC 365-196-800 for more information on the relationship between development regulations and the comprehensive plan. See WAC 356-196-305 for more information on the relationship between ((~~county-wide~~)) countywide planning policies and the comprehensive plan. See WAC 365-196-315 (5)(a) for information on consistencies between assumptions and observed development for cities or counties subject to monitoring requirements in RCW 36.70A.215.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-500, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-510 Interjurisdictional consistency. (1) Each county or city comprehensive plan must be coordinated with, and consistent with, the comprehensive plans of other counties and cities that share common borders or related regional issues with that county or city. Determining consistency in this interjurisdictional context is complicated by the differences in timing of comprehensive plan adoption and subsequent amendments.

(2) Initially, interjurisdictional consistency should be met by the adoption of comprehensive plans, and subsequent amendments, which are consistent with and carry out the relevant ((~~county-wide~~)) countywide planning policies and, where applicable, the relevant multicounty planning policies. Adopted ((~~county-wide~~)) countywide planning policies are designed to ensure that county and city comprehensive plans are consistent. More detailed recommendations about ((~~county-wide~~)) countywide planning policies are contained in WAC 365-196-305.

(3) To better ensure consistency of comprehensive plans, counties and cities should consider using similar policies and assumptions that apply to common areas or issues.

(4) Counties and cities should use consistent population projections and planning horizons when completing the periodic review and evaluation of comprehensive plans and development regulations. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5) and encompass a minimum of 20 years.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-510, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-530 State agency compliance. (1) RCW 36.70A.103 requires that state agencies comply with the local comprehensive plans and development regulations, and subsequent amendments, adopted pursuant to the act. An exception to this requirement exists for the state's authority to site and operate a special commitment center and a secure community transition facility to house persons conditionally released to a less restrictive alternative on McNeil Island under RCW 36.70A.200.

(2) The department construes RCW 36.70A.103 to require each state agency to meet local siting and building requirements when it occupies the position of an applicant proposing development, except where specific legislation explicitly dictates otherwise. This means that development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) Under RCW 36.70A.210(4), state agencies must follow adopted ((~~county-wide~~)) countywide planning policies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency, or the exercise by any local government of its responsibilities and authorities under the act.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision making. The discretion they exercise should take into account legislatively mandated local growth management programs. State agencies that approve plans of special purpose districts that are required to be consistent with local comprehensive plans should provide guidance or technical assistance to those entities to explain the need to coordinate their planning with the local government comprehensive plans within which they provide service.

(5) After local adoption of comprehensive plans and development regulations under the act, state agencies should review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-530, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-550 Essential public facilities. (1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with ((~~county-wide~~)) countywide planning policies, counties and cities should

create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:

(A) The interstate highway system;

(B) Interregional state principal arterials including ferry connections that serve statewide travel;

(C) Intercity passenger rail services;

(D) Intercity high-speed ground transportation;

(E) Major passenger intermodal terminals excluding all airport facilities and services;

(F) The freight railroad system;

(G) The Columbia/Snake navigable river system;

(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;

(I) High capacity transportation systems.

(v) Regional transit authority facilities as defined under RCW 81.112.020;

(vi) State and local correctional facilities;

(vii) Solid waste handling facilities;

(viii) In-patient facilities, including substance abuse facilities;

(ix) Mental health facilities;

(x) Group homes;

(xi) Secure community transition facilities;

(xii) Any facility on the state ((~~ten-year~~)) 10-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable ((~~county-wide~~)) countywide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substan-

tially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or ((~~county-wide~~)) countywide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for ((~~county-wide~~)) countywide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where ((~~county-wide~~)) countywide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-550, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-550, filed 1/19/10, effective 2/19/10.]

NEW SECTION

WAC 365-196-585 Tracking eligibility for state grants and loans. (1) This section defines the procedures used by the department to track and report the status of a county or city with completion of the review and revision requirement under RCW 36.70A.130, and to track any compliance orders issued by the growth management hearings board, or board, as defined under WAC 242-03-030 and established under RCW 36.70A.260.

(2) These procedures assure that the department provides timely and accurate reporting to state agencies regarding a county or city's eligibility for state grants or loans, and it assures that a county or city applicant, and the state agency reviewing grant or loan eligibility, understand the role of the department in this process for determining eligibility for state grants or loans, where applicable.

(3) These procedures are also designed to encourage and enable timely redress of overdue periodic updates or noncompliance issues. To accomplish this, a county or city must be aware of its current status so it may take necessary legislative action to achieve compliance with deadlines or board orders.

(4) Under RCW 36.70A.130(7), the act directs state agencies to consider compliance in the award of state financial assistance from a number of state grant and loan programs as follows:

(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70A.135 RCW:

(i) Complying with the deadlines in this section; or

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.

(b) A county or city that is fewer than 12 months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(5) Counties and cities must notify the department in writing that the jurisdiction considers the periodic update complete. WAC 365-196-610 (2)(c) provides recommendations on documenting completion of the periodic update, either in whole or in part.

(a) Counties and cities must take legislative action, in the form of an ordinance or resolution, following a public hearing. The ordi-

nance or resolution should clearly state the periodic update required by RCW 36.70A.130 is complete. If a county or city took multiple legislative actions as part of the periodic update process, the final ordinance or resolution should reference all prior legislative actions.

(b) Counties and cities must submit a notice of adoption to the department after taking legislative action on a comprehensive plan or development regulation amendment. The department considers the notice of adoption, required under RCW 36.70A.106(2), along with the final ordinance or resolution documenting the completion of the periodic update, as written notice.

(c) In lieu of an ordinance or resolution clearly stating that the periodic update required by RCW 36.70A.130 is complete, the department may consider a written letter from the mayor, county executive, or chair of the board of county commissioners stating that the periodic update is complete.

(6) The following state grant and loan programs use GMA compliance in the course of awarding state funds under the following programs under RCW 36.70A.130(7):

(a) Public works trust fund (public works board) under RCW 43.155.070 and WAC 399-30-030;

(b) Centennial clean water fund (department of ecology) under WAC 173-95A-610;

(c) Drinking water state revolving fund (department of health) under RCW 70A.125.070 and WAC 246-296-130;

(d) Recreation and conservation office;

(e) Transportation improvement board funding under RCW 47.26.086 and WAC 479-14-121;

(f) Predisaster mitigation grants (emergency management division, Washington military department); and

(g) Water pollution control facilities grants under RCW 70A.135.070.

The department does not determine eligibility for any particular grant or loan program administered by another state agency or board. Eligibility, including the effect of the compliance status of a city or county may have on eligibility, is determined by the state agency authorized to administer a grant or loan program.

(7) As the designated coordinator for state government regarding implementation of chapter 36.70A RCW, the department tracks local government implementation with the act. A state agency may consult with the department in the course of administering its grant and loan program, regarding the status of a county or city progress implementing the act.

(8) The department does not determine compliance by county or city with the provisions of chapter 36.70A RCW.

(a) For completion of the periodic update under RCW 36.70A.130, compliance with the requirement is determined by the county or city. This determination must be in the form of written notice of completion provided by the county or city to the department.

(b) For all other matters, compliance is determined by the board.

(9) For compliance matters related to a board final decision and order, a county or city may avoid being determined ineligible or otherwise penalized in the award of grants or loans during a period of remand by taking action to delay the effective date of a challenged ordinance or resolution as follows:

(a) A county or city may delay the effective date of the action subject to the petition before the board until after the board issues a final determination; or

(b) Within 30 days of receiving notice of a petition for review by the board, a county or city may delay the effective date of the action subject to the petition before the board until after the board issues a final determination.

(c) To avoid a penalty, a county or city must notify the department in writing that it has delayed the effective date of the challenged ordinance. Notice must be accompanied by the board order and a copy of the ordinance or resolution showing the delay to the effective date.

(d) A delay in the effective date will not prevent a determination of ineligibility or other penalty if the board makes a determination of invalidity.

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

WAC 365-196-600 Public participation. (1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a

county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) The public participation program should include outreach and early coordination with state and tribal agencies with subject matter expertise. Coordination with state agencies and tribes is recommended as draft policies and regulations are being developed.

(vii) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved. Counties and cities should implement innovative techniques that support meaningful and inclusive engagement for people of color and low-income people. Counties and cities should consider potential barriers to participation that may arise due to race, color, ethnicity, religion, age, disability, income, or education level.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet websites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action

taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official website;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-600, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-600, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) (i) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update on a schedule established in RCW 36.70A.130(5).

((~~(i) Deadlines for completion of periodic review are as follows:~~

~~Table WAC 365-196-610.1~~
~~Deadlines for Completion of Periodic Review~~
~~2015 - 2018~~

~~Update must be complete by June 30 of:~~	~~Affected counties and the cities within:~~
~~2015/2023~~	~~King, Pierce, Snohomish~~
~~2016/2024~~	~~Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom~~
~~2017/2025~~	~~Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima~~
~~2018/2026~~	~~Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman~~))

(ii) Certain smaller, slower-growing counties and cities may take up to an additional two years to complete the update.

(A) The eligibility of a county for the two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than ((~~fifty thousand~~)) 50,000 and a growth rate of less than ((~~seventeen~~)) 17 percent.

(C) A city is eligible if it has a population of less than ((~~five thousand~~)) 5,000, and either a growth rate of less than ((~~seventeen~~)) 17 percent or a total population growth of less than ((~~one hundred~~)) 100 persons.

(D) Growth rates are measured using the ((~~ten-year~~)) 10-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(iii) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance, including a best available science review (see chapter 365-195 WAC);

(ii) Analysis of urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and pro-

cedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances. The department recommends evaluating the results of plan, regulation, and permit monitoring to determine if changes are needed to ensure efficient and effective implementation of critical areas ordinances (See WAC 365-195-920);

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ((~~ten-year~~)) 10-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the ((~~twenty-year~~)) 20-year plan, counties and cities should consider updating them as part of the periodic update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430

Requirement	RCW Location	WAC Location
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process. Cities and counties may not conduct the periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, cities and counties must review the areas and densities contained in the urban growth area and, if needed, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding ((~~twenty-year~~)) 20-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 17-20-100, § 365-196-610, filed 10/4/17, effective 11/4/17; WSR 15-04-039, § 365-196-610, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-610, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-610, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-630 Submitting notice of intent to adopt to the state. (1) State notification and comment.

(a) The act requires each county or city proposing adoption of an original comprehensive plan or development regulation, or amendment, under the act, ((~~must~~)) to notify the department of its intent at least ((~~sixty~~)) 60 days prior to final adoption pursuant to RCW 36.70A.106. Counties and cities may request expedited review for ((~~changes~~)) amendments to the development regulations pursuant to RCW 36.70A.106 (3)(b).

(b) State agencies, including the department, may provide comments on comprehensive plans, development regulations, and related amendments during the public review process.

(2) Notice to the department ((~~must include~~)) may be in digital format through PlanView, a web-based portal, provided by the department. A complete submittal shall include the following:

(a) A cover letter or cover page that includes an explanation of the proposed amendment, notification that the submittal is intended to begin the ((~~sixty-day~~)) 60-day review process, the planned date of adoption, and the sender's contact information; and

(b) A copy of the proposed amendment ((~~language~~)) text. The drafted amendment text should be in a complete form, and it should clearly identify how the existing language will be modified. ((~~An example of acceptable form includes struck through and underlined text that indicates proposed deleted text and new text, respectively.~~)) Amended text shall show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the proposed amendment are clearly identifiable.

(c) If the proposed amendment changes during the legislative process, ((~~counties and cities~~)) following submittal, then a county or city may submit supplemental materials to the department without initiating a new ((~~sixty-day~~)) 60-day notice period. Counties and cities must identify any materials submitted to the department if they are supplemental to an earlier proposed amendment under a ((~~sixty-day~~)) 60-day review.

(3)(a) The department prefers that notices of proposed amendments, under RCW 36.70A.106, be submitted electronically through PlanView, a web-based portal. The department will provide access and instructions to a county or city for submitting notice through this process. ((~~Expedited review requests should be submitted by email as outlined in subsection (6) of this section. Counties and cities~~)) A county or city may contact the department ((~~by telephone at 360-725-3000 or~~)) by email at reviewteam@commerce.wa.gov to obtain

electronic contact information and procedures for electronic submittals.

(b) Copies submitted by U.S. mail should be sent to:

Department of Commerce,
Growth Management Services
Attn: Review Team
P.O. Box 42525
Olympia, WA 98504-2525

(4) Submitting adopted amendments.

(a) Each county or city planning under the act must transmit to the department, within ((~~ten~~)) 10 days after adoption, one complete and accurate copy of its adopted comprehensive plan or development regulation, or adopted amendment to a comprehensive plan or development regulation, pursuant to RCW 36.70A.106. ((~~Additional copies should be sent to those state agencies that provided comment on the proposed amendment.~~))

(b) The submittal of an adopted amendment must include a copy of the final signed and dated ordinance or resolution identifying the legislative action.

(c) Submittal of an adopted amendment((~~s~~)) should follow the method outlined for submission of the ((~~sixty-day~~)) 60-day notice for review in subsection (3) of this section.

(5) The ((~~sixty-day~~)) 60-day period for determining when an amendment to a comprehensive plan((~~,~~)) or development regulation((~~, or amendment can~~)) may be adopted begins as follows:

(a) When the notice is automatically date-stamped by the department in the PlanView system, or upon receipt ((~~by email attachment~~)) if the submittal is transmitted electronically; or

(b) When the material is stamped upon the date of receipt at the department's planning unit reception desk during regular business hours if the submittal is transmitted by U.S. mail.

(6) Expedited review.

(a) Counties and cities may request expedited review when ((~~they are providing~~)) submitting notice to the department ((~~notice~~)) of intent to adopt an amendment to development regulations under RCW 36.70A.106 (3)(b).

(b) Expedited review is intended for amendments to development regulations for which, without expedited review, the ((~~sixty-day~~)) 60-day state agency review process would needlessly delay the jurisdictions adoption schedule.

(c) Counties and cities may not request expedited review ((~~of~~)) for comprehensive plan amendments.

(d) Certain types of development regulations are very likely to require review by state agencies, and are therefore generally not appropriate for expedited review. Proposed changes to critical areas ordinances or regulations, concurrency ordinances, or ordinances regulating essential public facilities are examples of development regulation amendments that should not be submitted for expedited review.

(e) Department responsibilities:

(i) Requests submitted for expedited review should be ((~~forwarded to other state agencies~~)) identified by the department through the PlanView system within two working days of receipt of request for expedited review.

(ii) State agencies have ((~~ten~~)) 10 working days to determine if the proposal is of interest and requires more time for review.

(iii) If the department is notified by any state agency within ((~~ten~~)) 10 working days that it has an interest in more time for review, the department will not grant expedited review until all agencies have had an opportunity to comment.

(iv) If~~,~~ after ((~~ten~~)) 10 working days, a state agency does not respond to the department, then the department may grant the request for expedited review.

(v) The department may determine that it has an interest in a proposal that requires more time for review, and it may deny a request for expedited review on that basis.

(vi) The estimated time frame for processing an expedited review request is ((~~fourteen~~)) 14 days, to coincide with the State Environmental Policy Act comment period.

(vii) The expedited review request must include the information required to determine if an item is of state interest, similar to the methods outlined for submission of amendments for ((~~sixty-day~~)) 60-day review.

(f) State agency responsibilities:

(i) If a state agency intends to comment, the agency must respond to requests for expedited review within ((~~ten~~)) 10 working days.

(ii) State agencies should determine how to coordinate an agency response internally to maintain proper notification and information management between its headquarters office and regional offices. The department will work with state agencies if it can be of assistance in this process.

(iii) If a state agency has an interest in a proposed amendment for expedited review, and it has requested the department not grant expedited review, then the state agency requesting denial of the expedited review should contact and provide comment directly to the requesting ((~~jurisdiction~~)) county or city within the ((~~sixty-day~~)) 60-day period specified in RCW 36.70A.106. The state agency should notify the department when it has completed review and provided comments.

(g) County and city responsibilities:

(i) Requests for expedited review should be the exception and not the rule. Expedited review is designed for use with development regulation((~~s~~)) amendments that are unlikely to require state agency review or comment.

(ii) Expedited review should not be used as a substitute for timely notification. Counties and cities should plan for the full ((~~sixty-day~~)) 60-day review period when practicable.

(iii) Counties and cities must request expedited review on a case-by-case basis.

(iv) A request((~~s~~)) for expedited review should be in the form of an electronic submittal in the PlanView system, following the department's submittal requirements for ((~~email submittal for sixty-day~~)) 60-day review in subsection (3) of this section.

(v) The request must be accompanied with enough information, as defined by the department, in consultation with other state agencies and counties and cities, to determine whether it is of state interest.

(vi) Expedited review should not be requested if the normal ((~~sixty-day~~)) 60-day period will not delay adoption.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-630, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-660 Supplementing, amending, and monitoring. (1) New development regulations may be adopted as the need for supplementing the initial implementation strategy becomes apparent.

(2) Counties and cities should institute an annual review of growth management implementation on a systematic basis. To aid in this process, counties and cities planning under the act should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan.

(a) This process should also include a review of comprehensive plan or regulatory deficiencies encountered during project review.

(b) The department recommends critical areas regulations be reviewed to ensure they are achieving no net loss of ecosystem functions and values. This review should include an analysis of monitoring plans, regulations and permits to ensure they are efficient and effective at achieving protection goals and implementation benchmarks.

(c) This process should be integrated with provisions for continuous public involvement. See WAC 365-196-600.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-660, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-730 Federal authorities. (1) Counties and cities drafting or amending comprehensive plans and development regulations under the act should consider the effects of federal authority over land or resource use within the planning area, including:

(a) Treaties with Native Americans;

(b) Jurisdiction on land owned or held in trust by the federal government;

(c) Federal statutes or regulations imposing national standards;

(d) Federal permit programs and plans;

(e) Metropolitan planning organizations, which are also designated as regional transportation planning organizations established in chapter 47.80 RCW; and

(f) The Central Puget Sound economic development district.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act;

(h) State and local consolidated plans required by the Department of Housing and Urban Development under the Code of Federal Regulations (24 C.F.R. 91 and 24 C.F.R. 570);

(i) Historic preservation requirements and standards of the National Historic Preservation Act;

(j) Regulatory requirements of section 4(f) of the Department of Transportation Act; ((~~and~~))

(k) Plans adopted by metropolitan planning organizations to meet federal transportation planning responsibilities established by the U.S. Federal Highway Administration (FHWA) and the U.S. Federal Transit Administration (FTA)~~;~~

(l) Habitat alteration restrictions arising from the Bald and Golden Eagle Protection Act administered by the U.S. Fish and Wildlife Service; and

(m) Habitat alteration restrictions arising from the Migratory Bird Treaty Act administered by the U.S. Fish and Wildlife Service.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-730, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-740 Regional perspective. Some of the authorities in WAC 365-196-730 and 365-196-735 require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the environmental and ecological systems addressed in resource management, service by utilities, fish and wildlife management and pollution control are generally not circumscribed by county and city lines. Planning entities should attempt to identify these geographic areas which require a regional planning approach and, if needed, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach should assist in achieving interjurisdictional consistency, consistency with the ((~~county-wide~~)) countywide planning policies and, where applicable, multicounty planning policies. See WAC 365-196-305 regarding ((~~county-wide~~)) countywide planning policies.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-740, filed 1/19/10, effective 2/19/10.]

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

WAC 365-196-825 Potable water. (1) Each applicant for a building permit of a building needing potable water shall provide evidence of an adequate water supply for the intended use of the building. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues. RCW 19.27.097 provides that such evidence may be in the form of

a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(2) Requirements under RCW 90.94.020 and 90.94.030 apply to counties and cities reviewing water adequacy for development.

(3) Counties and cities should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an adequate water supply. ((~~In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.~~

~~(3)~~)) The department of health regulates the maximum number of equivalent residential units (including each domestic unit within a multifamily development) that can be legally and physically served by each public water system. Each water system tracks the current number of available equivalent residential units.

(4) If the department of ecology has adopted rules on this subject, or any part of it, local regulations ((~~should~~)) must be consistent with those rules. Such rules may include instream flow rules, which may limit the availability of additional ground or surface water within a specific geographic area.

((~~(4)~~)) (5) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-825, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

WAC 365-196-830 Protection of critical areas. (1) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. Avoidance is the most effective way to protect critical areas. If development regulations allow harm to critical areas, they must re-

quire compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Ecosystem functions ((~~are the conditions and processes that support the ecosystem. Conditions and processes~~)) and values operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs.

(a) When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(b) Local governments must review and, if needed, revise their development regulations to assure the protection of critical areas where agricultural activities take place.

(c) Local governments shall not broadly exempt agricultural activities from their critical areas regulations.

(d) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 17-20-100, § 365-196-830, filed 10/4/17, effective 11/4/17; WSR 10-03-085, § 365-196-830, filed 1/19/10, effective 2/19/10.]

WSR 23-01-084
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
[Filed December 16, 2022, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-082.

Title of Rule and Other Identifying Information: Chapter 196-32 WAC, On-site wastewater treatment system designer licenses/inspector certificates of competency.

Hearing Location(s): On January 25, 2023, at 1:00 p.m., at Board of Registration for Professional Engineers and Land Surveyors (board) Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or WebEx meeting https://brpels.my.webex.com/brpels.my/j.php?MTID=m6f7b1493de84ab7db2d7b567ebae851d. The public may participate in the hearing by providing written comment, coming to the board's office or they may participate in the hearing virtually by accessing the hearing link on the board's rule-making web page https://brpels.wa.gov/about-us-laws-and-rules/rulemaking-activity or calling 1-650-479-3208.

Date of Intended Adoption: February 23, 2023.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email Shanan.Gillespie@brpels.wa.gov, by January 25, 2023.

Assistance for Persons with Disabilities: Contact Shanan Gillespie, phone 360-664-1570, TTY 711 or 1-800-833-5388, email Shanan.Gillespie@brpels.wa.gov, by January 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes will impact all applicants applying for licensure as an on-site wastewater treatment systems designer, and all applicants applying for certification as an inspector certificate of competency holder. There will be no additional costs to implement and comply with the changes. New language and amendments to existing language will clarify the processes and better define requirements for examination for both on-site designers and inspector certificate of competency holders.

Reasons Supporting Proposal: Chapter 196-32 WAC has not been significantly updated since 2000. The amendments and new sections better define the requirements for designers and inspector certificate of competency holders and allow more flexibility to the board to consider different types of education and experience when reviewing applications.

Statutory Authority for Adoption: RCW 18.210.050 and 18.210.060.

Statute Being Implemented: Chapter 18.210 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-968-4805.

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 board is not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5)(a).

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 adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The following rules are exempt per RCW 34.05.310 (4)(c) because the language incorporates by reference without material change Washington state statutes: WAC 196-32-005 and 196-32-007.

The following rules are exempt per RCW 34.05.310 (4)(g)(ii) process requirements for applying to an agency for a license or permit: WAC 196-32-011, 196-32-020, 196-32-030, 196-32-035, 196-32-040, and 196-32-050.

Scope of exemption for rule proposal:

Is fully exempt.

December 16, 2022
Ken Fuller
Director

OTS-3601.5

NEW SECTION

WAC 196-32-005 Declaration and purpose. This chapter contains rules and procedures for applications, experience, education, and eligibility to become licensed as an on-site wastewater treatment system designer or to obtain a certificate of competency.

[]

NEW SECTION

WAC 196-32-007 Definitions. On-site wastewater treatment system designer. "Designer" or "licensee" means an individual authorized under chapter 18.210 RCW to perform design services for on-site wastewater systems.

On-site wastewater treatment system inspector/certificate of competency holder. "Certificate of competency holder" or "inspector" means a person who has been issued a certificate and has been authorized by the board to practice as an on-site wastewater treatment inspector.

[]

NEW SECTION

WAC 196-32-011 Requirements for designer license. To become licensed as an on-site wastewater treatment system designer in Washington, you must meet the requirements described below:

(1) Have a high school diploma or GED equivalent.

(2) Have four years of progressive experience in the design of on-site wastewater treatment systems judged suitable by the board. The four years of experience could be a combination of education and work experience related to on-site wastewater system design.

(3) Fully complete the application form to the satisfaction of the board.

(4) Pay all applicable fees.

(5) Receive a passing score on the Washington law review.

(6) Receive a passing score on the Washington state on-site designer examination.

Upon passing the on-site designer examination, the applicant will be licensed as an on-site wastewater treatment system designer.

[]

AMENDATORY SECTION (Amending WSR 00-20-017, filed 9/25/00, effective 10/26/00)

WAC 196-32-020 ((~~Qualifications for designer applicants~~)) Acceptable experience and ((~~education records~~)) supporting documents. ((~~To qualify for examination the law requires a high school diploma or equivalent and~~)) The four years of experience in the design of on-site wastewater treatment systems of a character satisfactory to the board((~~. The four years of experience must be completed two months prior to the date of the examination. The board shall evaluate all experience, including education, on a case-by-case basis and consider such experience and education as appropriate. The board will use~~)) should include site and soil assessment, hydraulics, topographic delineations, use of specialized treatment processes and devices, microbiology, and construction practices. The following criteria will be used in evaluating an applicant's experience record:

((~~Acceptable education experience will be based on transcripts.~~

~~(1) Education experience, up to a maximum of two years, may be approved based on the following:~~

~~(a) Graduation from a baccalaureate or associate degree program which contains course work in the sciences and technologies of on-site wastewater treatment systems, as provided in RCW 18.210.100.~~

~~(b) Completed college level course work without a degree will be evaluated on a case by case basis.~~

~~(c) Documented seminars, industry training programs, and other educational or training programs specifically related to the science and technologies of on-site wastewater treatment systems will be evaluated on a case by case basis.~~

~~(2)~~)) (1) Acceptable work experience shall be ((~~four years of~~)) broad based((~~,~~)) and progressive ((~~field and office experience~~)) in the design of on-site wastewater treatment systems. ((~~The applicability of the~~)) Work experience ((~~shall~~)) will be considered by the board based upon the verifications provided by the applicant, the level of independent judgments and decisions, and the demonstration of the ability to work within the regulatory structure. This experience must include, but shall not be limited to the following:

(a) Applying state and local health regulations;

(b) Exercising sound judgment when making independent decisions regarding the sciences and technologies of on-site wastewater treatment systems;

(c) Field identification and evaluation of soil types and site conditions;

(d) Conducting research; and((~~,~~))

(e) Interacting with clients and the public in conformance with chapter 18.210 RCW.

((~~The board may grant partial credit for experience that does not fully meet the requirements in (a) through (e) of this subsection.~~))

(2) Of the four years of work experience required, education relevant to on-site wastewater treatment may be considered satisfactory experience up to a maximum of two years; the board will determine if the education credentials are satisfactory to award years of experience based on the following:

(a) Graduation from a baccalaureate or associate degree program which contains course work in the sciences and technologies of engineering and/or on-site wastewater treatment systems, as provided in RCW 18.210.100 may be awarded up to a maximum of two years of experience. Course work relevant to on-site wastewater systems includes soil science, geology, biology, mapping, site development and construction management.

(b) Completed college level course work without a degree will be evaluated by the board in deciding the equivalent years of experience.

(c) Documented seminars, industry training programs, and other educational or training programs specifically related to the science and technologies of on-site wastewater treatment systems will be evaluated by the board in deciding the equivalent years of experience.

Official transcripts and/or other official educational documents must be sent to the board's office for review and approval to count towards experience.

(3) On-site wastewater related teaching ((~~of a character satisfactory to the board~~)) may be ((~~recognized as~~)) considered satisfactory experience up to a maximum of one year at the discretion of the board.

(4) ((~~Any~~)) Working for a local health jurisdiction as a certificate of competency holder may count towards a portion of the required experience, at the discretion of the board.

(5) All work experience gained ((~~in a situation which violates the provisions of~~)) must be performed under the direct supervision of a licensed designer or professional engineer as per chapter 18.210 RCW

((~~will not be credited towards the experience requirement~~)) or as approved by the board.

[Statutory Authority: RCW 18.210.050, 18.210.060. WSR 00-20-017, § 196-32-020, filed 9/25/00, effective 10/26/00.]

AMENDATORY SECTION (Amending WSR 00-20-017, filed 9/25/00, effective 10/26/00)

WAC 196-32-030 ((~~Qualifications~~)) Requirements for inspector certificate of competency. ((~~(1) To qualify for examination the law requires~~)) To receive an inspector certificate of competency you must meet the requirements below:

(1) Be an employee of a local health jurisdiction that reviews, inspects, or approves the design and construction of on-site wastewater treatment systems.

(2) Have one year of practical work experience under the supervision of a certificate of competency holder or one year of previous work under a licensed on-site designer or professional engineer, unless otherwise approved by the board.

The board will consider the following in evaluating the practical work experience: Verification(s) provided by the applicant, the demonstration of the ability to work within the regulatory structure and familiarity with the aspects of on-site wastewater system design, construction, and maintenance.

The work experience must demonstrate understanding of chapter 246-272A WAC and associated department of health recommended standards and guidance (RS&G) documents. In addition, the work experience should include:

(a) Review of site characteristics such as soil types and location of water tables.

(b) Review of well siting, testing, and construction.

(c) Review of plats and land subdivisions.

(d) Review of septic system designs.

(e) Review of system installation and construction.

(f) Review of system troubleshooting and operations and maintenance.

The applicant must demonstrate their knowledge and experience in more than one area listed under (a) through (f) of this subsection.

(3) Fully complete the application form to the satisfaction of the board.

(4) Provide a written request from the local health ((~~director or designee~~)) jurisdiction. Requests shall be submitted on a form prescribed by the board.

(5) Pay all applicable fees.

(6) Obtain a passing score on the Washington law review.

(7) Obtain a passing score on the on-site designer examination.

Upon passing the on-site designer examination, the applicant will be issued a certificate of competency. Issuance of the certificate of competency does not authorize the certificate of competency holder to offer or provide on-site wastewater treatment system design services to the public. However, nothing in this chapter limits or affects the ability of local health jurisdictions to perform on-site design services under their authority in chapter 70.05 RCW, RCW 18.210.190 (3)(d) and WAC 246-272A-0230.

[Statutory Authority: RCW 18.210.050, 18.210.060. WSR 00-20-017, § 196-32-030, filed 9/25/00, effective 10/26/00.]

NEW SECTION

WAC 196-32-035 Application process. The board has one application form for licensure as an on-site wastewater treatment system designer and another application for inspector certificate of competency. All applications must be completed on forms provided on the board's website, and include required documentation to be approved by the board for examination. Completed applications must be received at the board's address with the applicable fee by the date posted on the board's website to be considered for approval to take the exam. Incomplete applications, and/or applications received after the deadline may be considered for a later examination. Applications submitted without the proper fee shall be considered incomplete.

(1) **On-site wastewater treatment system designer application:** Applicants must complete all sections of the form and must meet all listed requirements for licensure.

(a) Applicants must provide information on the application form that demonstrates they meet all requirements for licensure. This includes work experience and education requirements, as detailed in WAC 196-32-011 and 196-32-020; and RCW 18.210.100, 18.210.110, and 18.210.120.

(b) All applicants must provide the following documents to verify these requirements:

(i) For education to be considered, you must submit official transcripts or other official educational documents.

(ii) Applicants must provide two or more verifications of work experience. Experience must be verified on the form titled "On-Site Wastewater Treatment Systems Designer Experience Verification" which includes not only work experience information and details but also verifications of work experience by supervisors or other verifiers. At least one of the verifiers should be a licensed on-site designer or professional engineer who provided direct supervision of the applicant performing design services.

(c) A certificate of competency holder who wants to become licensed as an on-site wastewater treatment system designer must complete the on-site wastewater treatment system designer application, including verification(s) of design experience.

(2) **Inspector certificate of competency application:** Applicants must complete all sections of the form and must meet all requirements to obtain an inspector certificate of competency.

(a) Applicants must provide verification of one year of practical work experience under the supervision of a certificate of competency holder, licensed on-site designer or professional engineer; or otherwise demonstrate knowledge of (a) through (f) of this subsection to be considered by the board for approval of application.

(b) Applicants must have the local health department director or director designee complete and sign the "DOH request for examination" form per WAC 196-32-030 and submit it with the application.

[]

AMENDATORY SECTION (Amending WSR 00-20-017, filed 9/25/00, effective 10/26/00)

WAC 196-32-040 Examinations. (1) To become licensed as an on-site wastewater treatment system designer or to become an inspector certificate of competency holder the ((~~candidate~~)) applicant must pass the on-site designer licensing examination as established by the board. ((~~The examinations are given at times and places designated by the board.~~)) The schedule of ((~~future~~)) examinations and an examination ((~~syllabus~~)) blueprint may be ((~~obtained from~~)) found on the board's ((~~office~~)) website.

(2) An applicant who has taken ((~~an~~)) the examination and failed or who qualified for ((~~an~~)) the examination but did not take it shall ((~~request to take or retake the examination at least three months prior to the examination date. A written request accompanied by the applicable fee and/or charge as listed in chapter 196-30 WAC is required to~~)) submit the exam reschedule ((~~for an examination~~)) application and applicable fee by the date posted on the board's website.

[Statutory Authority: RCW 18.210.050, 18.210.060. WSR 00-20-017, § 196-32-040, filed 9/25/00, effective 10/26/00.]

AMENDATORY SECTION (Amending WSR 00-20-017, filed 9/25/00, effective 10/26/00)

WAC 196-32-050 ((~~Comity—Licensing~~)) Registration of applicants licensed in other jurisdictions without examination. The board has the discretion to issue a license to an out-of-state licensee without examination who meets the following requirements:

(1) ((~~Applicants for licensure as an~~)) Completes the on-site wastewater treatment system designer ((~~by comity must meet the following criteria:~~

~~(a) The applicant's qualifications meet the~~)) registration application including supporting documentation as listed in WAC 196-32-035 and pays the appropriate fee.

(2) Receives a passing score on the Washington law review.

(3) Meets minimum requirements of ((~~chapter~~)) RCW 18.210.100, 18.210.110, and 18.210.180 ((~~RCW~~)) and this chapter((~~;~~

~~(b) The applicant is in good standing with the~~)).

(4) Holds a currently valid license in a board recognized licensing agency in a state, territory, possession, or foreign country. ((~~Good standing shall be defined as a currently valid license in the jurisdiction of original registration or the jurisdiction of most recent practice, if different from the jurisdiction of original registration.~~

~~(2) This provision does not apply to those individuals who have obtained a license, certificate or other authorization from a local health jurisdiction.~~))

[Statutory Authority: RCW 18.210.050, 18.210.060. WSR 00-20-017, § 196-32-050, filed 9/25/00, effective 10/26/00.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-32-010 Applications.

WSR 23-01-085
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
[Filed December 16, 2022, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-06-024.

Title of Rule and Other Identifying Information: Chapter 196-26A WAC, Registered professional engineers and land surveyor fees; and chapter 196-30 WAC, Fees for on-site wastewater treatment system designers and inspectors.

Hearing Location(s): On February 1, 2023, at 2:00 p.m., at Board of Registration for Professional Engineers and Land Surveyors (board) Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, or WebEx meeting https://brpels.my.webex.com/brpels.my/j.php?MTID=mc48e954e7eaefbf410b29ca60a12603a. The public may participate in the hearing by providing written comment, coming to the board's office or they may participate in the hearing virtually by accessing the hearing link on the board's rule-making web page https://brpels.wa.gov/about-us-laws-and-rules/rulemaking-activity or calling 1-650-479-3208.

Date of Intended Adoption: February 23, 2023.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email Shanan.Gillespie@brpels.wa.gov, by February 1, 2023.

Assistance for Persons with Disabilities: Contact Shanan Gillespie, phone 360-664-1570, TTY 711 or 1-800-833-5388, email Shanan.Gillespie@brpels.wa.gov, by January 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to WAC 196-26A-040 will remove the reference to the director of the department of licensing, speak to the legal history questions on the initial and renewal applications for professional engineers and land surveyors as a requirement for license renewal, require licensees to pass the board's law review exam if their license was expired for five or more years, and increase expiration dates for initial licenses issued no earlier than one year after the issue date.

Amendments to WAC 196-30-030 will remove the reference to the director of the department of licensing and will speak to the legal history questions on the initial and renewal application for on-site wastewater designers and inspectors as a requirement for license/certificate renewal.

Reasons Supporting Proposal: Changes current language and adds new language to clarify what information is needed when applying for or renewing a license. Increases the expiration date for an initial license for at least one calendar year after the initial issue date. Requires professional engineer and land surveyor licensees whose licenses have been expired for five years of longer pass a law review exam to familiarize the licensee with the laws and rules regulating the profession.

Statutory Authority for Adoption: RCW 18.43.035, 18.210.050, and 18.210.060.

Statute Being Implemented: RCW 18.43.080 and 18.210.140.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-968-4805.

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 board is not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5)(a).

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.

Explanation of exemptions: The following rules are exempt per RCW 34.05.310 (4)(d), correct or clarify language: WAC 196-26A-040 and 196-30-030. The following rules are exempt per RCW 34.05.310 (4)(g)(ii), process requirements for applying to an agency for a license or permit: WAC 196-26A-040 and 196-30-030.

Scope of exemption for rule proposal:

Is fully exempt.

December 16, 2022
Ken Fuller
Director

OTS-1570.2

AMENDATORY SECTION (Amending WSR 14-03-029, filed 1/8/14, effective 2/8/14)

WAC 196-26A-040 Renewals for professional engineer and professional land surveyor licenses. ((~~The date of renewal, renewal interval and renewal fee is established by the director of the department of licensing in accordance with chapter 43.24 RCW.~~

~~A completed~~)) (1) Licenses for professional engineers or professional land surveyors shall be renewed every two years. The date of expiration shall be the licensee's birthday. The initial license issued to an individual shall expire no earlier than one year after the issue date.

(2) To renew your license, complete an application for renewal ((~~requires payment of a~~)), pay the required renewal fee, and ((~~any~~)) provide the information ((~~specified by the board~~)) requested in the renewal notice and application form. This information may include email address or other contact information and information regarding prior unprofessional conduct pursuant to RCW 18.235.110 and 18.235.130. Information regarding unprofessional conduct will be evaluated by the board to determine whether it is related to the practice of the applicant's profession.

(3) For a professional land surveyor the renewal application requires completion of professional development requirements and an attestation by the applicant that they have read chapters 58.09 RCW and 332-130 WAC as part of the renewal process.

(4) If a completed application for renewal has not been received by the ((~~department~~)) board by the date of expiration (postmarked before the date of expiration if mailed or transacted online before the date of expiration), the license is invalid. Renewals that remain expired over ((~~ninety~~)) 90 days past the date of expiration require payment of a ((~~penalty~~)) late fee equivalent to the fee for a one-year renewal in addition to the base renewal fee, and completing of a renewal application.

(5) If your license has been expired for five or more years, you must submit a renewal application and you will be required to take and receive a passing score on the board's law review examination. In the first year of reactivated practice professional land surveyors may be required by the board to collect an additional 15 professional development hours (PDH). The licensee is responsible ((~~to ensure~~)) for timely renewal whether or not they received a renewal notice from the department.

((~~The licenses for individuals registered as professional engineers or professional land surveyors shall be renewed every two years or as otherwise set by the director of the department of licensing. The date of expiration shall be the licensee's date of birth. The initial license issued to an individual shall expire on the next occurrence of his or her birth date. If the next birth date is within three months of the initial date of licensure, the original license shall expire on his or her second birth date following original licensure.~~))

[Statutory Authority: RCW 18.43.080 and 43.24.086. WSR 14-03-029, § 196-26A-040, filed 1/8/14, effective 2/8/14. Statutory Authority: RCW 43.24.086 and 18.43.035. WSR 02-13-080, § 196-26A-040, filed 6/17/02, effective 9/1/02.]

OTS-3209.2

AMENDATORY SECTION (Amending WSR 12-06-064, filed 3/6/12, effective 4/6/12)

WAC 196-30-020 On-site wastewater treatment designer and inspector fees. The ((~~business and professions division of the department of licensing~~)) board of registration for professional engineers and land surveyors shall assess the following fees:

Title of Fee	Amount ($)
Designer license application	200.00
Designer license application (comity)	75.00
Designer license renewal	116.00
Designer license re-examination	140.00
Late renewal penalty	58.00
Certificate of competency (inspector)	
Application	175.00

Title of Fee	Amount ($)
Certificate of competency renewal	116.00
Late renewal penalty	58.00
Certificate of competency re-examination	140.00

[Statutory Authority: RCW 43.24.086 and chapter 18.210 RCW. WSR 12-06-064, § 196-30-020, filed 3/6/12, effective 4/6/12; WSR 07-10-126, § 196-30-020, filed 5/2/07, effective 6/2/07. Statutory Authority: RCW 43.24.086 and 18.210.050. WSR 99-24-022, § 196-30-020, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-06-064, filed 3/6/12, effective 4/6/12)

WAC 196-30-030 License renewals. (1) On-site licenses and certificates of competency ((~~that expire on or after March 1, 2012,~~)) shall be ((~~for a two-year period due on the individual's birth date.~~

~~(2) The initial designer license and certificate of competency will expire on the licensee's or certificate holder's next birth date. However, if the licensee's or certificate holder's next birth date is within three months of the initial date of issuing the license or certificate, the original license or certificate will expire on his or her second birthday following issuance of the original license or certificate. All subsequent renewals shall be for a two-year period due on the individual's birth date~~)) renewed every two years. The date of expiration shall be the licensee's birthday. The initial license issued to an individual shall expire no earlier than one year after the issue date.

(2) To renew your license, complete an application for renewal, pay the required renewal fee, and provide the information requested in the renewal notice and application form. This information may include email address or other contact information and information regarding prior unprofessional conduct pursuant to RCW 18.235.110 and 18.235.130. Information regarding unprofessional conduct will be evaluated by the board to determine whether it is related to the practice of the applicant's profession. No refunds will be made, or payments accepted for a partial year.

(3) It shall be the licensee's or certificate holder's responsibility to pay the prescribed renewal fee to the ((~~department of licensing~~)) board on or before the date of expiration.

(4) ((~~Licensees who fail to pay the prescribed renewal fee within ninety days of the license expiration date will be subject to a late penalty fee equivalent to the fee for a one-year renewal. However, the license or certificate is invalid the date of expiration (if not renewed) even though an additional ninety days is granted to pay the renewal fee without penalty. After ninety days, the base renewal fee plus the penalty fee must be paid before the license or certificate can be renewed to a valid status.~~)) If a completed application for renewal has not been received by the board by the date of expiration (postmarked before the date of expiration if mailed or transacted online before the date of expiration), the license is invalid. Renewal that remain expired over 90 days past the date of expiration require payment of a late fee equivalent to the fee for a one-year renewal in

addition to the base renewal fee, and completion of a renewal application.

(5) Any designer license that remains expired for more than two years would be canceled. After cancellation, a new application must be made in accordance with chapter 18.210 RCW to obtain another license.

[Statutory Authority: RCW 43.24.086 and chapter 18.210 RCW. WSR 12-06-064, § 196-30-030, filed 3/6/12, effective 4/6/12; WSR 07-10-126, § 196-30-030, filed 5/2/07, effective 6/2/07. Statutory Authority: RCW 43.24.086 and 18.210.050. WSR 99-24-022, § 196-30-030, filed 11/23/99, effective 12/24/99.]

WSR 23-01-087
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed December 16, 2022, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-067.

Title of Rule and Other Identifying Information: WAC 182-513-1110 Presumptive eligibility (PE)—Long-term services and supports (LTSS) in a home setting or in an alternate living facility (ALF) authorized by home and community services (HCS).

Hearing Location(s): On January 24, 2023, 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_7KYOOb3iRSGgvduJReSdYw. 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 January 25, 2023.

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 January 24, 2023, 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 January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is creating a new section in chapter 182-513 WAC to create presumptive eligibility for long-term services and supports authorized by HCS in homes and alternate living facilities. Proposed WAC 182-513-1110(10) refers to WAC 388-106-1810 and 388-106-1820. These are new rules under development by the department of social and health services under a preproposal statement of inquiry filed as WSR 21-09-071. The agencies will coordinate the adoption of these rules.

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: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; 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.

December 16, 2022
Wendy Barcus
Rules Coordinator

OTS-4252.1

NEW SECTION

WAC 182-513-1110 Presumptive eligibility (PE)—Long-term services and supports (LTSS) in a home setting or in an alternate living facility (ALF) authorized by home and community services (HCS). (1) A person may be determined presumptively eligible for long-term services and supports (LTSS) in their own home, as defined in WAC 388-106-0010, or in an alternate living facility, as defined in WAC 182-513-1100:

(a) Upon completion of a screening interview; and

(b) When authorized by home and community services (HCS).

(2) The screening interview described in subsection (3) of this section may be conducted by either:

(a) A HCS case manager or social worker;

(b) An area agency on aging (AAA) or their subcontractor; or

(c) A state designated tribal entity.

(3) To be presumptively eligible (PE), the person must:

(a) Be determined to meet nursing facility level of care under WAC 388-106-0355 during the screening interview; and

(b) Attest to information that meets the:

(i) Income limits at or below the average monthly state nursing facility rate;

(ii) Resource limits defined under WAC 182-513-1350;

(iii) Social security requirement under WAC 182-503-0515;

(iv) Residency requirement under WAC 182-503-0520; and

(v) Aged, blind, or disabled requirement under WAC 182-512-0050.

(4) The agency or the agency's designee determines how much client responsibility must be paid to the provider for PE home and community-based services authorized by HCS when living at home or in an alternate living facility as outlined in WAC 182-513-1215, 182-515-1507, and 182-515-1509.

(5) The client or the client's representative must submit an online application through Washington connection or an HCA 18-005 application for aged, blind, disabled/long-term care coverage to HCS within 10 calendar days of PE determination.

(6) The PE period begins on the date the screening interview is completed and:

(a) Ends on the last day of the month following the month of the PE determination if an LTSS application is not completed and submitted within 10 calendar days of PE determination; or

(b) Ends the last day of the month that the final eligibility determination is made if a LTSS application is submitted under subsection (5) of this section within 10 calendar days of PE determination.

(7) For application processing times, refer to WAC 182-503-0060.

(8) If the applicant is determined not financially eligible for LTSS under WAC 182-513-1315, there is no overpayment for services received during the PE period; however, client responsibility applies as described in WAC 182-513-1215, 182-515-1507, and 182-515-1509.

(9) People who qualify for PE under this section receive categorically needy (CN) medical coverage under WAC 182-501-0060 through the PE period. CN medical coverage begins as described in WAC 182-503-0070(1).

(10) When PE services described in WAC 388-106-1810 and 388-106-1820 are approved or denied, the agency or the agency's designee sends written notice as described in WAC 182-518-0010.

(11) A person may receive services under a PE period only once within a consecutive 24-month period.

(12) The applicant does not have a right to an administrative hearing on PE decisions under chapter 182-526 WAC.

(13) Institutional resource and income standards are found at https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

(14) This section does not apply to medical assistance programs described in WAC 182-507-0125 or 182-508-0005.

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WSR 23-01-104
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE
[Filed December 19, 2022, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-054.

Title of Rule and Other Identifying Information: Amend chapter 132Q-10 WAC, Standards of conduct for students in order to be complaint [compliant] with HB 1751, "Sam's Law," hazing prevention, RCW 28B.10.900.

Hearing Location(s): On February 21, 2023, at 10:00 a.m., at Lodge Building, 3305 West Whistalks Way, Spokane, WA 99224.

Date of Intended Adoption: February 21, 2023.

Submit Written Comments to: Patrick McEachern, 3410 West Whistalks Way, Spokane, WA 99224-5204, email Patrick.McEachern@sfcc.spokane.edu, by February 16, 2023; or Connan Campbell, 1810 North Greene Street, Spokane, WA 99217-5320, email Connan.Campbell@scc.spokane.edu, by February 16, 2023.

Assistance for Persons with Disabilities: Contact John O'Rourke, phone 509-434-5185, TTY 509-434-5275, email john.orourke@ccs.spokane.edu, TTY 1-800-833-6384, by February 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend chapter 132Q-10 WAC, Standards of conduct for students, in order to be complaint [compliant] with HB 1751, "Sam's Law," hazing prevention, RCW 28B.10.900.

Reasons Supporting Proposal: Changes required as result of Washington's adoption of "Sam's Law," hazing prevention, RCW 28B.10.900.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.10.900.

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

Name of Proponent: Community Colleges of Spokane, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick McEachern or Connan Campbell, Spokane, Washington, 509-533-3514 or 509-533-7015.

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. Community Colleges of Spokane is not a listed agency under RCW 34.05.328 and is, therefore, exempt from this provision.

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

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

December 19, 2022
John O'Rourke
WAC Coordinator

OTS-4160.1

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-105 Definitions. For the purposes of this chapter, the following terms shall mean:

(1) "Accused student" means any student accused of violating the standards of conduct for students.

(2) "Appeals board" is a district-wide board composed of one administrator from each college appointed by the chief executive of that college. The appeals board considers appeals from a student conduct board's determination or from the sanctions imposed by the student conduct officer. The appeals board is convened by the student conduct officer.

(3) The "chief student services officer" is the vice president of student services of Spokane Community College or of Spokane Falls Community College, or a person designated by the college president to be responsible for the administration of the standards of conduct for students. The chief student services officer also serves as the Title IX coordinator for matters regarding conduct of Community Colleges of Spokane (CCS) students.

(4) "College" means Spokane Community College, Spokane Falls Community College, and all locations of CCS.

(5) "College official" includes any person employed by the college performing assigned duties with the exception of work study students.

(6) "College premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the Community Colleges of Spokane (including adjacent streets and sidewalks).

(7) "College president" includes the president of Spokane Falls Community College and the president of Spokane Community College. Each president is authorized to designate a chief student service officer on behalf of his or her respective institutions.

(8) "Complainant" means any member of CCS, including employee(s), contractor(s), visitor(s), or guest(s) who submits a report alleging that a student violated the standards of conduct for students. When students believe they have been victimized by another student's misconduct, they have the same rights under these standards as are provided to the complainant, even if another member of CCS submitted the charge itself. For the purposes of complaints involving sexual misconduct, the "complainant" is the alleged victim of sexual misconduct even if the complaint is filed by a third party including, but not limited to, complaints filed by CCS, SFCC, or SCC.

(9) "Disciplinary action" is the process by which discipline is imposed against a student, members of a student organization, or a student organization for a violation of the standards of conduct for students by a student conduct officer, the student conduct board, the student conduct administrative panel, the appeals board, or a faculty member.

(10) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the chief student services officer, the student conduct officer, the student conduct board, or the student conduct administrative panel. Appeals of all appealable disciplinary action shall be determined by the appeals board.

(11) "Disciplinary hearing" is the process during which an accused student has the opportunity to respond to a complaint alleging a violation(s) of the standards of conduct for students. The accused

student has the opportunity to explain what he or she did and to provide evidence that is relevant to the complaint. Alleged misconduct that would not result in suspension in excess of ((~~ten~~)) 10 instructional days or an expulsion shall be reviewed through a brief adjudicative proceeding held by the student conduct officer or the student conduct board.

(12) "Faculty member" means a teacher, counselor, or librarian or person who is otherwise considered by the college to be a member of its faculty.

(13) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review. Unless expressly specified otherwise, filing shall be accomplished by:

(a) Hand delivery of the document to the school official or school official's assistant; or

(b) By sending the document by email and first class mail to the recipient's college email and office address. Papers required to be filed with the college shall be deemed filed upon actual receipt during office hours at the office of the specified official.

(14) "Instructional day" means Monday through Friday, except for federal or state holidays, when students are in attendance for instructional purposes.

(15) "Member of CCS" includes any person who is a student, faculty member, college official, guest, contractor, or visitor of CCS. A person's status in a particular situation is determined by the chief student services officer.

(16) "Notice" or "service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first class mail to the party's last known address. Service is deemed complete upon hand delivery of document or upon the date the document is emailed and deposited into mail.

(17) "Respondent" is the student against whom disciplinary action is initiated.

(18) "Sexually violent conduct" is a sexual or gender-based violation of the standards of conduct for students including, but not limited to:

(a) Nonconsensual sexual activity including sexual activity for which clear and voluntary consent has not been given in advance; and sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping, incapacitated due to alcohol or drugs, has an intellectual or other disability that prevents the individual from having the capacity to give consent, or is subject to duress, threat, coercion or force.

(b) Sexual assault, domestic violence, dating violence, and sexual or gender-based stalking;

(c) Nonphysical conduct such as indecent liberties, sexual exploitation, indecent exposure, sexual exhibitionism, sex or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual posting or recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

(19) "Student" includes a person taking courses at or through the college, either full time or part time. For the purposes of the standards of conduct for students, the term applies from the time of appli-

cation for admission through the actual receipt of a degree or certificate, even though conduct may occur before classes begin or after classes end. The term also applies during the academic year, during periods between terms of actual enrollment and includes individuals who are not officially enrolled for a particular quarter but have a continuing relationship with the college (including suspended students), and students participating in study abroad programs. "Student" also includes "student organization" and persons who withdraw after allegedly violating the standards of conduct for students.

(20) "Student organization" ((~~means any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such~~)) is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations formally recognized as such, members of a class or student cohort, and student performance groups.

(21) "Student conduct administrative panel" is a panel appointed by the president of the college to hear initial complaints referred by the student conduct officer involving allegations of sexual misconduct or other misconduct which may result in a suspension of more than ((~~ten~~)) 10 instructional days or dismissal/expulsion from the college. The panel shall consist of three faculty members appointed by the president and two members of the administration, but not the vice president of student services, appointed by the president at the beginning of the academic year. One of the members of the administration shall serve as the chair of the committee. If that individual is not available for a hearing or has a conflict of interest, the other member of the administration shall chair the individual hearing. The chairs shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct. The student conduct officer convenes the board and appoints the chair for each hearing. Hearings may be held by a quorum of three members of the committee so long as one faculty member and one administrator are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(22) "Student conduct board" is a board appointed by the president of the college to hear initial complaints referred by the student conduct officer to determine whether a student has violated the general standards of conduct for students, and to impose sanctions when a violation has been committed for misconduct that would result in discipline involving an academic suspension of ((~~ten~~)) 10 instructional days or less or a discipline not involving dismissal or expulsion from the college. The board shall have at least one member from the respective groups: Faculty, students, and administration. The student conduct officer convenes the board and appoints the chair. Hearings may be held by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of the committee members attending the hearing.

(23) "Student conduct officer" means the individual or individuals designated by the college president to facilitate and coordinate student conduct matters pursuant to these standards of conduct for students.

(24) "Title IX coordinator" means the vice president of student services for the college or his/her designee who is responsible for

coordinating Title IX matters regarding students of CCS who is also known as the chief student services officer.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-105, filed 7/21/15, effective 8/21/15.]

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-120 Jurisdiction of the standards of conduct for students. The standards of conduct for students apply to conduct that occurs on college premises, at college-sponsored activities, and to off-campus conduct that adversely affects CCS's educational environment and/or the pursuit of its objectives as set forth in its mission. Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, athletic events, activities funded by associated students, training internships, cooperative and distance education, online education, study abroad programs, practicums, supervised work experiences, any other college-sanctioned social or club activities, and/or foreign or domestic travel associated with any of these events or activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college student conduct officer, or their designee, has sole discretion, on a case-by-case basis to determine ((~~what~~)) whether the student conduct ((~~occurring off campus adversely impacts the college and/or the pursuit of its objectives~~)) code will be applied to conduct by students or student groups that occurs off campus.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-120, filed 7/21/15, effective 8/21/15.]

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-218 Hazing. ((~~(1) Conspiring to engage in hazing or participating in hazing of another.~~

~~(a) Hazing means any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.~~

~~(b) Hazing activities may include the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; and morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.~~

~~(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and intercollegiate athletics, or other similar~~

~~contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.~~

~~(2) Washington state law prohibits hazing which may subject violators to criminal prosecution under RCW 28B.10.901.~~

~~(3) Washington state law (RCW 28B.10.901) provides sanctions for hazing.~~)) (1) Hazing is any act committed as part of:

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

(b) Any pastime or amusement engaged in with respect to such a student group; or

(c) That causes or is likely to cause, bodily danger or physical harm or serious psychological or emotional harm, to any student.

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

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

(b) Humiliation by the ritual act;

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

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

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

(3) "Hazing" does not include customary athletic events or other similar contests or competitions.

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

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

(6) Washington state law provides that:

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

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

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

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

(7) As described in WAC 132Q-10-140, a student organization and/or individual members may be subject to appropriate sanctions for student conduct violations.

(8) Additional disciplinary sanctions for hazing violations can be found in WAC 132Q-10-400.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-218, filed 7/21/15, effective 8/21/15.]

WSR 23-01-108
PROPOSED RULES
GREEN RIVER COLLEGE
[Filed December 18, 2022, 5:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-083.

Title of Rule and Other Identifying Information: Green River College, rules of student conduct.

Hearing Location(s): On January 24, 2023, at 2:00 p.m., at Green River College, 31920 124th Avenue S.E., Emerald City Room SU 200, Auburn, WA 98092.

Date of Intended Adoption: February 25, 2023.

Submit Written Comments to: Shawn Percell, 31920 124th Avenue S.E., Auburn, WA 98092, email conduct@greenriver.edu, by January 24, 2023.

Assistance for Persons with Disabilities: Contact disability support services, phone 253-931-6460, TTY 253-288-3359, email dss@greenriver.edu, www.greenriver.edu/accessibility, by January 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address state and federal law compliance requirements and general updates to organization and usefulness of the student conduct code for students and the campus community.

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

Statute Being Implemented: RCW 28B.50.140(13).

Rule is necessary because of 2SHB 1751.

Name of Proponent: Green River College, Student Affairs, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Shawn Percell, Director of Judicial Affairs, SA - 206, 253-833-9111; Enforcement: Deb Casey, Vice President of Student Affairs, SA - 206, 253-833-9111.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule will not impose any costs for the institution.

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 will not impose any costs for the institution or community.

December 18, 2022
Shawn Percell
Director of Judicial Affairs and Compliance

OTS-4045.2

AMENDATORY SECTION (Amending WSR 15-15-071, filed 7/13/15, effective 8/13/15)

WAC 132J-126-030 Definitions. The following definitions shall apply for the purpose of this student conduct code:

"Assembly" is any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, peti-

tion for a cause or disseminate information to any person, persons, or groups of persons.

"Business day" means a weekday, excluding weekends and college holidays.

"Cheating" is defined as intentional deception in producing or creating academic work. Cheating includes, but is not limited to:

(a) Intentional plagiarism;

(b) Selling or giving your own completed work to others who intend to turn it in as their own;

(c) Purchasing or accepting the work of others with the intent of turning it in as your own;

(d) Acquiring and/or using teachers' editions of textbooks, without the permission of the specific instructor, in order to complete your course assignments;

(e) Obtaining or attempting to obtain an examination prior to its administration;

(f) Referring to devices, materials or sources not authorized by the instructor;

(g) Receiving assistance from another person when not authorized by the instructor;

(h) Providing assistance to another person when not authorized by the instructor;

(i) Taking an examination for another person;

(j) Obtaining or attempting to obtain another person to take one's own examination;

(k) Falsifying laboratory results or copying another person's laboratory results; and

(l) Falsifying or attempting to falsify the record of one's grades or evaluation.

"College" means Green River College.

"College facilities" includes all buildings, structures, grounds, office space, and parking lots.

"College groups" shall mean individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

"College official" includes any person employed by the college, performing assigned administrative or professional responsibilities.

"College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

"Complainant" means any person who submits a charge alleging that a student violated the student code. When a student believes that she/he has been a victim of another student's misconduct, the student who believes she/he has been a victim will have the same rights under this student code as are provided to the complainant, even if another member of the college community submitted the charge himself or herself.

"Conduct review officer" is the vice president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

"Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ((~~ten~~)) 10 instructional days or a dismissal are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

"Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspectives or viewpoints.

"Fabrication" is defined as intentional misrepresentation of an activity done by a student for an academic project or practicum. Fabrication includes, but is not limited to:

(a) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(b) Counterfeiting a record of internship or practicum experiences;

(c) Submitting a false excuse for absence or tardiness; and

(d) Unauthorized multiple submission of the same work; sabotage of others' work.

"Faculty member" means any person hired by the college to conduct classroom, counseling, or teaching activities or who is otherwise considered by the college to be a member of its faculty.

"Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

"May" is used in the permissive sense.

"Member of the college community" includes any person who is a student, faculty member, college official or any other person employed by the college. A person's status in a particular situation shall be determined by the vice president of student affairs or designee.

"Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

"Organization" means number of persons who have complied with the formal requirements for college recognition/registration.

"Plagiarism" is defined as using others' original ideas in your written or spoken work without giving proper credit.

(a) Ideas include, but are not limited to:

(i) Facts;

(ii) Opinions;

(iii) Images;

(iv) Statistics;

(v) Equations;
(vi) Hypotheses;
(vii) Theories.

(b) Plagiarism can occur in two ways: Intentional and unintentional.

(c) Ways that intentional plagiarism occur include, but are not limited to:
(i) Turning in someone else's work as your own;
(ii) Copying words or ideas from someone else without giving credit;
(iii) Failing to put a quotation in quotation marks;
(iv) Giving incorrect information about the source of a quotation;
(v) Changing words but copying the sentence structure of a source without giving credit;
(vi) Copying so many words or ideas from a source that it makes up the majority of your work, whether you give credit or not.

(d) Unintentional plagiarism may occur when a student has tried in good faith to document their academic work but fails to do so accurately and/or thoroughly. Unintentional plagiarism may also occur when a student has not had course work covering plagiarism and documentation and is therefore unprepared for college academic writing or speaking.

"Policy" means the written regulations of the college as found in, but not limited to, the student code, the college web page and computer use policy, and catalogs.

"Respondent" is the student against whom disciplinary action is initiated.

"Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:
(a) Hand delivery of the document to the party; or
(b) By sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

"Shall" is used in the imperative sense.

"Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered students.

"Student conduct officer" is a college administrator designated by the president or vice president of student affairs to be responsible for implementing and enforcing the student conduct code. The president or vice president of student affairs is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

"The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

"Vice president of student affairs" means the college administrator who reports to the college president, who serves as the college's student judicial affairs administrator, and who is responsible for administering the student rights and responsibilities code. The vice president of student affairs may designate a student conduct officer to fulfill this responsibility.

[Statutory Authority: RCW 28B.50.140 and 34.02.353 [34.05.353]. WSR 15-15-071, § 132J-126-030, filed 7/13/15, effective 8/13/15. Statutory Authority: RCW 28B.50.140(13) and P.L. 113-4. WSR 14-24-129, § 132J-126-030, filed 12/3/14, effective 1/3/15.]

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

WAC 132J-126-090 Conduct—Student responsibilities. Any student or student group shall be subject to disciplinary action as provided for in this chapter, who either as a principal actor, aide, abettor, or accomplice as defined in RCW 9A.08.020:

Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;

Violates any provision of this chapter; or

Commits any prohibited act including, but not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. In academically honest writing or speaking, the student documents his/her source of information whenever:

Another person's exact words are quoted;

Another person's idea, opinion or theory is used through paraphrase; and

Facts, statistics, or other illustrative materials are borrowed.

In order to complete academically honest work, students should:

Acknowledge all sources according to the method of citation preferred by the instructor;

Write as much as possible from one's own understanding of the materials and in one's own voice;

Ask an authority on the subject, such as the instructor who assigned the work; and

Seek help from academic student services such as the library and/or writing center.

(2) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products are not allowed on college campus. In addition to the main campus, this also includes any building and premises owned, leased or operated by the college outside of the main campus. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(3) **Alcohol.** The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(4) **Drugs/substance abuse.**

(a) Any student who, while in any college facility or participating in a college-related program, uses, possesses, consumes, is demonstrably under the influence of, or sells any narcotic drug or controlled substance as defined in RCW 69.50.101, in violation of law or in a manner which significantly disrupts a college activity. For purposes of this section, "sell" includes the statutory meaning in RCW 69.50.410.

(b) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(5) **Conduct at college functions.** Any student who significantly disrupts or obstructs any teaching, research, administration, disciplinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.

(6) **Theft; stolen property; robbery.** Any student who, while in any college facility or participating in a college-related program, commits or attempts to commit theft as defined in RCW 9A.56.020, or possesses stolen property as defined in RCW 9A.56.140, or commits or attempts to commit robbery as defined in RCW 9A.56.190.

(7) **Damaging property.**

(a) Any student who causes or attempts to cause physical damage to property owned, controlled or operated by the college, or to property owned, controlled or operated by another person while said property is located on college facilities.

(b) Any student who in this or any other manner is guilty of malicious mischief in violation of RCW 9A.48.070 through 9A.48.100.

(8) **Abuse; intimidation.** Physical abuse, verbal abuse, threats, intimidation, coercion, and/or other conduct which threatens or endangers the health or safety of any person.

(9) **Hazing.** ((~~Hazing, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing are not neutral acts; they are violations of this rule.~~))

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

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

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

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

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

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

(ii) Humiliation by ritual act;

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

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

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

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

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

(10) **Failure to comply.** Failure to comply with directions of college officials, campus safety officers, or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

(11) **Possession of keys.** Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.

(12) **Policy violation.** Violation of any college policy, rule, or regulation published in hard copy or available electronically on the college website.

(13) **Violation of laws.** Violation of any federal, state, or local law.

(14) **False alarms.** Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(15) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(16) **Sexual misconduct.**

(a) Sexual misconduct is any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism.

(b) Consent to sexual activity requires that, at the time of the act, there are actual words or conduct demonstrating freely given agreement to sexual activity, silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(i) Force or blackmail is threatened or used to procure compliance with the sexual activity; or

(ii) The person is unconscious or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(iii) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause.

(c) A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge

and consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy.

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

(e) The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(17) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(18) **Weapons and fireworks.** Possession or use of fireworks anywhere on campus; possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or any other cutting or stabbing instrument, or club, or incendiary device, or explosive, or any facsimile weapons, or any other weapon apparently capable of producing bodily harm and/or property damage is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel, legally authorized military personnel, or bank-related security personnel required by their office to carry such weapons or devices.

(b) Possession or use of disabling chemical sprays when used for self-defense.

(c) The president may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(19) **Demonstrations.** Participating in an on-campus or off-campus demonstration, riot, or activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.

(20) **Disorderly conduct.** Conduct that is disorderly, lewd, indecent, or obscene; breach of peace; or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored by, or participated in by, the college or members of the college community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his/her prior knowledge, or without his/her effective consent when such a recording is in a place or situation where he or she has a reasonable expectation of privacy. This includes, but is not limited to,

surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(21) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of his/her race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(22) **Stalking.** Stalking, defined as intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property.

(23) **Improper use of technology.** Theft or other abuse of computer facilities and resources including, but not limited to:

(a) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(b) Unauthorized transfer of a file.

(c) Use of another individual's identification and/or password.

(d) Use of computing facilities and resources to interfere with the work of another student, faculty member, or college official.

(e) Use of computing facilities and resources to view or send obscene or abusive messages.

(f) Use of computing facilities and resources to interfere with normal operation of the college computing system.

(g) Use of computing facilities and resources in violation of copyright laws.

(h) Any violation of the Student Affairs Policy SA-24 - Student Acceptable Computer Use.

(24) **Forgery or alteration of records.** Any student who, while in any college facility or participating in a college-related program, engages in forgery, as defined in RCW 9A.60.020.

(25) **Disruption of conduct process.** Abuse of the student conduct system including, but not limited to:

(a) Falsification, distortion, or misrepresentation of information before a student conduct officer.

(b) Disruption or interference with the orderly conduct of a student conduct hearing proceeding.

(c) Institution of a student conduct code proceeding in bad faith.

(d) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(e) Attempting to influence the impartiality of a member of a student conduct officer prior to, and/or during the course of, the student conduct hearing proceeding.

(f) Harassment (verbal or physical) and/or intimidation of a member of a student conduct officer prior to, during, and/or after a student conduct hearing proceeding.

(g) Failure to comply with the sanction(s) imposed under the student code.

(h) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

(26) **False complaint.** Filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.

(27) **Classroom conduct.** Any student who significantly disrupts any college class and makes it unreasonably difficult to conduct the class in an orderly manner shall be subject to disciplinary action. An instructor/faculty member may impose any of the following actions for classroom conduct:

(a) Warning: An oral or written notice to a student that college and/or classroom expectations about conduct have not been met.

(b) Reprimand: A written notice which censures a student for improper conduct and includes a warning that continuation or repetition of improper conduct shall result in further disciplinary action.

(c) Summary suspension for a maximum of two days: As defined in WAC 132J-126-230.

At any time, severe misconduct or continued misconduct shall be just cause for the matter to be forwarded immediately to the vice president of student affairs or designee for further action.

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

[Statutory Authority: RCW 28B.50.140(13) and P.L. 113-4. WSR 14-24-129, § 132J-126-090, filed 12/3/14, effective 1/3/15.]

NEW SECTION

WAC 132J-126-125 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132-126-090(9).

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

(3) Washington state law provides that:

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

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

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

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

[]

WSR 23-01-125
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
[Filed December 20, 2022, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-006.

Title of Rule and Other Identifying Information: Changes in dollar amounts by making inflationary adjustments to the monetary limits and reporting thresholds established in statute.

Hearing Location(s): On January 26, 2023, at 9:30 a.m., at 711 Capitol Way South, Suite 206, Olympia, WA 98504. The hearing will be accessible remotely, in-person by special accommodation, and streamed live at https://www.youtube.com/user/WASTPDC/live. To provide public comment via conference line during this time, please call 1-360-522-2372.

Date of Intended Adoption: January 26, 2023.

Submit Written Comments to: Sean Flynn, P.O. Box 40908, email pdc@pdc.wa.gov.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, email pdc@pdc.wa.gov, by January 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making would make inflationary adjustments to the monetary limits and reporting values of the campaign finance category, which are established in statute, based on the economic changes since the time of enactment, as reflected in the inflationary index recommended by the office of financial management (OFM). The public disclosure commission (commission) may adjust the inflationary values by rounding off the numbers in order to be most accessible to the public. The proposal also includes changing the reporting values set in rule, which are not limited to the inflationary index formula.

Reasons Supporting Proposal: Under RCW 42.17A.125, the commission is required to consider revising the monetary limits and reporting values in statute based on the inflationary index as recommended by OFM. The last inflationary adjustments were made in 2016. Other reporting values set in rule are not subject to the requirements of the inflationary adjustment, but may be considered for change within the discretion of the commission.

Statutory Authority for Adoption: RCW 42.17A.110 and [42.17A].125.

Statute Being Implemented: RCW 42.17A.125.

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

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sean Flynn, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111; Enforcement: Kim Bradford, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111.

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

December 19, 2022
Sean Flynn
General Counsel

OTS-4258.3

AMENDATORY SECTION (Amending WSR 22-14-030, filed 6/24/22, effective 6/30/22)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the authority in RCW 42.17A.125 that the commission may revise the monetary contribution limits and reporting thresholds and code values of the act to reflect changes in economic conditions, the previous and current amounts are:

((~~Code Section~~	~~Subject Matter~~	~~Previous~~	~~Current~~
~~.005~~	~~Reporting threshold for "Independent Expenditure" for political advertising~~	~~$950~~	~~$1,000~~
~~.255~~	~~Reporting threshold for "Independent Expenditure" not otherwise reported~~	~~$100~~	~~$100~~
~~.265~~	~~Reporting threshold for late contributions (last minute contributions)~~	~~$1,000~~	~~$1,500~~
~~.445(3)~~	~~Reimbursement of candidate for loan to own campaign~~	~~$5,500~~	~~$6,000~~
~~.630(1)~~	~~Report —~~		
	~~Applicability of provisions to persons who made contributions~~	~~$19,000~~	~~$20,000~~
	~~Persons who made independent expenditures~~	~~$950~~	~~$1,000~~
~~.405(2)~~	~~Contribution Limits —~~		
	~~Candidates for state leg. office~~	~~$950~~	~~$1,000~~
	~~Candidates for county office~~	~~$950~~	~~$1,000~~
	~~Candidates for other state office~~	~~$1,900~~	~~$2,000~~
	~~Candidates for special purpose districts~~	~~$1,900~~	~~$2,000~~
	~~Candidates for city council office~~	~~$950~~	~~$1,000~~
	~~Candidates for mayoral office~~	~~$950~~	~~$1,000~~
	~~Candidates for school board office~~	~~$950~~	~~$1,000~~
	~~Candidates for hospital district~~	~~$950~~	~~$1,000~~
~~.405(3)~~	~~Contribution Limits —~~		
	~~State official up for recall or pol comm. supporting recall —~~		
	~~State Legislative Office~~	~~$950~~	~~$1,000~~
	~~Other State Office~~	~~$1,900~~	~~$2,000~~
~~.405(4)~~	~~Contribution Limits —~~		
	~~Contributions made by political parties and caucus committees~~		

((~~Code Section~~	~~Subject Matter~~	~~Previous~~	~~Current~~
	~~State parties and caucus committees~~	~~.95 per voter~~	~~$1.00 per registered voter~~
	~~County and leg. district parties~~	~~.50 per voter~~	~~.50 per registered voter~~
	~~Limit for all county and leg. district parties to a candidate~~	~~.50 per voter~~	~~.50 per registered voter~~
~~.405(5)~~	~~Contribution Limits—~~		
	~~Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall~~		
	~~State parties and caucuses~~	~~.95 per voter~~	~~$1.00 per registered voter~~
	~~County and leg. district parties~~	~~.50 per voter~~	~~.50 per registered voter~~
	~~Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall~~	~~.50 per voter~~	~~.50 per registered voter~~
~~.405(7)~~	~~Limits on contributions to political parties and caucus committees~~		
	~~To caucus committee~~	~~$950~~	~~$1,000~~
	~~To political party~~	~~$5,000~~	~~$5,500~~
~~.410(1)~~	~~Candidates for judicial office~~	~~$1,900~~	~~$2,000~~
~~.475~~	~~Contribution must be made by written instrument~~	~~$95~~	~~$100~~
~~.710~~	~~Code values for statement of personal financial affairs - See WAC 390-24-301~~))		

Code Section	**Subject**	**Value Set in Statute (year last changed)**	**Previous Adjusted Value in Rule (last set in 2016)**	**Current Adjusted Value (last set in 2023)**
Campaign Finance Reporting				
.005(15)	Limit for the value of volunteer services excluded from the definition of contribution	$50 (1989)	n/a	$144
.005(21)	Reporting threshold for "Electioneering communication"	$1,000 (2011)	n/a	$1,449
.005(30)	Reporting threshold for "Independent expenditure" for political advertising	$1,000 (2019)	n/a	$1,203
.005(46)(a)	Maximum limit for qualification as a "Remediable violation" where no contribution limit applies	$1,000 (2018)	n/a	$1,237
.110(8)	Limit on eligibility for reporting exceptions by small campaigns ("mini reporting" pursuant to WAC 390-16-105 et seq.)	$5,000 (2010)	n/a	$7,285
.207(1)(a)(i)	Incidental committee - Threshold of expenditures for registration	$25,000 (2018)	n/a	$30,925
.235(1)	Incidental committee - Threshold for reporting top 10 contributors	$10,000 (2018)	n/a	$12,370

Code Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
.235(3)(b)	Incidental committee - Threshold for regular monthly reporting of contributions or expenditures	$200 (2018)	n/a	$247
.220(4)	Limit for retaining accumulated unidentified contributions	$300 (1973)	n/a	$2,478
.225(2)	Regular monthly campaign reports - Threshold for regular monthly reporting of contributions or expenditures - continuing PAC	$200 (1982)	n/a	$693
.235(3)(a)	Regular monthly campaign reports - Threshold for regular monthly reporting of contributions or expenditures - PAC	$200 (1982)	n/a	$693
.230(2)	Contributions fund-raising - Limit on amounts eligible for special reporting of fund-raising activities	$25 - event $50 - auction (1989)	n/a	$72 (event) $144 (auction)
.230(4)	Contributions fund-raising - Threshold for reporting identity of contributions	$50 (1989)	n/a	$144
.235(5) & .240(2)	Contributions - Threshold for required reporting identity of contributors	$25 (1982)	n/a	$87
.240(2)	Threshold for reporting pledges	$100 (2019)	n/a	$120
.240(7)	Threshold for reporting expenditure activity	$50 (1982)	n/a	$173
.240(9)	Threshold for reporting source of debt	$750 (2018)	n/a	$928
.250	Out-of-state PAC - Threshold for reporting contributions	$25 - In-state (1983) $2,550 - Out-of-state (2010)	n/a	$84 - In-state $3,715 - Out-of-state
.265	"Last-minute contribution" - Reporting threshold	$1,000 (2001)	n/a	$1,500* *adjusted in 2022
.255(1)	Independent expenditure ("not otherwise reported") - Threshold for including incidental volunteer expenses	$50 (1995)	n/a	$110
.255(2)	Independent expenditure ("not otherwise reported") - Threshold for reporting	$100 (1973)	n/a	$826

Code Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
.255(5)	Independent expenditure ("not otherwise reported") - Threshold for itemized expenditures	$50 (1989)	n/a	$144
.260	Independent expenditure (political advertising) - Threshold for reporting	$1,000 (2001)	n/a	$1,812
.305	Independent expenditure (electioneering communication) - Threshold for detailed reporting of expenditure	$100 (2005)	n/a	$169
.630(1)	Applicability of provisions to persons who made contributions	$16,000 (2010)	$20,000	$20,000* *not adjusted in 2023
.630(1)	Persons who made independent expenditures	$800 (2010)	$1,000	$1,000* *not adjusted in 2023
Campaign Contribution Limits				
.405(2)	Limits on contributions to candidates			
	- Candidates for state legislative office	$800 (2010)	$1,000	$1,165
	- Candidates for county office	$800 (2010)	$1,000	$1,165
	- Candidates for other state office	$1,600 (2010)	$2,000	$2,331
	- Candidates for special purpose districts	$1,600 (2010)	$2,000	$2,331
	- Candidates for city council office	$800 (2010)	$1,000	$1,165
	- Candidates for mayoral office	$800 (2010)	$1,000	$1,165
	- Candidates for school board office	$800 (2010)	$1,000	$1,165
	- Candidates for hospital district	$800 (2010)	$1,000	$1,165
.410(1)	- Candidates for judicial office	$1,600 (2010)	$2,000	$2,331
.405(4)	State and local party and caucus committee limits on contributions to a candidate			
	- State parties and caucus committee	$0.80 × per voter (2010)	$1.00 per voter	$1.17 per registered voter
	- County and legislative district parties	$0.40 per voter (2010)	$.50 per voter	$.58 per registered voter

Code Section	Subject	Value Set in Statute (year last changed)	Previous Adjusted Value in Rule (last set in 2016)	Current Adjusted Value (last set in 2023)
	- Limit on aggregate of all county and legislative district parties to a candidate	$0.40 × per voter (2010)	$.50 per voter	$0.58 per registered voter
.405(7)	Limits to political parties and caucus committees			
	- To caucus committee	$800 (2010)	$1,000	$1,165
	- To political party	$4,000 (2010)	$6,000	$5,828
.405(3)	Recall - Limits to state or local official or to PAC supporting recall			
	- State legislative office and local office	$800 (2010)	$1,000	$1,165
	- Other (nonlegislative) state office and port district	$1,600 (2010)	$2,000	$2,331
.405(5)	Recall - Limits for political parties and caucus committees to state or local officials or to PACs supporting recall			
	- State parties and caucuses	$0.80 × per voter (2010)	$1.00 per voter	$1.17 per registered voter
	- County and legislative district parties	$0.40 × per voter (2010)	.50 per voter	$0.58 per registered voter
	- Limit for all county and legislative district parties to state official up for recall or political committee supporting recall	$0.40 × per voter (2010)	.50 per voter	$0.58 per registered voter
.420	Limits on large contributions			
	- Statewide office	$50,000 - (2010)	n/a	$72,850
	- Other (nonstatewide) office	$5,000 - other (2010)	n/a	$7,285
.445(3)	Maximum limit for reimbursement of candidate loan to own campaign	$4,700 (2010)	$6,000	$6,848
.475	Contribution must be made by written instrument	$100 (2019)	n/a	$120
.600 - .640	Lobbying disclosure and restrictions - See WAC 390-20-150			
.710	Code values for statement of personal financial affairs - See WAC 390-24-301			

[Statutory Authority: RCW 42.17A.125. WSR 22-14-030, § 390-05-400, filed 6/24/22, effective 6/30/22. Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-05-400, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-05-400, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110, 42.17A.125(1), and 42.17A.250 [(1)](g). WSR 16-04-080, § 390-05-400, filed 1/29/16, effective 2/29/16; WSR 14-01-010, § 390-05-400, filed 12/5/13, effective 1/5/14. Statutory Authority: RCW 42.17A.110 and 42.17A.125. WSR 13-05-012, § 390-05-400, filed 2/7/13, effective 3/10/13. Statutory Authority: RCW 42.17.110 and 42.17.125. WSR 12-10-041, § 390-05-400, filed 4/27/12, effective 5/28/12. Statutory Authority: RCW 42.17.370(1) and 42.17.690. WSR 12-01-032, § 390-05-400, filed 12/13/11, effective 1/13/12. Statutory Authority: RCW 42.17.370(1), 42.17.690, and 42.17.645. WSR 08-04-022, § 390-05-400, filed 1/28/08, effective 2/28/08. Statutory Authority: RCW 42.17.370. WSR 07-07-005, § 390-05-400, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW 42.17.370 and 42.17.690. WSR 06-07-001, § 390-05-400, filed 3/1/06, effective 4/1/06. Statutory Authority: RCW 42.17.690. WSR 03-22-064, § 390-05-400, filed 11/4/03, effective 1/1/04. Statutory Authority: RCW 42.17.370 and 42.17.690. WSR 01-22-050, § 390-05-400, filed 10/31/01, effective 1/1/02. Statutory Authority: RCW 42.17.370(1). WSR 00-04-058, § 390-05-400, filed 1/28/00, effective 3/1/00. Statutory Authority: RCW 42.17.690. WSR 98-08-069, § 390-05-400, filed 3/30/98, effective 5/1/98; WSR 96-04-021, § 390-05-400, filed 1/30/96, effective 3/1/96.]

OTS-4259.1

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-034 Additional contribution reporting requirements. Pursuant to RCW 42.17A.240, each report required under RCW 42.17A.235 shall disclose, in addition to the name and address of each person who has made one or more contributions in the aggregate amount of more than ((~~one hundred dollars~~)) $120, their occupation, and the name and address of their employer.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-034, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-034, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 02-01-014, § 390-16-034, filed 12/7/01, effective 1/7/02; WSR 96-05-001, § 390-16-034, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.370. WSR 93-24-003, § 390-16-034, filed 11/18/93, effective 12/19/93.]

WSR 23-01-128
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-15—Filed December 20, 2022, 2:20 p.m.]

Continuance of WSR 22-21-100 on October 17, 2022.

Preproposal statement of inquiry was filed as WSR 22-16-100 on August 2, 2022.

Title of Rule and Other Identifying Information: Fishing guide logbook reporting rule revision. WAC 220-352-245 Reporting required of licensed food fish, game fish and combination fishing guides.

Hearing Location(s): On January 27-28, 2023, at 8:00 a.m., webinar. The public may participate in the meeting. Registration is required to testify at the public hearing. Registration deadlines and registration forms are available at http://wdfw.wa.gov/about/commission/meetings or contact the commission office at 360-902-2267.

Date of Intended Adoption: No sooner than January 27, 2023.

Submit Written Comments to: Kelly Henderson, email GuideLogbook@PublicInput.com, website https://publicinput.com/GuideLogbook, voicemail comments 855-925-2801, project code 4215, by January 24, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, by January 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This revision to the fishing guide logbook rule will improve enforceability and compliance of the rule. Specifically, this revision will require trip location and date information at the beginning of the trip, will clarify when reports entered through the web reporting tool need to be submitted, and remove references to "vessel" so it's clear that all guided fishing trips, whether on foot or on a vessel, must be reported.

The public hearing has been rescheduled from its original date and the public comment period is being extended. The proposed rule is unchanged from the original notice.

Reasons Supporting Proposal: This proposal will close enforcement loopholes allowing officers to make contacts at any point in the guided trip, not just at the end of the day at the boat launch. It also clarifies elements of the rule for the benefit of guides and will hopefully increase overall compliance with the rule.

Statutory Authority for Adoption: RCW 77.65.500.

Statute Being Implemented: RCW 77.65.500.

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: This rule making does not change the type of data being collected by guides, the reporting tools, or frequency of reporting. It clarifies elements of the rule and makes it easier to enforce.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Raquel Crosier, 111 Sherman Street, La Conner, WA 98257, 360-789-9652.

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.

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. This rule revision does not change the information collected on the logbook, but will require some information to be collected at the beginning of the day. For mobile logbook users, most of the fields required at the beginning of the trip, "name," "license number," and "date," fields are auto-populated. The only field being required at the beginning of the day that is not auto-populated is the "waterbody" field. Opening the mobile app and entering water body takes less than one minute and entering that information at the beginning of the day eliminates the need to enter the field later in the trip. Some guides choose to use paper logbooks instead of the mobile reporting tool. Guides choosing to use the paper logbook to report will have to hand-write "name," "license number," "date," and "water body" fields at the beginning of the trip vs. at the end of the trip. This may increase the time spent entering paper logs at the beginning of the trip by one to five minutes and may reduce the time spent on logbooks at the end of the trip by one to five minutes. The rule revision will increase postage costs for those submitting paper logbook reports by requiring them to be submitted twice a month as opposed to once a month. All guides will have the option of submitting reports through the mobile application and avoiding postage costs.

December 20, 2022
Chris Fredley
Acting Agency Rules Coordinator

OTS-4142.3

AMENDATORY SECTION (Amending WSR 19-17-010, filed 8/9/19, effective 1/1/20)

WAC 220-352-245 Reporting required of licensed food fish, game fish and combination fishing guides. (1) Licensed food fish, game fish and combination fishing guides shall maintain a daily logbook of guiding activity to include:

(a) Guide name and license No. for the guide leading the trip;

(b) Date that fishing took place. For multiday trips, each day is considered a separate trip;

(c) Specific name of river, stream, or lake fished;

(d) Site code of site fished as referenced within a list provided to each guide. If multiple sites are fished on the same day, each site is considered a separate trip;

(e) Client, "comped angler" and crew current fishing license number (wild ID No.) for each person on board if required to have a license or catch record card. A comped angler is an angler that fishes without charge;

(f) Indicate if person was a crew member or if angler was "comped";

(g) Species kept or released. For salmon and steelhead specify origin (hatchery, wild) and life stage (adult, jack).

(2) ((~~Logbooks are required to be completed for each trip before offloading any fish from the vessel or if no fish were kept, complete the logbook before leaving the site~~)) Every daily logbook entry must be started before fishing activity begins by entering guide name, license number, date, and waterbody the trip initiated from.

(3) Report of daily guiding activity shall be made using the department's paper logbook or ((~~online~~)) mobile reporting application. ((~~Logbook pages~~)) Trips reported using the paper logbook for activity that occurred between the first day of the calendar month and the 15th day of the calendar month must be ((~~provided~~)) postmarked and mailed to the department ((~~or postmarked within ten days following any calendar month in which the guiding activity took place~~)) by the 28th day of the same calendar month. Trips reported using the paper logbook for activity that occurred between the 16th day of the calendar month and the last day of the calendar month must be postmarked and mailed to the department by the 14th day of the calendar month immediately following. Reports logged using the mobile application must be finalized or submitted at the end of the guided trip before leaving the site.

(4) Each day of fishing ((~~that occurs on a designated WDFW licensed guide fish vessel~~)) will be required to be recorded in the logbook. This includes any personal use or nonguided fishing trips that occur. Only guide name, license number, and date are required for nonguided fishing trips.

(5) Information collected under this section may be exempt from public disclosure to the extent provided under RCW 42.56.430.

(6) Failure to report any guiding activity listed in subsections (1) through (4) of this section is an infraction, punishable under RCW 77.15.160.

(7) A fishing guide, or person under the control or direction of a fishing guide, that submits false information is guilty of a gross misdemeanor, punishable under RCW 77.15.270.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020 and 77.04.055. WSR 19-17-010 (Order 19-141), § 220-352-245, filed 8/9/19, effective 1/1/20.]

WSR 23-01-130
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-13—Filed December 20, 2022, 3:04 p.m.]

Supplemental Notice to WSR 22-22-041 on October 26, 2022.

Preproposal statement of inquiry was filed as WSR 22-18-049 on August 30, 2022, and 20-21-057 on October 14, 2020.

Title of Rule and Other Identifying Information: Periodic status review: Columbian white-tailed deer and Cascade red fox. WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished and 220-610-010 Wildlife classified as endangered species.

Hearing Location(s): On January 27-28, 2023, at 8:00 a.m., webinar and/or conference call. 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: On or after January 27, 2023.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email deerandfox@PublicInput.com, fax 360-902-2162, https://publicinput.com/deerandfox, voicemail comments 855-925-2801, project code 4007, by January 24, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, http://wdfw.wa.gov/accessibility/requests-accommodation, by January 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to conservation gains, in particular the success of translocated populations, Columbian white-tailed deer may no longer meet the definition of endangered in the state of Washington. We propose changing their classification to threatened to better align with the definition and reflect the reduced conservation concern and highlight the success.

In addition to the change to the Columbian white-tailed deer, we are amending to list the Cascade red fox as endangered in the state of Washington to reflect a vote previously taken by the fish and wildlife commission.

Reasons Supporting Proposal: We are no longer uncertain about the viability of the Ridgefield subpopulation, given the encouraging projections of the viability assessment for the subpopulation. We are now much more confident that the deer at Ridgefield have established into a viable subpopulation with significant growth potential.

With this development, we believe the lower Columbia River population no longer fits the definition of endangered, as it is no longer under serious threat of extinction. (WAC 220-610-010)

The Washington department of fish and wildlife (WDFW) thus recommends reclassifying the Columbian white-tailed deer to threatened.

On October 7, 2022, the fish and wildlife commission voted to list the Cascade red fox as endangered, instead of threatened, which had been recommended by agency staff. Because of a procedural issue, we are now proposing rule amendments to capture the endangered listing for Cascade red fox in conjunction with the Columbian white-tailed deer amendment.

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 Cas-

cade 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.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030.

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; 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.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

December 20, 2022
Chris Fredley
Acting Agency Rules Coordinator

NEW SECTION [AMENDATORY SECTION (Amending WSR 21-20-010, filed 9/23/21, effective 10/24/21)]

WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished. Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	*Sciurus griseus*
sea otter	*Enhydra lutris*
green sea turtle	*Chelonia mydas*
Mazama pocket gopher	*Thomomys mazama*
American white pelican	*Pelecanus erythrorhynchos*
Columbian white-tailed deer	*Odocoileus virginianus leucurus*

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their

range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	*Eschrichtius robustus*
Common Loon	*Gavia immer*
Larch Mountain salamander	*Plethodon larselli*
Pygmy whitefish	*Prosopium coulteri*
Margined sculpin	*Cottus marginatus*
Olympic mudminnow	*Novumbra hubbsi*

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	*Ochotona princeps*
least chipmunk	*Tamias minimus*
yellow-pine chipmunk	*Tamias amoenus*
Townsend's chipmunk	*Tamias townsendii*
red-tailed chipmunk	*Tamias ruficaudus*
hoary marmot	*Marmota caligata*
Olympic marmot	*Marmota olympus*
Cascade golden-mantled ground squirrel	*Callospermophilus saturatus*
golden-mantled ground squirrel	*Callospermophilus lateralis*
Washington ground squirrel	*Urocitellus washingtoni*
red squirrel	*Tamiasciurus hudsonicus*
Douglas squirrel	*Tamiasciurus douglasii*
northern flying squirrel	*Glaucomys sabrinus*
Humboldt's flying squirrel	*Glaucomys oregonensis*
wolverine	*Gulo gulo*
painted turtle	*Chrysemys picta*
California mountain kingsnake	*Lampropeltis zonata*

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-20-010 (Order 21-196), § 220-200-100, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-13-032 (Order 21-60), § 220-200-100, filed 6/10/21, effective 7/11/21. Statutory Authority:

RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 18-17-153 (Order 18-207), § 220-200-100, filed 8/21/18, effective 9/21/18. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-20-030 (Order 17-254), § 220-200-100, filed 9/27/17, effective 10/28/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-200-100, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-02-084 (Order 17-02), § 232-12-011, filed 1/4/17, effective 2/4/17; WSR 15-10-021 (Order 14-95), § 232-12-011, filed 4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 08-03-068 (Order 08-09), § 232-12-011, filed 1/14/08, effective 2/14/08; WSR 06-04-066 (Order 06-09), § 232-12-011, filed 1/30/06, effective 3/2/06. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR 02-11-069 (Order 02-98), § 232-12-011, filed 5/10/02, effective 6/10/02. Statutory Authority: RCW 77.12.047. WSR 02-08-048 (Order 02-53), § 232-12-011, filed 3/29/02, effective 5/1/02; WSR 00-17-106 (Order 00-149), § 232-12-011, filed 8/16/00, effective 9/16/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770. WSR 00-10-001 (Order 00-47), § 232-12-011, filed 4/19/00, effective 5/20/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-04-017 (Order 00-05), § 232-12-011, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-011, filed 11/6/98, effective 12/7/98. Statutory Authority: RCW 77.12.040. WSR 98-10-021 (Order 98-71), § 232-12-011, filed 4/22/98, effective 5/23/98. Statutory Authority: RCW 77.12.040 and 75.08.080. WSR 98-06-031, § 232-12-011, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 77.12.020. WSR 97-18-019 (Order 97-167), § 232-12-011, filed 8/25/97, effective 9/25/97. Statutory Authority: RCW 77.12.040, 77.12.020, 77.12.030 and 77.32.220. WSR 97-12-048, § 232-12-011, filed 6/2/97, effective 7/3/97. Statutory Authority: RCW 77.12.020. WSR 93-21-027 (Order 615), § 232-12-011, filed 10/14/93, effective 11/14/93; WSR 90-11-065 (Order 441), § 232-12-011, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 77.12.040. WSR 89-11-061 (Order 392), § 232-12-011, filed 5/18/89; WSR 82-19-026 (Order 192), § 232-12-011, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-011, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-011, filed 6/1/81.]

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 21-20-010, filed 9/23/21, effective 10/24/21)

WAC 220-610-010 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
Oregon vesper sparrow	*Pooecetes gramineus affinis*
pygmy rabbit	*Brachylagus idahoensis*
fisher	*Pekania pennanti*
gray wolf	*Canis lupus*
grizzly bear	*Ursus arctos*

Common Name	Scientific Name
killer whale	*Orcinus orca*
sei whale	*Balaenoptera borealis*
fin whale	*Balaenoptera physalus*
blue whale	*Balaenoptera musculus*
humpback whale	*Megaptera novaeangliae*
North Pacific right whale	*Eubalaena japonica*
sperm whale	*Physeter macrocephalus*
~~Columbian white-tailed deer~~	~~*Odocoileus virginianus leucurus*~~
woodland caribou	*Rangifer tarandus caribou*
Columbian sharp-tailed grouse	*Tympanuchus phasianellus columbianus*
sandhill crane	*Grus canadensis*
snowy plover	*Charadrius nivosus*
upland sandpiper	*Bartramia longicauda*
spotted owl	*Strix occidentalis*
western pond turtle	*Clemmys marmorata*
leatherback sea turtle	*Dermochelys coriacea*
mardon skipper	*Polites mardon*
Oregon silverspot butterfly	*Speyeria zerene hippolyta*
Oregon spotted frog	*Rana pretiosa*
northern leopard frog	*Rana pipiens*
Taylor's checkerspot	*Euphydryas editha taylori*
Streaked horned lark	*Eremophila alpestris strigata*
Tufted puffin	*Fratercula cirrhata*
North American lynx	*Lynx canadensis*
marbled murrelet	*Brachyramphus marmoratus*
Loggerhead sea turtle	*Caretta caretta*
Yellow-billed cuckoo	*Coccyzus americanus*
Pinto abalone	*Haliotis kamtschatkana*
Greater sage grouse	*Centrocercus urophasianus*
Ferruginous hawk	*Buteo regalis*
Cascade red fox	*Vulpes vulpes cascadenis*

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-20-010 (Order 21-196), § 220-610-010, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-13-032 (Order 21-60), § 220-610-010, filed 6/10/21, effective 7/11/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-07-019 (Order 21-15), § 220-610-010, filed 3/5/21, effective 4/5/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 19-13-013 (Order 18-120), § 220-610-010, filed 6/7/19, effective 7/8/19; WSR 18-17-153 (Order 18-207), § 220-610-010, filed 8/21/18, effective 9/21/18. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-20-030 (Order 17-254), § 220-610-010, filed 9/27/17, effective 10/28/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and

77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-610-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-02-084 (Order 17-02), § 232-12-014, filed 1/4/17, effective 2/4/17; WSR 16-11-023 (Order 16-84), § 232-12-014, filed 5/6/16, effective 6/6/16; WSR 15-10-022 (Order 14-95), § 232-12-014, filed 4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 06-04-066 (Order 06-09), § 232-12-014, filed 1/30/06, effective 3/2/06; WSR 04-11-036 (Order 04-98), § 232-12-014, filed 5/12/04, effective 6/12/04. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR 02-11-069 (Order 02-98), § 232-12-014, filed 5/10/02, effective 6/10/02. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-04-017 (Order 00-05), § 232-12-014, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-014, filed 11/6/98, effective 12/7/98; WSR 97-18-019 (Order 97-167), § 232-12-014, filed 8/25/97, effective 9/25/97; WSR 93-21-026 (Order 616), § 232-12-014, filed 10/14/93, effective 11/14/93. Statutory Authority: RCW 77.12.020(6). WSR 88-05-032 (Order 305), § 232-12-014, filed 2/12/88. Statutory Authority: RCW 77.12.040. WSR 82-19-026 (Order 192), § 232-12-014, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-014, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-014, filed 6/1/81.]

WSR 23-01-133
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed December 20, 2022, 5:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-067.

Title of Rule and Other Identifying Information: Multiple health profession fee amendments, including WAC 246-803-990, 246-809-990, 246-810-990, 246-815-990, 246-817-990, 246-817-99005, 246-828-990, 246-845-990, 246-915-990, 246-915-99005, 246-930-990, and 246-980-990. Amendments to fee rates are being proposed by the department of health (department) for the following professions: Acupuncturist or acupuncture and Eastern medicine practitioner, licensed mental health counselor, licensed advanced social worker and licensed independent clinical social worker, certified counselor, certified adviser, registered agency-affiliated counselor (excluding interns), dental hygienist, dentist, registered dental assistant, certified dental anesthesia assistant, licensed expanded function dental auxiliary, audiologist, speech-language pathologist, hearing aid specialist, speech-language pathology assistant, nursing pool operator, physical therapist, physical therapist assistant, sex offender treatment provider, affiliate treatment provider certificate, and home care aide. Additional technical updates are proposed to ensure clarity and consistency.

Hearing Location(s): On January 24, 2023, at 9:00 a.m. The department is holding this hearing via Zoom only. Please register in advance for this hearing at https://us02web.zoom.us/webinar/register/WN_zV_6IEypTqGLAWA4cAjMPA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: January 25, 2023.

Submit Written Comments to: Heather Cantrell, P.O. Box 47850, Olympia, WA 98504-7850, email HSQAFeeRules@doh.wa.gov, https://fortress.wa.gov/doh/policyreview, by January 23, 2023.

Assistance for Persons with Disabilities: Contact Heather Cantrell, phone 360-236-4637, TTY 711, email HSQAFeeRules@doh.wa.gov, by January 16, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.250 requires that the costs of licensing each profession be fully borne by members of that profession. The office of financial management also requires professions to maintain a reasonable cash reserve to cover fluctuations in cash flow and operating expenses. These changes are needed to ensure the department is in line with RCW 43.70.250 and the fees set are sufficient to recover the costs of licensing the professions. These changes will also address the petition from the Washington acupuncture and Eastern medicine association (WAEMA) requesting the department lower the licensure fees for acupuncture and Eastern medicine practitioners. The department is also proposing modifications in rule language for clarity and consistency.

Reasons Supporting Proposal: Assessments of fund balances were performed to determine if the fund balances were projected to have either too much or too little to maintain levels. These adjustments are needed to maintain the appropriate balance amounts as identified in the assessment. RCW 43.70.250 requires that the costs of licensing each profession be fully borne by members of the profession.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, and 43.70.280.

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: Heather Cantrell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4637; Implementation: Shawna Fox, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4700; and Enforcement: Blake Maresh,111 Israel Road S.E., Tumwater, WA 98501, 360-236-4700.

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. As defined in RCW 34.05.328 (5)(b), the department has determined that no significant analysis is required because the revisions are to set or adjust fees, correct, or clarify language without changing the effect of the rule.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; 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: As defined in RCW 34.05.310 (4)(f), the department has determined that no small business economic impact statement is required because the revisions are to set or adjust fees or clarify language under RCW 34.05.310 (4)(d).

Scope of exemption for rule proposal:

Is fully exempt.

December 20, 2022
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4235.1

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-990 Acupuncturist or acupuncture and Eastern medicine practitioner fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC((~~, Part 2~~)).

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
License application	((~~$100.00~~)) $60.00
License renewal	((~~196.00~~)) 60.00

Title of Fee	Fee
Inactive license renewal	50.00
Late renewal penalty	((~~105.00~~)) 50.00
Expired license reissuance	50.00
Expired inactive license reissuance	50.00
Duplicate license	15.00
Certification of license	25.00
Acupuncture or Eastern medicine training program application	500.00
UW library access fee	9.00

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-990, filed 4/8/21, effective 5/9/21. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-990, filed 8/22/11, effective 9/22/11.]

OTS-4236.1

AMENDATORY SECTION (Amending WSR 21-20-030, filed 9/24/21, effective 10/25/21)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Except for a probationary license as described in WAC 246-809-095, a license must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than six times, except as provided in RCW 18.225.145.

(3) The following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	$290.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed marriage and family therapy associate	

Title	Fee
Original application	
Application	65.00
UW online access fee (HEAL-WA)	16.00
Renewal	
Renewal	50.00
UW online access fee (HEAL-WA)	16.00
Late renewal penalty	50.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application	95.00
Initial license	80.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((~~90.00~~)) 125.00
Late renewal penalty	((~~50.00~~)) 65.00
Expired license reissuance	65.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor associate	
Original application	
Application	35.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	((~~100.00~~)) 170.00
((~~Initial license~~	~~100.00~~))
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((~~100.00~~)) 70.00
Late renewal penalty	50.00
Expired license reissuance	72.50

Title	Fee
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	65.00
Late renewal penalty	30.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker associate and licensed independent clinical social worker associate	
Original application	
Application	35.00
UW online access fee (HEAL-WA)*	16.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
UW online access fee (HEAL-WA)*	16.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00

* Surcharge applies to independent clinical social worker associate only.

(4) For a probationary license as described under WAC 246-809-095, the following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	$290.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application and initial license	175.00
Active license renewal	
Renewal	90.00
Late renewal penalty	50.00
Expired license reissuance	65.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	200.00
Active license renewal	

Title	Fee
Renewal	100.00
Late renewal penalty	50.00
Expired license reissuance	72.50
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 18.225.040, 18.205.060, and 2021 c 57; RCW 18.225.145, 18.205.095. WSR 21-20-030, § 246-809-990, filed 9/24/21, effective 10/25/21. Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-809-990, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 18-01-098, § 246-809-990, filed 12/18/17, effective 4/1/18. Statutory Authority: RCW 43.70.110, 43.70.280 and 18.225.145. WSR 15-19-149, § 246-809-990, filed 9/22/15, effective 1/1/16. Statutory Authority: RCW 18.130.250, 18.225.170, 43.70.110, and 43.70.250. WSR 13-24-097, § 246-809-990, filed 12/3/13, effective 2/1/14. Statutory Authority: RCW 43.70.110 (3)(c) and 43.70.250. WSR 12-19-088, § 246-809-990, filed 9/18/12, effective 11/1/12. Statutory Authority: RCW 43.70.110 and 43.70.112. WSR 11-19-098, § 246-809-990, filed 9/20/11, effective 1/1/12. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-809-990, filed 9/16/10, effective 10/15/10. Statutory Authority: Chapter 18.225 RCW. WSR 09-15-039, § 246-809-990, filed 7/8/09, effective 7/8/09. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-809-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-809-990, filed 5/20/05, effective 7/1/05. Statutory Authority: 2001 c 251, RCW 43.70.250. WSR 01-17-113, § 246-809-990, filed 8/22/01, effective 9/22/01.]

OTS-4237.1

AMENDATORY SECTION (Amending WSR 21-16-002, filed 7/22/21, effective 11/1/21)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, a counselor must renew their credential every year on the practitioner's birthday.

(2) Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnotherapist:	
Application and registration	$155.00
Renewal	$80.00
Late renewal penalty	$75.00
Expired registration reissuance	$75.00
Duplicate registration	$10.00

Title	Fee
Verification of registration	$25.00
Certified counselor:	
Application and certification	((~~$345.00~~)) $680.00
Examination or reexamination	$85.00
Renewal	((~~$305.00~~)) $800.00
Late renewal penalty	((~~$155.00~~)) $300.00
Expired credential reissuance	$100.00
Duplicate credential	$10.00
Verification of credential	$25.00
Certified adviser:	
Application and certification	((~~$285.00~~)) $620.00
Examination or reexamination	$85.00
Renewal	((~~$250.00~~)) $745.00
Late renewal penalty	((~~$125.00~~)) $300.00
Expired credential reissuance	$100.00
Duplicate credential	$10.00
Verification of credential	$25.00
Registered agency affiliated counselor:	
Application and registration	((~~$90.00~~)) $175.00
Renewal	((~~$75.00~~)) $185.00
Late renewal penalty	((~~$50.00~~)) $95.00
Expired registration reissuance	$50.00
Duplicate registration	$10.00
Verification of registration	$25.00

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 21-16-002, § 246-810-990, filed 7/22/21, effective 11/1/21; WSR 18-01-098, § 246-810-990, filed 12/18/17, effective 4/1/18. Statutory Authority: RCW 43.70.250, 18.19.050, 43.70.110 and 2013 c 4. WSR 14-07-095, § 246-810-990, filed 3/18/14, effective 7/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-810-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.19.050 and chapter 18.19 RCW. WSR 09-15-041, § 246-810-990, filed 7/8/09, effective 7/8/09. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-810-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 18.19.050. WSR 06-08-106, § 246-810-990, filed 4/5/06, effective 5/6/06. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-810-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-810-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-810-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.19.050(1). WSR 97-17-113, § 246-810-990, filed 8/20/97, effec-

tive 9/20/97. Statutory Authority: Chapter 18.19 RCW. WSR 96-08-069, § 246-810-990, filed 4/3/96, effective 5/4/96. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-810-990, filed 6/24/93, effective 7/25/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-810-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-18-039 (Order 084), § 308-190-010, filed 8/29/90, effective 9/29/90; WSR 90-04-094 (Order 029), § 308-190-010, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-033 (Order PM 669), § 308-190-010, filed 8/27/87.]

OTS-4238.1

AMENDATORY SECTION (Amending WSR 18-21-141, filed 10/19/18, effective 11/19/18)

WAC 246-815-990 Dental hygiene fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC((~~, Part 2~~)).

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application examination and reexamination. .	$100.00
Renewal.	((~~50.00~~)) 70.00
Late renewal penalty.	50.00
Expired license reissuance.	50.00
Credentialing application.	100.00
Limited license application.	100.00
Limited license renewal.	((~~50.00~~)) 70.00
Limited license late renewal penalty.	50.00
Expired limited license reissuance.	50.00
Duplicate license.	15.00
Verification of license.	25.00
Education program evaluation.	200.00

[Statutory Authority: RCW 18.29.210, 43.70.280, and chapter 18.29 RCW. WSR 18-21-141, § 246-815-990, filed 10/19/18, effective 11/19/18. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-815-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-815-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 05-01-018, § 246-815-990, filed 12/2/04, effective 3/22/05; WSR 03-07-095, § 246-815-990, filed 3/19/03, effective 7/1/03. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-815-990, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.29 RCW and RCW 18.20.150(4). WSR 95-16-102, § 246-815-990, filed 8/1/95, effective 9/1/95. Statutory Authority: RCW 43.70.250. WSR 94-02-059, § 246-815-990, filed 1/3/94, effective 3/1/94. Statutory Authority: RCW 43.70.250 and 1993 c 323. WSR 93-16-073, §

246-815-990, filed 8/2/93, effective 9/2/93. Statutory Authority: RCW 43.70.250. WSR 91-13-002 (Order 173), § 246-815-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-815-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-25-065, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-10-028 (Order PM 650), § 308-25-065, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-25-065, filed 8/10/83. Formerly WAC 308-25-060.]

OTS-4239.1

AMENDATORY SECTION (Amending WSR 15-07-004, filed 3/6/15, effective 4/6/15)

WAC 246-817-990 Dentist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC((~~, Part 2~~)), except faculty and resident licenses.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC((~~, Part 2~~)).

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application by examination*	
Initial application	$500.00
Original application - Without examination	
Initial application	500.00
Initial license	500.00
Faculty license application	500.00
Resident license application	115.00
Active license renewal:	
Renewal	((~~350.00~~)) 365.00
Surcharge - Impaired dentist	50.00
Late renewal penalty	((~~288.00~~)) 185.00
Expired license reissuance	300.00
Inactive license renewal:	
Renewal	125.00
Surcharge - Impaired dentist	50.00
Late renewal penalty	50.00
Retired active license renewal	
Renewal	150.00
Surcharge - Impaired dentist	50.00
Late renewal penalty	75.00
Duplicate license	15.00
Certification of license	25.00
Anesthesia permit	

Title of Fee	Fee
Initial application	150.00
Renewal - (Three-year renewal cycle)	((~~150.00~~)) 160.00
Late renewal penalty	((~~75.00~~)) 80.00
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

[Statutory Authority: RCW 18.130.250, 43.70.250 and 18.32.534. WSR 15-07-004, § 246-817-990, filed 3/6/15, effective 4/6/15. Statutory Authority: RCW 43.70.250, 43.70.280, and 2013 c 129. WSR 13-21-069, § 246-817-990, filed 10/16/13, effective 1/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-817-990, filed 9/16/10, effective 10/15/10. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-817-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-817-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.32.0365 and 43.70.250. WSR 01-11-166, § 246-817-990, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-817-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-817-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.040. WSR 95-16-122, § 246-817-990, filed 8/2/95, effective 9/1/95.]

OTS-4240.1

AMENDATORY SECTION (Amending WSR 12-24-015, filed 11/27/12, effective 7/1/13)

WAC 246-817-99005 Dental assistant, dental anesthesia assistant, and expanded function dental auxiliary fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC((~~, Part 2~~)).

(2) The following nonrefundable fees will be charged for dental assistant, dental anesthesia assistant, and expanded function dental auxiliary credentials:

Title of Fee - Dental Professionals	Fee
Registered dental assistant application	$40.00
Registered dental assistant renewal	((~~21.00~~)) 25.00
Registered dental assistant late renewal	((~~21.00~~)) 25.00
Registered dental assistant expired reactivation	20.00

Title of Fee - Dental Professionals	Fee
Certified dental anesthesia assistant application	100.00
Certified dental anesthesia assistant renewal	((~~75.00~~)) 85.00
Certified dental anesthesia assistant late renewal	50.00
Certified dental anesthesia assistant expired reactivation	75.00
Licensed expanded function dental auxiliary application	175.00
Licensed expanded function dental auxiliary renewal	((~~160.00~~)) 165.00
Licensed expanded function dental auxiliary late renewal	((~~80.00~~)) 85.00
Licensed expanded function dental auxiliary expired reactivation	50.00
Duplicate credential	15.00
Certification of credential	25.00

[Statutory Authority: 2012 c 208, 2012 c 23, 2012 c 137, 2012 c 153, RCW 43.70.110, and 43.70.250. WSR 12-24-015, § 246-817-99005, filed 11/27/12, effective 7/1/13. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-817-99005, filed 9/16/10, effective 10/15/10. Statutory Authority: RCW 43.70.250. WSR 08-13-069, § 246-817-99005, filed 6/13/08, effective 7/1/08.]

OTS-4241.1

AMENDATORY SECTION (Amending WSR 22-13-103, filed 6/15/22, effective 8/1/22)

WAC 246-828-990 Hearing aid specialist, audiologist, speech-language pathologist, and speech-language pathology assistant fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in WAC 246-12-030.

(2) Practitioners must pay the following nonrefundable fees:

Audiologist or Speech-Language Pathologist	
Fee Type:	**Fee**
Interim permit	
Application	$165.00
Permit	140.00
Initial license	
Application and license	((~~110.00~~)) 175.00
((~~License~~	~~95.00~~))
HEAL-WA* surcharge	16.00
Active license renewal	

Audiologist or Speech-Language Pathologist

Fee Type:	Fee
Renewal	((~~75.00~~)) 45.00
Late renewal penalty	((~~50.00~~)) 45.00
HEAL-WA* surcharge	16.00
Expired license reissuance	140.00
Inactive license	
Renewal	60.00
Expired license reissuance	90.00
Verification of license	25.00
Duplicate license	10.00

* Surcharge applies to speech-language pathologists only. HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

Hearing Aid Specialist

Fee Type:	Fee
Initial license	
Application and license	((~~$110.00~~)) $175.00
((~~License~~	~~95.00~~))
Hearing aid specialist practical exam for Washington hearing society applicants	350.00
Active license renewal	
Renewal	((~~75.00~~)) 45.00
Late renewal penalty	((~~50.00~~)) 45.00
Expired license reissuance	136.00
Inactive license renewal	
Renewal	56.00
Expired license reissuance	86.00
Verification of license	25.00
Duplicate license	10.00

Speech-Language Pathology Assistant

Fee Type:	Fee
Initial credential	
Application	((~~$85.00~~)) $55.00
Active credential renewal	
Renewal	((~~45.00~~)) 15.00
Late renewal penalty	((~~45.00~~)) 15.00
Expired credential reissuance	50.00
Inactive credential renewal	
Renewal	50.00
Expired credential reissuance	50.00

Speech-Language Pathology Assistant	
Fee Type:	**Fee**
Verification of credential	25.00
Duplicate credential	10.00

[Statutory Authority: RCW 18.35.161 and 43.70.250. WSR 22-13-103, § 246-828-990, filed 6/15/22, effective 8/1/22. Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 16-07-087, § 246-828-990, filed 3/17/16, effective 7/1/16. Statutory Authority: RCW 43.70.250, 43.70.280 and 2014 c 189. WSR 15-16-020, § 246-828-990, filed 7/24/15, effective 8/24/15. Statutory Authority: RCW 43.70.280 and 2013 c 249. WSR 13-21-077, § 246-828-990, filed 10/17/13, effective 1/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-828-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-990, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-828-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-828-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.35.161. WSR 04-02-068, § 246-828-990, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-828-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.35.090 and 43.70.250. WSR 97-04-043, § 246-828-990, filed 1/31/97, effective 1/31/97. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017, § 246-828-990, filed 9/7/95, effective 10/8/95. Statutory Authority: RCW 43.70.250. WSR 94-08-038, § 246-828-990, filed 3/31/94, effective 5/1/94; WSR 93-14-011, § 246-828-990, filed 6/24/93, effective 7/25/93; WSR 91-13-002 (Order 173), § 246-828-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-11-030 (Order 139), recodified as § 246-828-990, filed 5/8/91, effective 6/8/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-50-440, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-031 (Order PM 667), § 308-50-440, filed 8/27/87.]

OTS-4242.1

AMENDATORY SECTION (Amending WSR 17-24-014 and 17-22-088, filed 11/27/17 and 10/27/17, effective 3/1/18)

WAC 246-845-990 Nursing pool fees and renewal cycle. (1) Registrations must be renewed every year on the ((~~practitioner's birthday~~)) date of original issuance as provided in chapter 246-12 WAC((~~, Part 2~~)).

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application	$175.00
Renewal	((~~155.00~~)) 280.00

Title of Fee	Fee
Late renewal penalty	((~~80.00~~)) 140.00
Expired registration reissuance	60.00
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 17-24-014 and 17-22-088, § 246-845-990, filed 11/27/17 and 10/27/17, effective 3/1/18. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-845-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-845-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-845-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-845-990, filed 6/24/93, effective 7/25/93; WSR 91-13-002 (Order 173), § 246-845-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-845-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-310-010, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 88-20-076 (Order 784), § 308-310-010, filed 10/5/88.]

OTS-4243.1

AMENDATORY SECTION (Amending WSR 18-21-140, filed 10/19/18, effective 2/1/19)

WAC 246-915-990 Physical therapist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC((~~, Part 2~~)).

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application	
Application	((~~$65.00~~)) $80.00
Active license renewal	
License renewal	((~~75.00~~)) 100.00
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive license renewal	
License renewal	35.00
Expired license reissuance	50.00
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 18.74.510, 43.70.250, and 43.70.320. WSR 18-21-140, § 246-915-990, filed 10/19/18, effective 2/1/19. Statutory

Authority: RCW 43.70.280. WSR 15-19-149, § 246-915-990, filed 9/22/15, effective 1/1/16. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-915-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-915-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.74.073. WSR 05-09-003, § 246-915-990, filed 4/7/05, effective 5/8/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-915-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-915-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.250. WSR 91-13-002 (Order 173), § 246-915-990, filed 6/6/91, effective 7/7/91; WSR 91-05-004 (Order 128), § 246-915-990, filed 2/7/91, effective 3/10/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-915-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.24.086. WSR 87-10-028 (Order PM 650), § 308-42-075, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-42-075, filed 8/10/83. Formerly WAC 308-42-100.]

OTS-4244.1

AMENDATORY SECTION (Amending WSR 18-21-140, filed 10/19/18, effective 2/1/19)

WAC 246-915-99005 Physical therapist assistant fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC((~~, Part 2~~)).

(2) The following nonrefundable fees will be charged for physical therapist assistant:

Title of Fee	Fee
Original application	
Application	((~~$60.00~~)) $75.00
Active license renewal	
License renewal	((~~70.00~~)) 95.00
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive license renewal	
License renewal	35.00
Expired license reissuance	50.00
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 18.74.510, 43.70.250, and 43.70.320. WSR 18-21-140, § 246-915-99005, filed 10/19/18, effective 2/1/19. Statutory Authority: RCW 43.70.280. WSR 15-19-149, § 246-915-99005, filed 9/22/15, effective 1/1/16. Statutory Authority: RCW 43.70.250. WSR 08-13-068, § 246-915-99005, filed 6/13/08, effective 7/1/08.]

OTS-4245.1

AMENDATORY SECTION (Amending WSR 21-13-079, filed 6/15/21, effective 7/16/21)

WAC 246-930-990 Sex offender treatment provider fees and renewal cycle. (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) The following nonrefundable fees will be charged for:

Title of Fee	Fee
Sex offender treatment provider:	
Application and examination	((~~$600.00~~)) $450.00
Reexamination	250.00
Initial certification	((~~200.00~~)) 50.00
Renewal	((~~1,000.00~~)) 500.00
Inactive status	300.00
Late renewal penalty	((~~300.00~~)) 250.00
Expired certificate reissuance	300.00
Expired inactive certificate reissuance	150.00
Duplicate certificate	15.00
Verification of certification	15.00

(3) The following nonrefundable fees will be charged for affiliate treatment provider:

Title of Fee	Fee
Application and examination	((~~400.00~~)) 200.00
Reexamination	250.00
Renewal	((~~500.00~~)) 250.00
Inactive status	250.00
Late renewal penalty	((~~250.00~~)) 125.00
Expired affiliate certificate reissuance	250.00
Expired inactive affiliate certificate reissuance	100.00
Duplicate certificate	15.00

(4) Under RCW 71.09.360, fees established in this section may be waived for sex offender treatment providers contracted to provide treatment services to persons on conditional release in underserved counties as determined by the department of social and health services.

[Statutory Authority: RCW 18.155.040 and 2020 c 266, and 2020 c 76. WSR 21-13-079, § 246-930-990, filed 6/15/21, effective 7/16/21. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-930-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 18.155.040. WSR 05-12-014, § 246-930-990, filed 5/20/05, effective 6/20/05. Statutory Authority: RCW 43.70.250, [43.70.]280 and

43.70.110. WSR 05-12-012, § 246-930-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-930-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-930-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.155.040. WSR 94-13-179, § 246-930-990, filed 6/21/94, effective 7/22/94; WSR 92-12-027 (Order 275), § 246-930-990, filed 5/28/92, effective 6/28/92; WSR 91-11-063 (Order 168), § 246-930-990, filed 5/16/91, effective 6/16/91.]

OTS-4246.1

AMENDATORY SECTION (Amending WSR 16-05-021 and 15-19-150, filed 2/8/16 and 9/22/15, effective 5/1/16)

WAC 246-980-990 Home care aide certification fees. (1) Certifications must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC((~~, Part 2~~)).

(2) The following nonrefundable fees will be charged for home care aide:

Title of Fee	Fee
Application	((~~$85.00~~)) $100.00
Certification renewal	((~~85.00~~)) 100.00
Late renewal penalty	((~~30.00~~)) 50.00
Expired certification reactivation	30.00
Duplicate certification	15.00
Verification	25.00

[Statutory Authority: RCW 43.70.110, 43.70.250, 43.70.280. WSR 16-05-021 and 15-19-150, § 246-980-990, filed 2/8/16 and 9/22/15, effective 5/1/16. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-990, filed 7/20/10, effective 1/1/11.]

WSR 23-01-134
PROPOSED RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed December 20, 2022, 5:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-090.

Title of Rule and Other Identifying Information: WAC 246-840-365 Inactive and reactivating an ARNP license and 246-840-367 Expired license. The nursing care quality assurance commission (commission) is proposing amendments to inactive and expired licensure requirements for advanced registered nurse practitioners (ARNP) in response to the coronavirus disease 2019 (COVID-19) pandemic and the critical demand for health care professionals.

Hearing Location(s): On January 27, 2023, at 12:00 p.m. In order to help mitigate the transmission of COVID-19, the department of health will not provide a physical location. A virtual public hearing, without physical meeting space, will be held instead. We invite you to participate in our public rules hearing using your computer, tablet, or smartphone. Please register at https://us02web.zoom.us/meeting/register/tZUkcuGsqDoqE90Yn1EvHQ0r_Hv8T47CqXJc. After registering you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: January 27, 2023.

Submit Written Comments to: Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, email https://fortress.wa.gov/doh/policyreview, fax 360-236-4738, by January 13, 2023.

Assistance for Persons with Disabilities: Contact Jessilyn Dagum, phone 360-236-3538, fax 360-236-4738, TTY 711, email NCQAC.Rules@doh.wa.gov, by January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 246-840-365 and 246-840-367 are currently enacted under emergency rule and the commission has approved these amendments for permanent rule making.

Changes in WAC 246-840-365 and 246-840-367 are needed to remove nonevidence-based licensure requirements to license renewal for ARNP returning to active practice from inactive or expired status. The proposed rules also provide consistency with other revisions made previously to WAC 246-840-360 and 246-840-342, which also reduced licensure barriers for ARNP renewal and out-of-state endorsement. The proposed changes for these rule-making requirements include:

- For those holding an inactive ARNP license, eliminates the requirement to complete 250 hours of advanced clinical practice for each designation within the past two years, or, if the ARNP has not satisfied the advanced clinical practice requirements, eliminates the requirement to complete at least 250 hours of supervised advanced clinical practice hours and the need to obtain an interim permit to complete the practice hours.
- For ARNPs whose license has been expired for less than two years, the proposed rule removes the requirement that ARNPs who do not meet required advanced clinical practice requirements must complete 250 hours of supervised advanced clinical practice for every two years the ARNP has been out of practice and the need to obtain an interim permit to complete the practice hours.

- Housekeeping amendments that remove general citations to chapter 246-12 WAC and replace them with citations that more clearly identify the specific requirements.

The commission proposes amending these rules to make permanent changes to current rules identified as a barrier to the provision of services, both in emergency response and during regular operations. While permanent rule making is ongoing, the commission will continue to renew and update (as necessary) emergency rules applicable to ARNPs.

The commission is proposing the amendments to make permanent changes to current rules to reduce barriers to the provision of services both in emergency response and during regular operations.

Reasons Supporting Proposal: The proposed changes to WAC 246-840-365 and 246-840-367 reduce barriers to licensure and are consistent with prior revisions made to WAC 246-840-360 and 246-840-342, which removed licensure requirements for ARNP renewal and out-of-state endorsement that did not have any evidence of better practice outcomes.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.250.

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

Name of Proponent: Washington state nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jessilyn Dagum, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-3538; Enforcement: Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

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 Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email NCQAC.Rules@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).

Scope of exemption for rule proposal:

Is fully exempt.

December 20, 2022
Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality Assurance Commission

OTS-3963.2

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-365 Inactive and reactivating an ARNP license. To apply for an inactive ARNP license, an ARNP shall comply with WAC 246-12-090 or 246-12-540, if military related.

(1) An ARNP may apply for an inactive license if he or she holds an active Washington state ARNP license without sanctions or restrictions.

(2) To return to active status the ARNP:

(a) Shall meet the requirements ((~~identified in chapter 246-12 WAC, Part 4~~)) for an inactive credential for nonmilitary practitioners identified under WAC 246-12-090 through 246-12-110;

(b) Must hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;

(c) Shall submit the fee as identified under WAC 246-840-990;

(d) Shall submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1); and

(e) Shall submit evidence of ((~~thirty~~)) 30 contact hours of continuing education for each designation within the past two years((~~; and~~

~~(f) Shall submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.~~

~~(3) An ARNP applicant who does not have the required practice requirements, shall complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(4) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5)~~)).

((~~(5)~~)) (3) To regain prescriptive authority after inactive status, the applicant must meet the prescriptive authority requirements identified in WAC 246-840-410.

[Statutory Authority: RCW 18.79.110. WSR 19-08-031, § 246-840-365, filed 3/27/19, effective 4/27/19. Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-365, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-365, filed 12/11/08, effective 1/11/09. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-365, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-365, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-367 Expired license. When an ARNP license is not renewed, it is placed in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse shall:

(a) Meet the requirements ((~~of chapter 246-12 WAC, Part 2~~)) for initial and renewal credentialing of practitioners as identified under WAC 246-12-020 through 246-12-051;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

(2) ((~~Applicants who do not meet the required advanced clinical practice requirements must complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(3) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).~~

~~(4)~~)) If the ARNP license has expired for two years or more, the applicant shall:

(a) Meet the requirements ((~~of chapter 246-12 WAC, Part 2~~)) for initial and renewal credentialing of practitioners as identified under WAC 246-12-020 through 246-12-051;

(b) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(3);

(c) Submit evidence of ((~~thirty~~)) 30 contact hours of continuing education for each designation within the prior two years; and

(d) ((~~Submit evidence of two hundred fifty hours of advanced clinical practice completed within the prior two years; and~~

~~(e) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.~~

~~(5) If the applicant does not meet the required advanced clinical practice hours, the applicant shall obtain an ARNP interim permit consistent with the requirements for supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).~~)) Meet the prescriptive authority requirements identified in WAC 246-840-410 if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.

[Statutory Authority: RCW 18.79.110. WSR 19-08-031, § 246-840-367, filed 3/27/19, effective 4/27/19. Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-367, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-367, filed 12/11/08, effective 1/11/09.]

WSR 23-01-140
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed December 21, 2022, 9:17 a.m.]

This memo serves as notice that the dental quality assurance commission (commission) is withdrawing the CR-102 for WAC 246-817-701 through 246-817-790 concerning administration of anesthetic agents for dental procedures. The commission was proposing rule amendments to establish new and updated requirements for the administration of anesthetic agents for dental procedures. The CR-102 was filed November 10, 2022, and published under WSR 22-23-076.

The commission is withdrawing this CR-102 because of comments received from interested parties that could result in substantive changes to the rules as currently drafted. The commission wants to further contemplate the suggested changes to amend the rules to best ensure patient safety.

Individuals requiring information on this rule should contact Amber Freeberg, program manager, at 360-236-4893.

Tami Thompson
Regulatory Affairs Manager

WSR 23-01-143
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed December 21, 2022, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-103.

Title of Rule and Other Identifying Information: Update Title 308 WAC chapters to clarify business practices, procedures, and guidelines as it pertains to financial responsibility hearings.

Hearing Location(s): On January 25, 2023, at 11:00 a.m. Join Zoom meeting https://dol-wa.zoom.us/j/89768286169?pwd=QS9neTBWeHJzemI4dm9jYUJWRDI5UT09, Meeting ID 897 6828 6169, Passcode 281890; one-tap mobile, +12532158782,,89768286169#,,,,*281890# US (Tacoma); or dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 897 6828 6169, Passcode 281890. Find your local number https://dol-wa.zoom.us/u/kevHQ3imEw. If you are having trouble accessing the public hearing at the time of the hearing, please call 360-902-3846.

Date of Intended Adoption: January 26, 2023.

Submit Written Comments to: Ellis Starrett, P.O. Box 9020, Olympia, WA 98507-9020, email rulescoordinator@dol.wa.gov, 360-902-3846.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update procedures, guidelines, and language of the financial responsibility judgment hearings.

Reasons Supporting Proposal: This proposal will provide clearer guidance that will align with the intent of chapter 46.29 RCW.

Statutory Authority for Adoption: RCW 34.05.030 (2)(b) and 46.01.110 Rule-making authority, 46.01.040(10) Powers, duties, and functions relating to motor vehicle laws vested in department, subsection (10), the administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW.

Statute Being Implemented: Not applicable.

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: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Colton Myersi, 1125 Washington Street S.E., Olympia, WA 98504, 360-634-5094; Implementation and Enforcement: Marta Reinhold, 1125 Washington Street S.E., Olympia, WA 98504, 360-664-1488.

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

A cost-benefit analysis is not required under RCW 34.05.328. Proposed rule making is an administrating language clean up and does not impose any costs.

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. These changes represent administrative changes that do not impose any cost on businesses.

December 21, 2022

Ellis Starrett
Rule and Policy Manager

OTS-4234.2

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-004 Presiding officer. Hearings((~~,~~)) and informal interviews ((~~and document reviews~~)) held under this chapter shall be conducted by a presiding officer who shall be delegated the authority to conduct such hearings((~~, informal document reviews~~)) and informal interviews by the director. The presiding officer shall have the powers and duties provided by chapter 34.05 RCW, and may be authorized by the director to make final determinations regarding the issuance, denial, cancellation, or suspension or revocation of a driver's license or a nonresident's privilege to drive. If the presiding officer is authorized by the director to make final determinations, the decision shall be final.

If the presiding officer is not authorized to make final decisions the results shall be subject to review by the director or his ((~~or~~)), her, or their designated representative. The director or his ((~~or~~)), her, or their designated representative upon review of the records, the evidence, and the findings of the presiding officer shall promptly render his ((~~or~~)), her, or their decision sustaining, modifying, or reversing any order entered by the department.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-004, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 96-20-089, filed 10/1/96, effective 11/1/96)

WAC 308-102-006 Correspondence address. All correspondence shall be addressed to the Department of Licensing, Hearings and Interviews Section, P.O. Box ((~~9030~~)) 9031, Olympia, WA 98507-((~~9030~~)) 9031, or sent by facsimile transmission (fax) to ((~~(360) 664-8492, attention Hearings and Interviews Section~~)) 360-570-4950, or emailed to hearings@dol.wa.gov. Any correspondence must include the driver's full name and license number, or case number if assigned.

[Statutory Authority: RCW 46.01.110 and 46.20.205. WSR 96-20-089, § 308-102-006, filed 10/1/96, effective 11/1/96. Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-006, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-008 Property damage threshold. In the case of property damage, the provisions of the Financial Responsibility Act shall apply where the damage to the property of any one person is of an apparent extent equal to or greater than ((~~five hundred dollars~~)) $1,000. In the event that this amount differs from that established by the chief of the Washington state patrol under the provisions of RCW 46.52.030, the amount established ((~~by the chief of the Washington state patrol shall prevail~~)) in WAC 446-85-010.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-008, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-010 Order fixing amount of security. Whenever under the Financial Responsibility Act, the department fixes the amount of the security required of any person it shall ((~~forthwith~~)) notify the person of the amount so required by mailing to the ((~~person at his or her~~)) person's address ((~~as shown by department records~~)) of record, a notice of security stating the amount of the security required, the date by which the security must be posted, ((~~which shall be not less than twenty nor more than sixty days following the date of mailing,~~)) and ((~~which notice shall contain~~)) containing instructions ((~~pertaining to the filing of~~)) on how to file the proof of financial responsibility. The date by which the security must be posted shall not be less than 20 nor more than 60 days following the date of mailing.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-010, filed 3/25/92, effective 4/25/92; Order 103-MV, § 308-102-010, filed 8/17/71; Order 101-MV, § 308-102-010, filed 3/8/71.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-011 Amount of security—How determined. The department shall determine the amount of security deposit required of any person upon the basis of reports submitted, such reports to be in a form provided by the department which must be completed by the parties who sustain a loss, or their successors in interest, or upon the basis of other information or evidence received by the department which provides sufficiently specific information for the department to enter its decision concerning the amount of security with reasonable certainty: Provided, That a fatality or fatalities will create the presumption that the amount shall be for the full amount of the limit provided by RCW 46.29.090 in reference to the acceptable limits of a policy or bond. Failure to respond to a request for specific information within ((~~thirty~~)) 30 days will allow the department to conclude that no claim is being pursued.

The department shall determine the amount of security deposit required by a person based on the reports submitted to the department or based on other information or evidence received by the department which provides sufficiently specific information for the department to enter its decision concerning the amount of security with reasonable certainty. Any submitted reports must be in a form provided by the department and must be completed by the parties who sustained the loss or their successor in interest. A fatality or fatalities will create the presumption that the amount shall be for the full amount of the limit provided by RCW 46.29.090 in reference to the acceptable limits of a policy or a bond. Failure to respond to a request for specific information within 30 days will allow the department to conclude that no claim is being pursued.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-011, filed 3/25/92, effective 4/25/92; Order 228, § 308-102-011, filed 12/31/74.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-020 Notice of intent to suspend. (1) The department shall mail a notice of intent to suspend:

(a) At the time the department mails a notice of security((~~, it shall also mail a notice of intent to suspend.~~)); or

(b) At the time the department receives all required certifications from a judgment creditor pursuant to RCW 46.29.230.

(2) The notice of intent to suspend sent with the notice of security under subsection (1)(a) of this section shall give notice to the person required to post security of the department's intention to suspend the person's driving privilege, the effective date of such suspension to be not less than ((~~twenty~~)) 20 and not more than ((~~sixty~~)) 60 days from the date of mailing. The grounds stated in the notice shall ((~~be: "~~)) communicate that failure to deposit the security ((~~requirements~~)) amount and ((~~to~~)) file proof of financial responsibility((~~."~~)) is the basis for the license suspension. A person receiving ((~~a~~)) this notice of intent to suspend may apply for administrative ((~~review~~)) relief under WAC 308-102-100. Failure to apply for administrative ((~~review~~)) relief within the time limits of WAC 308-102-100 shall constitute a default and shall result in the suspension becoming effective on the date indicated on the notice of intent to suspend and the loss of the right to further administrative ((~~review~~)) relief. In the event the person so notified posts the security and files proof of financial responsibility for the future within the time allowed for such purposes, no suspension shall be ((~~effected~~)) affected. ((~~The department may extend the effective date of the suspension where it appears the person suspended has made a bona fide attempt to file proof of financial responsibility for the future within the time permitted and will in all probability be able to do so within thirty days.~~))

(3) The notice of intent to suspend, sent at the time the department receives all required certifications from a judgment creditor pursuant to RCW 46.29.230, shall give notice to the person of the department's intention to suspend the person's driving privilege. The effective date of the suspension shall not be less than 20 nor more

than 60 days from the date of mailing. The notice shall advise the person that the suspension is required under chapter 46.29 RCW and shall include:

(a) The name of the court where the civil judgment has been entered;

(b) The dollar amount of the judgment;

(c) The date of the collision of theft of motor vehicle collision; and

(d) The cause number.

A person receiving this notice of intent may contest the proposed action by formal hearing under WAC 308-102-200(2). Failure to submit a request to contest the suspension within 15 days of the notice of intent shall constitute a default and shall result in the suspension becoming effective on the date indicated on the notice of intent to suspend. In the event the department receives a certified copy or abstract of judgment indicating the default judgment has been resolved, no suspension shall occur.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-020, filed 3/25/92, effective 4/25/92; Order 103-MV, § 308-102-020, filed 8/17/71; Order 101-MV, § 308-102-020, filed 3/8/71.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-085 Agreements for payment of damages—Effect on administrative proceedings. ((~~An individual~~)) A person that submits a written payment agreement to the department in accordance with RCW 46.29.140, waives any further review to the validity of the department's action. Any pending ((~~document review,~~)) administrative interview((~~,~~)) or formal hearing shall be canceled upon receipt of the written payment agreement.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-085, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-100 Request for informal settlement—Effect, timeliness. Pursuant to WAC 10-08-230, regarding informal settlements, any person notified of the requirement of depositing security and suspension for failure to deposit security under the Financial Responsibility Act, chapter 46.29 RCW, may within ((~~fifteen~~)) 15 days of the date of the notice of intent to suspend his ((~~or~~)), her, or their driver's license or nonresident privilege to drive request an interview before a presiding officer. The request ((~~may be oral or~~)) must be written((~~, but if made orally, such request must be confirmed by the person in writing within five days following such request~~)).

Upon receipt of a timely request for interview, the suspension shall be stayed pending the outcome of the document review or interview.

If the person does not request an interview within the time specified above, or fails to attend an interview scheduled at the person's request, said person shall have waived his ((~~or~~)), her, or their right to any further administrative remedies, including the formal hearing, and the suspension of the person's driver's license or driving privilege shall become effective. If the person shows good cause as to why they failed to appear, the default may be vacated.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-100, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-100, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-100, filed 3/12/86; Order 466-DOL, § 308-102-100, filed 12/30/77; Order MV-302, § 308-102-100, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-140 Informal settlement—Interview. The interview only applies to notices to suspend arising under WAC 308-102-020(2). The interview shall be held before a presiding officer who, in making the decision, shall consider any of the following:

(1) Oral testimony or argument offered by, for, or on behalf of the person seeking review by their legal representative;

(2) Affidavits from the individuals claiming the loss and/or from a representative of any insurance carrier that has a subrogated interest therein;

(3) Investigating officer's reports of the accident in question;

(4) Court records of convictions ((~~or bail forfeitures~~)) submitted to the department of licensing and arising out of the accident in question;

(5) The department's financial responsibility files concerning the person seeking review;

(6) Affidavits or witness testimony ((~~of~~)) offered by the person seeking review; and

(7) Any other evidence relevant to the issues to be determined.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-140, filed 3/25/92, effective 4/25/92; Order 466-DOL, § 308-102-140, filed 12/30/77; Order MV-302, § 308-102-140, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-190 Informal settlement—Interview—Decision. Upon conclusion of an interview the presiding officer shall make findings on the matter under consideration and shall sustain, modify, or reverse the department's notice of intention to suspend ((~~and/or~~)), address, and confirm the amount of security required. The department shall ((~~notify the person of the presiding officer's decision and said person's~~)) send a copy of the presiding officer's decision (findings) with the notice of the decision and right to request a formal adminis-

trative hearing in writing by first class mail sent to the last address of record((~~. A copy of the presiding officer's findings shall be sent to the person with the notice of the decision and right to a formal hearing~~)), or email, provided the driver or their legal representative has consented to electronic receipt of the interview decision. Upon receipt of a timely request for formal hearing the order for the deposit of security and suspension for failure to deposit security shall ((~~be~~)) remain stayed pending the results of the hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-190, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-190, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-190, filed 3/12/86; Order MV-302, § 308-102-190, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-200 Request for adjudicative proceeding—Formal hearing. (1) Any person ((~~who is aggrieved by the interview of the department~~)) may request a formal hearing ((~~on the matter~~)) if they disagree with the presiding officer's decision following an administrative interview. The request for formal hearing must be in writing and must be addressed to the department of licensing and postmarked within ((~~fifteen~~)) 15 days following the mailing of the decision of the department to the person or the notices of suspension for failure to satisfy a judgment. Failure to make timely request for a formal hearing to the department shall be considered a withdrawal of the person's request for adjudicative proceedings and shall result in a waiver of the person's right to such hearing and the decision of the department shall become final.

(2) If a timely request for a formal hearing is made, the department shall notify the person of the time of such hearing in writing, and mail such notice to the person's last address of record, at least ((~~twenty~~)) 10 days in advance of the hearing date. In accordance with RCW 34.05.449(3), the hearing shall be by telephone or other electronic means. ((~~If in the discretion of the presiding officer an in-person hearing is necessary, the hearing shall be held within a reasonable distance of the county wherein the person resides, or, if the person is a nonresident of Washington, in the county where the accident occurred.~~)) The notice shall include the information required by RCW 34.05.434(2).

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-200, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-200, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-200, filed 3/12/86; Order 466-DOL, § 308-102-200, filed 12/30/77; Order MV-302, § 308-102-200, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-250 Issues to be determined—Formal hearing. (1) Only the following issues shall be considered at any formal hearing held on request of a person for failing to deposit sufficient security funds:

((~~(1)~~)) (a) Whether the person was the owner or driver of any motor vehicle of a type subject to registration under the motor vehicle laws of this state which was in any manner involved in an accident within this state;

((~~(2)~~)) (b) Whether the accident resulted in bodily injury or death of any person or damage to the property of any one person in an amount meeting or exceeding the property damage threshold established by WAC 308-102-008;

((~~(3)~~)) (c) Whether there is a reasonable possibility of a judgment being entered against the person in the amount required by the order of the department fixing such security;

((~~(4)~~)) (d) Whether the amount of security to be deposited, if any, is sufficient to satisfy any judgment or judgments resulting from such accident as may be recovered against the person, not to exceed the amount listed in chapter 46.29 RCW; and

((~~(5)~~)) (e) Whether the person is entitled to an exception to the requirement of security pursuant to RCW 46.29.080.

(2) The following issues shall be considered at any formal hearing held on request of a person for failure to satisfy a judgment pursuant to RCW 46.29.330; whether the department received the following from the judgment creditor:

(a) A certified copy or abstract of such judgment;

(b) A certificate of facts relative to such judgment; and

(c) Where the judgment is by default, a certified copy or abstract of that portion of the record which indicates the manner in which service of the summons was effectuated and all the measures taken to provide the defendant with timely and actual notice of the suit against him, her, or them.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-250, filed 3/25/92, effective 4/25/92; Order 467-DOL, § 308-102-250, filed 12/30/77; Order MV-302, § 308-102-250, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-255 Determination of possibility of judgment. For the purposes of WAC 308-102-250((~~(3)~~)) (1)(c), the department may presume that there is a reasonable possibility of a judgment being entered against a person if:

(1) The person was convicted of ((~~or forfeited bail for~~)) a traffic violation arising out of the accident((~~,~~)); or

(2) A law enforcement officer investigating the accident completed a report which specified that a violation of a rule of the road contributed to the accident regardless of whether a citation was issued((~~,~~)); or

(3) The person was negligent, having committed an act which a reasonably careful and prudent person would not have done under the same or similar circumstances, or failed to act in a way which a reasonably careful and prudent person would have acted under the same or similar circumstances, and such act or omission was a proximate cause of the accident.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-255, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-260 Presiding officer—Duties. (1) The presiding officer, in making his ((~~or~~)), her, or their decision at the formal hearing held on request of a person for failing to deposit security, shall consider:

((~~(1)~~)) (a) Evidence as allowed under RCW 34.05.452;

((~~(2)~~)) (b) Court records of convictions ((~~or bail forfeitures~~)) submitted to the department of licensing and arising out of the accident in question;

((~~(3)~~)) (c) Traffic collision reports completed by a police officer who investigated the accident, all reports and other information submitted to the department by the individual(s) who sustained the loss or the insurance carrier who has a subrogated interest therein, records and documents in the possession of the department of which it desires to avail itself, repair estimates, repair and medical bills, towing bills and any other reasonable accounting of a loss proximately arising from an accident or photocopies thereof; and

((~~(4)~~)) (d) Any other evidence related to the issues before the hearing which have probative value commonly accepted by reasonable, prudent persons in the conduct of their affairs.

(2) The presiding officer, in making his, her, or their decision, at the formal hearing, held at the request of a person who failed to satisfy a judgment, shall consider whether the department received all the certificates required by RCW 46.29.310.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-260, filed 3/25/92, effective 4/25/92; WSR 82-03-046 (Order 668 DOL), § 308-102-260, filed 1/19/82; Order 466-DOL, § 308-102-260, filed 12/30/77; Order MV-302, § 308-102-260, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-265 Formal hearing—Failure to appear. In the event that a final default order is entered against the person who requested a formal hearing pursuant to this chapter ((~~fails to appear at the time and place of the scheduled hearing~~)), no hearing shall be held. The case shall be remanded to the department, and the previous department order requiring security shall be affirmed: Provided, That the presiding officer:

(1) May consider evidence as to whether the amount of security to be deposited is sufficient to satisfy any judgment or judgments as may be recovered against the person, and may adjust the amount of security required accordingly; or

(2) Determine whether the department received the certificates required by RCW 46.39.330, and if not, may enter a decision to cancel the suspension.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-265, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-265, filed 3/12/86.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-290 Formal hearings—Findings, conclusions and decisions. At the conclusion of the formal hearing, the presiding officer shall, as soon as practical, ((~~make and enter~~)) issue findings of fact, conclusions of law, and enter an order as provided by RCW 34.05.461.

If the order of the department is affirmed, the department shall suspend the driver's license or nonresident driving privilege of the person required to deposit security or satisfy judgment, but the order of suspension shall carry an effective date of ((~~thirty~~)) 30 days after the date of mailing, during which time the person may comply with the terms of the order.

If the order of the department is reversed, the department shall cancel its previous order.

If the order of the department is modified, the department shall ((~~nonetheless~~)) suspend the driver's license or nonresident driving privilege of the person required to deposit security, but the order of suspension shall carry an effective date of ((~~thirty~~)) 30 days after the date of mailing, during which time the person may comply with the terms of the order.

Petitions for reconsideration, as provided by RCW 34.05.470, shall be filed with the presiding officer within ((~~ten~~)) 10 days of service of the final order. The department is deemed to have denied the petition for reconsideration if, within ((~~twenty~~)) 20 days from the date the petition is filed, the department does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-290, filed 3/25/92, effective 4/25/92; WSR 82-03-046 (Order 668 DOL), § 308-102-290, filed 1/19/82; Order MV-349, § 308-102-290, filed 1/28/76; Order MV-302, § 308-102-290, filed 3/31/75.]

WSR 23-01-144
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed December 21, 2022, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-102.

Title of Rule and Other Identifying Information: Updating responsive Title 308 WAC chapters to clarify language and reflect current business practices and guidelines.

Hearing Location(s): On January 24, 2023, at 1:00 p.m. Join Zoom meeting, https://dol-wa.zoom.us/j/87158056004?pwd=b0w5SmNyMko5ZzY3R3IzUHN6WUZ1QT09, Meeting ID 871 5805 6004, Passcode 078429; one-tap mobile +12532158782,,87158056004#,,,,*078429# US (Tacoma); or dial by your location +1 253 205 0468 US, +1 253 215 8782 US (Tacoma), Meeting ID 871 5805 6004, Passcode 078429. Find your local number https://dol-wa.zoom.us/u/kbJyhvUuCB. If you are having trouble accessing the public hearing at the time of the hearing, please call 360-902-3846.

Date of Intended Adoption: January 25, 2023.

Submit Written Comments to: Ellis Starrett, P.O. Box 9020, Olympia, WA 98507-9020, email rulescoordinator@dol.wa.gov, 360-902-3846, by January 24, 2023.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by January 16, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to provide clarifying language around acceptable processes for receipt of documents, signatures, criteria for rescheduling administrative interviews and formal hearings, and submissions of subpoena requests.

Reasons Supporting Proposal: This proposal will provide clearer language and reflect current business practices and guidelines.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, 46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department, subsection (10), the administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW.

Statute Being Implemented: Not applicable.

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: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Colton Myersi, 1125 Washington Street S.E., Olympia, WA 98504, 360-634-5094; Implementation and Enforcement: Marta Reinhold, 1125 Washington Street S.E., Olympia, WA 98504, 360-664-1488.

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

A cost-benefit analysis is not required under RCW 34.05.328. Proposed rule making is an administration clean up and does not impose any costs.

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. These changes represent administrative changes that do not impose any cost on businesses.

December 21, 2022
Ellis Starrett
Rule and Policy Manager

OTS-4161.1

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-040 Eligibility for hearing. (1) A person is eligible for a hearing whenever the department proposes an adverse action against the driving privilege and the opportunity for a hearing or an interview is required by law. A person is also eligible for a hearing in the following circumstances:

(2) **HTO stay hearings:** A habitual traffic offender is eligible for a stay hearing under RCW 46.65.060 so long as the following conditions have been met:

(a) There is an alcohol/drug assessment from a state approved treatment agency on file that indicates substance dependence, and it was completed after the last drug or alcohol related offense on the driving record;

(b) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080;

(c) If a stay has previously been denied after a hearing, there is evidence of ((~~alcoholism or drug addiction (~~))substance dependence((~~)~~)) with new treatment information from a state approved treatment agency.

(3) **HTO reinstatement hearings:** A habitual traffic offender is eligible for a reinstatement hearing if all of the following conditions have been met:

(a) At least four years have elapsed since the beginning of the habitual traffic offender revocation or if a habitual traffic offender stay has been violated, at least four years have elapsed since the date of the new revocation notice or the period of time set by the department has been satisfied;

(b) The person submits a declaration stating that he or she has not driven within two years prior to the request for a hearing. A record of any traffic infraction or conviction is conclusive evidence that a person drove within the past two years;

(c) The driver's record does not show any traffic infractions or criminal cases indicative of driving within the past two years. A conviction is conclusive evidence that a person drove in the past two years;

(d) Any period of additional revocation imposed following a habitual traffic offender reinstatement probation violation must be completed;

((~~(d)~~)) (e) If there has been a previous denial of a petition for reinstatement by a hearings examiner, at least one year has elapsed

since the denial unless a shorter time is ordered by the hearings examiner;

(f) The person is not incarcerated at the time of the hearing; and

(g) The person has complied with any department required treatment obligations.

(4) **HTO reinstatement without a hearing:** The department may grant a habitual traffic offender a reinstatement without a hearing if the person is eligible for a hearing under subsection ((~~(4)~~)) (3) of this section and at the time of the request for a hearing:

(a) There are no other suspensions or revocations in effect;

(b) There are no vehicular homicide or vehicular assault convictions on the driver's record; ((~~and~~))

(c) ((~~There is no more than one alcohol or drug-related incident on the driver's record. An alcohol or drug-related incident shall include an alcohol-related offense as defined in RCW 46.01.260, or an incident for which a sworn report was received under RCW 46.20.308 or 46.25.120, or similar incidents involving drugs and alcohol (including minor in possession laws), so long as the same incident is not counted more than once.~~)) The person has no unresolved court cases involving driving offenses; and

(d) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080.

(5) **Notification if ineligible:** The department shall notify any person seeking a reinstatement or stay, of any finding of ineligibility and the basis for the ineligibility. If a hearing request is denied for a lack of eligibility, once the reason for the ineligibility has been resolved, the driver may make another request for a hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-040, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-070 Signatures. (1) Legal representative signatures. An electronic document which requires a legal representative's signature may be signed in the following manner:

/s/ Jane Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104
Telephone: 206-123-4567
Fax: 206-123-4567
Email: Jane.Attorney@lawfirm.com

(2) ((~~Nonattorney signatures. An electronic document which requires a nonattorney's signature may be signed in the following manner:~~

~~/s/ John Citizen~~
~~123 South Fifth Avenue~~
~~Seattle, WA 98104~~
~~Telephone: 206-123-4567~~

~~Fax: 206-123-4567~~
~~Email: John.Citizen@email.com~~

~~(3)~~)) Law enforcement officer signatures on documents signed under penalty of perjury. Any document initiated by a law enforcement officer is presumed to have been signed when the officer uses his or her user ID and password to electronically submit the document to a court or prosecutor through the statewide electronic collision and traffic online records application, the justice information network data exchange, or a local secured system that the presiding judge designates by local rule. Unless otherwise specified, the signature shall be presumed to have been made under penalty of perjury under the laws of the state of Washington and on the date and at the place set forth in the report and/or citation.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-070, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-090 Scheduling—Notice of hearing. (1) The department shall ((~~mail~~)) send a hearing notice to the petitioner or petitioner's legal representative, either through the U.S. Postal Services or through an alternative electronic transmission, in the time frame prescribed in Title 46 RCW. If no period is prescribed, the petitioner shall be served with a notice of hearing at least ((~~ten~~)) 10 days before the date set for the hearing.

(2) The department's hearing notice will include the assigned examiner's name, a phone number at which he or she may be contacted, and other information concerning the hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations. The notice must also include:

(a) A statement of the time, place, and nature of the hearing.

(b) A statement of the legal authority under which the hearing is to be held;

(c) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-090, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-120 Continuances. (1) After a hearing has been scheduled, it may be continued((~~,~~)) or rescheduled((~~, or adjourned~~)) only at the discretion of the hearings examiner.

(2) Requests for a continuance, or to reschedule, ((~~or to adjourn must be made in writing, to the assigned hearings examiner, and shall include the basis for the request.~~

~~(3) Except in the case of an emergency, the hearings examiner must receive the continuance~~)) must include all of the following:

(a) A written request directed to the assigned hearings examiner;

(b) The basis for the request; and

(c) At least two proposed reschedule dates.

(3) A party may make one continuance or reschedule request without judicial review.

(4) A party requesting a second or later continuance or reschedule must file the request at least two business days before the scheduled hearing((~~. Absent an emergency, requests made with less than two business days' notice may be summarily denied.~~

~~(4)~~)), except upon showing of good cause.

(5) Good cause is defined as substantive reason or legal justification for failing to meet the reschedule deadline. Good cause may include, but are not limited to:

(a) Military deployment;

(b) Medical treatment or hospitalization;

(c) Housing instability;

(d) Language barriers;

(e) Domestic violence; or

(f) Incarceration.

(6) The hearings examiner may continue((~~,~~)) or reschedule((~~, or adjourn~~)) the hearing at any time, including on the date of the ((~~administrative~~)) hearing.

((~~(5)~~)) (7) A party shall not consider a hearing continued((~~,~~)) or rescheduled((~~, or adjourned~~)) until notified affirmatively by the hearings examiner or his ((~~or~~)), her, or their designee.

((~~(6)~~)) (8) The hearings examiner may require the party who requests a second or later continuance((~~, to~~)) or reschedule((~~, or to adjourn~~)) to submit documentary evidence that substantiates the reason for the request.

((~~(7) A second request for a continuance, to reschedule, or to adjourn will only be granted in the event of an emergency and at the discretion of the assigned hearings examiner.~~

~~(8)~~)) (9) Notwithstanding any provisions of this section to the contrary, a hearings examiner may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearings examiner must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. ((~~A hearing continued under this subsection must be adjourned until such time as the subpoena may be enforced under RCW 7.21.060.~~))

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-120, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-150 Subpoenas. (1) Subpoenas shall be issued and enforced, ((~~and witness fees paid,~~)) as provided in RCW 46.20.308(7). All subpoenas shall direct the witness to appear by telephone unless otherwise ((~~agreed to~~)) ordered by the hearings examiner.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at www.dol.wa.gov, for approval by a hearings examiner. If approved, the hearings examiner ((~~may either~~)) will sign and issue the subpoena back to the party requesting the subpoena ((~~or direct the requesting party, by telephone, electronic mail, or other reliable means, to note the hearings examiner's approval on the subpoena~~)).

((~~(a)~~)) (3) A subpoena to a person to provide testimony at a hearing shall:

(a) Specify the date and time set for hearing((~~.~~)); and

(b) The hearing department's contact information. This contact information must enable the person receiving the subpoena to request an alternative date and time for the department to receive their testimony, if they are unavailable on the date of the hearing.

(4) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall ((~~specify a time and place for producing~~)) direct the person to produce the books, documents, or things((~~. That time and place may be the time and place set for hearing, or another reasonably convenient time and place~~)) by a reasonable time in advance of the hearing.

((~~(3)~~)) (5) A subpoena must be personally served by a suitable person over ((~~eighteen~~)) 18 years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her ((~~abode~~)) residence. Proof of service shall be made by affidavit or declaration under penalty of perjury, and must be filed with the hearings examiner at least two days prior to the hearing. If the subpoena is served by personal service, proof of service must include a copy of the subpoena that shows it was received by the law enforcement agency. Service by certified mail must be preapproved by the hearings examiner. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

((~~(4) The hearings examiner may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.~~

~~(5)~~)) (6) A subpoena must be properly served five days prior to the date of the hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-150, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-155 Filing of exhibits and other documents with the department and calling expert witnesses. (1) Any exhibit or document submitted to the hearings and interviews unit must include the petitioner's case number assigned by the unit, if a case number has been assigned. All exhibits or documents submitted electronically, shall only be submitted in a PDF format.

(2) A petitioner may submit documents for consideration via any one of the following methods:

(a) U.S. mail addressed to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9030, Olympia, WA 98507-9030.

(b) Facsimile transmission to the assigned hearings examiner.

(c) An internet portal made available by the department.

(d) Email ((~~to the hearings examiner, but only with the hearings examiner's preapproval~~)) hearings@dol.wa.gov.

(3) Petitioners are permitted to call expert witnesses, at their own expense. The petitioner must file notice with the hearings unit of the following:

(a) Notice of the expert testimony;

(b) A curriculum vitae (CV) of the anticipated expert; and

(c) A summary of their expected testimony at least five business days prior to the hearing. If petitioner fails to comply with these requirements, the expert testimony may be properly excluded and not considered.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-155, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-170 Video evidence. (1) If the petitioner wishes to submit video evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video evidence shall be submitted sufficiently in advance of the hearing to allow the hearings examiner the opportunity to review it prior to the hearing. The hearings examiner may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed. Video evidence must be submitted by DVD and in a format which allows the DVD to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

(2) Video evidence may be submitted in the following ways: On a DVD, on a flash drive, or submitted electronically in a digital format. If the petitioner wishes to submit a digital copy of video evidence, the petitioner shall email hearings@dol.wa.gov with the evidence and any instructions on viewing the evidence. The video must be in a format that allows the video to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-170, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-180 ((~~Format and length for~~)) Briefs, motions, memoranda, and other pleadings. (1) The text of ((~~any brief must be typed or printed in a proportionally spaced typeface and must appear in print as twelve point or larger type with no more than ten characters per inch and double-spaced. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as ten point or larger type and be the equivalent of single-~~

~~spaced. Quotations may be the equivalent of single-spaced. Except for materials in an appendix, the typewritten or printed material in the brief may not be reduced or condensed by photographic or other means.~~

~~(2) Briefs shall not exceed twenty pages. For the purpose of determining compliance with this rule, appendices are not included. For good cause, the hearings examiner may grant a motion to file an over-length brief.~~

~~(3) Unpublished opinions of the Washington court of appeals are those opinions not published in the *Washington Appellate Reports*. Unpublished opinions of the court of appeals have no precedential value and are not binding on any court. However, unpublished opinions of the court of appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the hearings examiner deems appropriate.~~)) all documents filed with this department should be double-spaced, except footnotes and block quotations, which may be single-spaced. In a document produced using word processing software, all text, including footnotes and block quotations, should appear in a 14-point font serif equivalent to Times New Roman or San serif font equivalent to Arial.

(2) **Brief length and certificate of compliance:** All documents filed with this department and produced using word processing software should contain a short statement above the signature line certifying the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the certificate of compliance, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, exhibits). The signor may rely on the word count calculation of the word processing software used to prepare the brief or motion. Motions/briefs shall not exceed 5,000 words or 20 pages if handwritten. Any appendices or attachments are not to be included in the length. For good cause, a hearings examiner may permit an over-length brief.

(3) Citations to the legal authority shall comply with the Washington state court general rules 14 and 14.1.

(4) All exhibits or documents submitted electronically shall be submitted only in a PDF format.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-180, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-210 Conduct of hearings. Hearings are ((~~open to~~)) public ((~~observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record~~)) proceedings. Public access is achieved through providing a copy of the audio recording and admitted exhibits in compliance with a public records request. The hearings examiner's authority includes, but shall not be limited to, the authority to:

(1) Determine the order of presentation of evidence;

(2) Administer oaths and affirmations;

(3) Issue subpoenas pursuant to RCW 46.20.308(7);

(4) Rule on procedural matters, objections, and motions;

(5) Rule on offers of proof and receive relevant evidence;

(6) Order the exclusion of witnesses upon a showing of good cause;

(7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearings examiner may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;

(8) Call additional witnesses ((~~and request and/or obtain additional exhibits~~)) deemed necessary to complete the record and receive such ((~~evidence~~)) testimony subject to full opportunity for cross-examination and rebuttal by the petitioner;

(9) Examine and admit the official records of the department, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

(10) Examine and admit public records including, but not limited to, maps, policy and procedure manuals, breath testing equipment manuals and the Washington state patrol breath test section website at any time before, during, or after the hearing, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

(11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(13) Issue an order of default;

(14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;

(15) Take any other action necessary and authorized by any applicable statute or rule; and

(16) Waive any requirement of these rules ((~~unless petitioner shows that he or she would be prejudiced by such a waiver~~)) so long as neither the department nor the petitioner is prejudiced by such a waiver.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-210, filed 5/21/18, effective 9/4/18.]