

**WSR 17-06-051**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[General Order R-588—Filed February 28, 2017, 9:20 a.m., effective March 31, 2017]

In the matter of amending/adopting/repealing chapter 480-07 WAC, relating to the commission's procedural rules, governing the conduct of business before the commission, including rules governing formal proceedings.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 16-24-061, filed with the code reviser on December 5, 2016. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

**3 DATE OF ADOPTION:** The commission adopts this rule on the date this order is entered.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

**5** To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

**6 REFERENCE TO AFFECTED RULES:** This order amends WAC 480-07-010 Scope of this chapter, 480-07-100 Scope of Part I, 480-07-110 Exemptions from and modifications to commission rules; conflicts involving rules, 480-07-120 Office hours, 480-07-125 Physical address; telephone; fax; web portal; e-mail; internet, 480-07-130 Time periods specified for acts governed by this chapter, 480-07-140 Communicating with the commission, 480-07-141 Receiving and filing a document is not acceptance, 480-07-150 Service of documents in adjudicative proceedings, 480-07-160 Confidential information, 480-07-170 Official communications from the commission, 480-07-180 Incorporated and referenced materials in commission rules and orders, 480-07-220 Monitoring rule-making proceedings; lists of interested persons, 480-07-230 Inquiring about rule-making proceedings, 480-07-300 Scope of Part III, 480-07-305 Commencement of an adjudicative proceeding, 480-07-307 Probable cause determinations, 480-07-310 Ex parte communication, 480-07-330 Presiding officers, 480-07-340 Parties—General, 480-07-345 Appearance and practice before the commission, 480-07-355

Parties—Intervention, 480-07-360 Parties—Master service list, 480-07-370 Pleadings—General, 480-07-375 Motions, 480-07-380 Motions that are dispositive—Motion to dismiss; motion for summary determination; motion to withdraw, 480-07-385 Motion for continuance, postponement, or extension of time, 480-07-390 Briefs; oral argument; findings and conclusions, 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment, 480-07-400 Discovery, 480-07-405 Discovery—Data requests, record requisitions, and bench requests, 480-07-410 Discovery—Depositions, 480-07-415 Discovery conference, 480-07-420 Discovery—Protective orders, 480-07-425 Discovery disputes, 480-07-430 Prehearing conferences, 480-07-440 Hearing notice, 480-07-450 Hearing—Failure to appear, 480-07-460 Hearing—Predistribution of exhibits and prefiled testimony, 480-07-470 Hearing guidelines, 480-07-490 Hearing—Exhibits and documentary evidence, 480-07-495 Hearing—Rules of evidence; official notice and 480-07-498 Hearing—Public comment; adopting WAC 480-07-175 Inspection and production of documents in commission investigations, 480-07-190 Electronic signatures, 480-07-250 Submitting documents in rule-making proceedings and 480-07-365 Filing documents in adjudicative proceedings; and repealing WAC 480-07-143 Submitting documents in rule-making proceedings, 480-07-145 Filing documents in adjudicative proceedings, and 480-07-423 Discovery—Protective orders—Submission requirements for documents.

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on March 20, 2013, at WSR 13-07-071.

**8** The statement advised interested persons that the commission was considering undertaking a rule making to consider possible corrections and changes to certain sections in chapter 480-07 WAC, the commission's procedural rules governing the conduct of business before the commission, including informal proceedings. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), to all interested persons in the previous procedural rules rule-making docket A-050802, and to all persons on the commission's list of utility attorneys, transportation attorneys, and telecommunications attorneys. Pursuant to the notice, but rescheduled at later dates, the commission received comments on May 17, 2013, and held a stakeholder workshop on August 21, 2013.

**9 SUBSEQUENT COMMENTS AND WORKSHOPS:** The commission received additional comments on the rules that are the subject of this order on or about December 20, 2013; October 23, 2014; July 20, 2015; and June 30, 2016. The commission also held additional workshops on these rules on January 15, 2014, and November 19, 2014.

**10 SMALL BUSINESS ECONOMIC IMPACT ANALYSIS:** The commission reviewed the proposed rules to determine their economic impact on small businesses that are subject to commission regulation. The commission regulates a wide variety of companies, from single owner/operator transportation companies and small water companies to the largest electric and natural gas utility in the state. The rules in chapter 480-07

WAC govern the procedures that all companies must follow in their dealings with the commission, and thus the rules that are the subject of this order will affect small businesses.

*11* That effect, however, will be positive. The commission is revising these rules to clarify its procedures and to reflect current practices and technology. Among other changes, the rules will now require that companies submit documents to the commission only in electronic form, rather than in both hard and soft copy. The commission also will serve documents only electronically, speeding delivery and eliminating unnecessary paper. Companies that are parties to commission adjudications will benefit further from rule revisions that establish or facilitate definitive identification and submission requirements for prefiled testimony, exhibits, briefs, and other documents.

*12* Only two proposed revisions to the existing rules could have a significant economic impact on small businesses - the removal of the requirement to submit paper copies of most filings and the elimination of submission by facsimile transmission (fax). Submitting only electronic copies of documents will eliminate paper, copying, and postage costs and therefore will reduce the amount all businesses must spend to make filings with the commission. With respect to fax filing, most, if not all, businesses have access to the internet and the capability of submitting documents through the commission's web portal or via email. Accordingly, eliminating the option to submit documents via fax should have only a minor economic impact. The commission nevertheless will work with small businesses that may continue to rely on faxing to enable them to make those filings.

*13* **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on December 5, 2016, at WSR 16-24-061. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 16-24-061 at 1:30 p.m., Monday, January 30, 2017, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

*14* **WRITTEN COMMENTS:** The commission received comments on the proposed rules on January 13, 2017. Summaries of those written comments and commission staff's responses and recommendations are contained in Appendix A, shown below, and made part of, this order.

*15* **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on January 30, 2017, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Ann E. Rendahl. The commission heard a presentation and comments from Gregory J. Kopta, Director, Administrative Law Division, representing commission staff, and oral comments from representatives of the Public Counsel Unit of the Attorney General's Office, Puget Sound Energy, Pacific Power & Light Company (PPL), Northwest Natural Gas Company, Union Pacific Railroad, the Industrial Customers of Northwest Utilities, and CenturyLink, all of whom provided greater detail in support of their prior written comments.

*16* **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Written and oral comments suggested changes to

the proposed rules. The commission adopts staff's recommendations and reasons to reject those suggestions contained in the summary matrix in Appendix A,<sup>1</sup> except that for purposes of this phase of the rule making, we do not adopt the proposed amendments to the definition of "confidential information" in WAC 480-07-160(2), to the procedure in WAC 480-07-160(5) governing challenges to confidentiality designations in adjudications, or to language in WAC 480-07-160(6)(b)(i) and (iii) concerning "parties" that have designated information as "confidential" or "highly confidential."<sup>2</sup>

<sup>1</sup> In addition, we concur with staff's further explanation at the adoption hearing that WAC 480-07-175 is not intended to circumvent attorney-client privilege or other bases for objecting to providing documents the commission may request and that if a public service company disagrees with the executive director's or administrative law judge's decision overruling the company's objection to a commission request for documents, the company may seek administrative review under the process applicable to review of initial orders in WAC 480-07-825.

<sup>2</sup> In addition to supplementing its written comments, Puget Sound Energy commented at the adoption hearing that the proposed revisions to WAC 480-07-160 (4)(d)(i)(A) to add the words "Designated information is" unnecessarily extends the existing phrase of "Confidential per protective order in docket [insert docket number]" or "Confidential per WAC 480-07-160" that must be included on each page of a document that includes such information. Companies, however, generally comply with this requirement by using a running footer in the document that appears on every page, even if no information on that page is designated as confidential. We find that the proposed additional words are less of an administrative inconvenience than requiring the marking be *only* on pages that include such information and that the revised marking minimizes the confusion that could result from using a running footer - particularly with the implementation of electronic-only filing and the corresponding lack of colored paper on which pages containing confidential information would otherwise need to be printed.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### Definition of Confidential Information

*17* Several stakeholders in their written and oral comments disagree with the proposed revision to the definition of confidential information. The proposed rule would define that term to include only the information specified in RCW 80.04.095 and 81.77.210. The definition in the existing rule is more expansive and also covers information that is exempt from public disclosure under the Public Records Act (PRA or act) or protected under the terms of a commission protective order.

*18* The stakeholders are concerned that limiting the definition of "confidential information" governed by this rule would leave no process for identifying or protecting personally identifiable data in records utilities provide to the commission, as well as other information that is exempt from public disclosure.<sup>3</sup> In addition, where the term "confidential" is used in this rule in the context of documents submitted pursuant to a protective order, stakeholders are concerned that the commission may inadvertently release protected information if it is not designated as confidential or highly confidential.

<sup>3</sup> *E.g.*, RCW 42.56.330(2).

*19* The procedures in WAC 480-07-160, however, implement the requirements in RCW 80.04.095 and 81.77.210, which require a court order before the commission can refuse to disclose information designated as confidential. The

commission has an independent obligation to withhold information the act exempts from disclosure, and subjecting such information to the requirement to obtain a court order could result in unintentional release of that information in violation of the PRA.

20 We recognize the importance of protecting customer-specific and other exempt information, and find that risks of inadvertent disclosure of this information are inherent in both the existing rule and the proposed amendment. Further discussions are necessary to develop alternative language that will better enable companies, parties to proceedings, and the commission to identify and distinguish between information that is designated as confidential pursuant to RCW 80.04.095 or 81.77.210 and information that is exempt from disclosure under RCW 42.56.330(2) or other provisions of the PRA.

21 We find that maintaining the existing definition of confidential information poses the least risk of mistakenly disclosing exempt information while the commission explores better ways to protect such information. Accordingly, except for amendments at the end of WAC 480-07-160(2), *i.e.*, the addition of the phrase "or 81.77.210" and the addition of the last sentence, we do not adopt the proposed revisions in the first paragraph of WAC 480-07-160 and in subsection (2) that modify the definition of confidential information. This rule making remains open to address other rules in chapter 480-07 WAC, and we will work with stakeholders to develop language to resolve this issue.

#### **Challenges to Confidential Designations in Adjudications**

22 Stakeholders also have legal, practical, and financial issues with the proposed revisions to WAC 480-07-160(5). Those revisions would replace commission review of challenges to confidentiality designations with the same process the commission uses when a person requests public documents that contain information that has been designated as confidential.

23 The stakeholders contend that the last sentence in RCW 80.04.095 and 81.77.210 grants the commission authority to enter protective orders that govern the protection afforded confidential information and that authority includes the power to determine whether that information has been correctly designated as confidential. The stakeholders therefore maintain that a challenge to the designation of information as confidential under a protective order is legally distinct from a public records request. The stakeholders also contend that requiring the provider of confidential information to go to court in the midst of a commission adjudication would be disruptive and needlessly expensive, and that the commission is in a better position than a court to determine whether the challenged information should be protected from public disclosure.

24 The commission, on the other hand, proposes to clarify in these rules the procedure required upon a request for confidential information under the PRA. We also seek to ensure that commission procedures are consistent with the PRA, as Washington courts repeatedly interpret the act's disclosure obligations liberally and narrowly confine exemptions.<sup>4</sup>

<sup>4</sup> *E.g., Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 128, 580 P.2d 246 (1978).

25 We find that these issues warrant additional exploration. Pending further discussion on amendments to this subsection, we will refrain from revising the language in WAC 480-07-160(5), except to add RCW 81.77.210 to the list of bases for treating information as confidential. The commission will consider further amendments to WAC 480-07-160, if necessary, to reflect the results of commission consultation with stakeholders as this rule making continues.

#### **Requests for Information Designated as Confidential**

26 For the same reasons discussed above, and given the need for additional discussion about the process for requests for confidential information in adjudications in which parties are subject to a protective order, we also refrain from adopting the phrase "(and the party that has designated the information as confidential or highly confidential, if different)" as proposed in WAC 480-07-160 (6)(b)(i) and (iii). The commission will consider whether to make these or any other additional amendments to WAC 480-07-160 following further process in this rule making.

27 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, repeal, or adopt the rules as proposed in the CR-102 at WSR 16-24-061 with the following changes discussed in paragraphs 16-26 above:

WAC 480-07-160 Strike the last two sentences in the first paragraph of the proposed rule (beginning with "This rule does not apply ... " through " ... that redacts that information.").

WAC 480-07-160(2) Reinstate the existing language proposed to be stricken from this subsection.

WAC 480-07-160(5) Reinstate the existing language proposed to be stricken from this subsection; insert "RCW 81.77.210," after "RCW 80.04.095," in the second sentence; and strike all language proposed to be added to this subsection.

WAC 480-07-160 (6)(b) Strike the phrase "(and the party that has designated the information as confidential or highly confidential, if different)" proposed to be added in subsections (i) and (iii).

28 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that the sections in chapter 480-07 WAC listed in paragraph 6 above should be amended, repealed, or adopted as applicable to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

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

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

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

**ORDER**

**29 THE COMMISSION ORDERS:**

30 The commission amends chapter 480-07 WAC to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

31 This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, February 28, 2017.

Washington Utilities and Transportation Commission

David W. Danner, Chairman  
 Philip B. Jones, Commissioner  
 Ann E. Rendahl, Commissioner

**A-130355 Procedural Rules  
 Summary of Comments on CR-102 Proposed Revisions to Rules in Parts I, II, and IIIA  
 January 25, 2017**

480-07-	Utilities	Rail	Solid Waste	Consumers	Staff Response
Commenter Acronyms	PSE - Puget Sound Energy PPL - Pacific Power and Light Company NWN - Northwest Natural Gas Company CL - CenturyLink	UP - Union Pacific Railroad Company	SLG - Summit Law Group WRRRA - Washington Refuse and Recycling Association	ICNU - Industrial Customers of Northwest Utilities	
140(3)	PPL: Exclude workpapers from requirement that cover letters identify all submitted documents as overly burdensome.				Disagree. The purpose of listing in the cover letter all of the documents submitted is to ensure that the commission has received all documents persons believe they have submitted. This is just as necessary for workpapers as it is for other documents and benefits both the commission and the company submitting the documents.
140 (6)(a)	PPL: Allow flexibility in using "hidden cells" to permit lines and columns to be hidden to present the information in a more expansive format.				Disagree. The rule precludes information and its source in the cells of a spreadsheet from being hidden, not the format of the spreadsheet itself. Accordingly, the rule does not preclude the expansion of the size of a cell as PPL describes, even if that is technically accomplished by "hiding" lines or columns.
141			SLG: Concerned that staff review of all filings would be overbroad and burdensome to commission staff; such review would be better included in the rules specifically governing rate case filings.		Disagree. Staff appreciates SLG's concern but continues to propose that staff, particularly in the records center, review all submissions within a reasonable time to determine whether they comply with applicable requirements.
150			SLG: When initiating an adjudication, commission should use the same service required to commence a lawsuit in court; create a procedural mechanism for		Disagree. All documents the commission serves on a regulated company are important, and no more specialized service should be required for documents initiating an adjudication than for other documents requiring company action, including but not limited to penalty assessments, requests for information, and annual report reminders.

480-07-	Utilities	Rail	Solid Waste	Consumers	Staff Response
			filing and maintaining contact information, perhaps including verification in annual reports.		Staff will explore and implement appropriate procedures for obtaining and maintaining current contact information, but such procedures need not be included in this rule.
160		UP: Opposes the revisions to this rule, which are vague and confusing as to scope and purpose.	WRRRA: Clarify that applicants for solid waste certificate may not designate information as confidential. SLG: Clarify whether the rule applies to information that companies provide in the context of informal data requests.		UP - The proposed revisions consolidate into a single rule the process and requirements for designating information as confidential and better tailor those requirements to RCW 80.04.095, 81.77.210, and chapter 42.56 RCW. WRRRA - Disagree. Chapter 81.77 RCW applies to all solid waste collection companies, not just certificated solid waste collection companies, and there is no basis in the language of RCW 81.77.210 to limit its applicability to certificated companies. The commission has consistently applied WAC 480-07-160 to applicants for authority to provide utility service, and because RCW 81.77.210 is virtually identical to RCW 80.04.095, the rule also should apply to applicants for solid waste collection authority. SLG - The rule applies to all documents submitted to the commission or its staff, which includes documents companies provide in response to informal commission data requests.
160(2)	PSE, PPL, NWN: Protect additional information that is exempt from public disclosure under the PRA (e.g., customers' personal, financial, and contact information) as confidential information.				Disagree. See separate staff memo on information designated as confidential.
160(3)		UP: Commission should not create and impose its own definition of "confidential information," including highly confidential protection; revised rule fails to recognize other exemptions, specifically federal law.			Disagree. With respect to the highly confidential designation, the rule does not alter the statutory definition of "valuable commercial information" but only provides more restrictive limits on persons other than commission or attorney general personnel who can have access to such information. That protection is part of the existing rule and has been part of commission practice for over twenty years. See separate staff memo on information designated as confidential for the response to the more general objections.
160 (4)(d)	PPL: Use a "reasonable efforts" standard with respect to designating confidential information, particularly for extremely voluminous documents or designations.				Disagree. The proposed rule language allows for greater flexibility than the existing rule by requiring that information designated as confidential be highlighted through shading <i>or other clearly visible designation</i> . To the extent that even with this flexibility, the requirement imposes an extraordinary burden on the provider of a specific document, the provider may seek a waiver of the requirement. The commission's ultimate goal is to ensure that it is fully aware of all

480-07-	Utilities	Rail	Solid Waste	Consumers	Staff Response
					information that a company has designated as confidential, and requiring only "reasonable efforts" is too vague a standard for accomplishing that goal.
160(5)	CL, NWN, PPL, PSE: Retain existing rule provision requiring commission resolution of dispute over confidentiality designation in adjudications.		SLG: Commission should review any challenge to a confidentiality designation to ensure it is made in good faith, rather than to burden or harass an opposing party.		Disagree. See separate staff memo on information designated as confidential.
160(6)	PPL: Clarify that any release of information designated as confidential is conditioned on that release not being prohibited by law, rule, or commission order.		SLG: Commission should notify provider whenever its confidential information is requested, not just when the designation is challenged, to enable the requester and the company to resolve the request agreeably.		PPL - Disagree. The rule is sufficiently clear that the commission will not release information designated as confidential if a court order prohibits such release. A commission rule or order can delay that release by ten days but cannot otherwise authorize the commission to withhold production of such information. SLG - Disagree. Requesters often do not continue to request information once they are aware it is designated as confidential, so the commission notifies the provider only when the requester continues to request information knowing its confidential designation. The requester and the company may then negotiate a resolution of the request short of resorting to a superior court determination.
175		UP: Opposes this rule; requiring access to all documents at any and all times is wildly and impracticably overbroad, and commission cannot circumvent protections for privileged or proprietary information or warrant requirements.	SLG: Clarify impact of PRA on documents reviewed at company locations; lack of limitation on production is troubling; need to understand the formality of the requests contemplated by this rule. WRRRA: Extend application to applicants for solid waste collection authority.		UP - Disagree. Staff's proposed language properly incorporates the authority in RCW 81.04.070 that the commission "shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company." <i>See also</i> RCW 81.04.090. To the extent that a company believes that other legal authority supersedes this statutory authority, the company may make such an objection in response to the commission's request for inspection or documents, and the commission will address that objection before proceeding. SLG - Disagree. A court, not the commission, determines the applicability of the PRA, and the commission will not render a legal opinion on that applicability. As discussed above, the rule reflects the breadth of the statute, and the company can object if it believes the commission is exceeding its authority. The formality of the rule is similar to a bench request in an adjudication - the company is obligated to provide the requested information unless the commission sustains an objection to the request. WRRRA - Disagree. The statute limits the commission's authority to public service companies, and the commission cannot extend that authority by rule. The commission, moreover, has subpoena power and does not need this rule to request any additional information the commission believes is necessary to determine whether to grant an application.

480-07-	Utilities	Rail	Solid Waste	Consumers	Staff Response
190			SLG: A digital image of a signature copied onto the signature line should qualify as a "secure" electronic signature.		Disagree. The proposed rule establishes general guidelines for secure electronic signatures to accommodate evolving technology. A digital image of a signature must satisfy all of the requirements in the rule to be considered a secure electronic signature. The commission should make that determination based on the specific technology being used, which is a fact-specific inquiry, rather than incorporating that technology into the rule.
305 (5)(b)	PPL: Consider adding circumstances in which the person seeking to initiate an adjudication is not "involved in an actual case or controversy" or otherwise aggrieved to the list of circumstances in which the commission will not commence an adjudication.				Disagree. The circumstances PPL describes are already covered under the rule (e.g., as lack of standing or commission authority). Even if that were not the case, the rule expressly provides that the list of circumstances is not exclusive, and as a matter of practice, the commission will not initiate an adjudication where no actual case or controversy exists or where no harm is alleged.
307			SLG: Add more substantive review of third-party complaints prior to initiating an adjudication to preclude nuisance actions.		Disagree. The commission reviews all third party complaints and only serves those that comply with the rules. The commission commences an adjudication only after receiving the respondent company's answer to the complaint. If that answer contends that the complaint is frivolous or brought in bad faith, the commission will take that into consideration before initiating an adjudication.
310			WRRRA: On commission review of an initial order, prohibit contact between commissioners and advisory staff that worked on that order.		Disagree. The commission's practice is to have a different ALJ assist the commissioners on review than the judge who entered the initial order, but this is not an ex parte issue. Staff intends to propose revisions to WAC 480-07-825, which governs review of initial orders, to codify the requirement that a different ALJ and advisory staff assist the commissioners when reviewing an initial order.
355(2)				ICNU: Require responses to petitions to intervene to be filed within twenty days of the date the petition is filed or two business days prior to the prehearing conference, whichever is less.	Disagree. The commission receives the vast majority of petitions to intervene much less than twenty days before the prehearing conference. Having a single deadline for filing responses to such petitions is preferable to adding the alternative deadline that the commission has established for petitions in general.
370				SLG: Include motions in the list of pleadings?	No. Pleadings under the rules are documents that seek to initiate formal commission action or that respond to such requests. Motions are requests for relief within an adjudication that the commission has already initiated. Some petitions are also filed in existing adjudications, but no motions are filed outside of such proceedings.

480-07-	Utilities	Rail	Solid Waste	Consumers	Staff Response
400 (1)(c)	PPL: Condition with "reasonable efforts" or limit time period within which a company must rerun or recalculate a model to exclude models that are obsolete or no longer available and allow for additional time to rerun the model.				Disagree. Any cost study or model on which a party relies should not be obsolete or no longer available, and the party must be willing to rerun it with different inputs and assumptions. As with any other data request, if the party cannot respond within the required time frame, the rules already allow for a reasonable extension of time in which to provide a response. WAC 480-07-405 (7)(b).
460 (1)(a)				ICNU: Clarify reasons for eliminating existing subsection on revising prefiled testimony to correct mistakes of fact.	Staff proposes to distinguish only between corrections that are substantive and corrections that are minor ( <i>i.e.</i> , nonsubstantive). Corrections to mistakes of fact could be either. Accordingly, staff proposes to delete the existing subsection on correcting mistakes of fact as redundant and potentially confusing.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-010 Scope of this chapter.** This chapter includes rules that explain how to conduct business with the Washington utilities and transportation commission (~~((the))~~ commission). The commission interacts both informally and formally with the public and with the businesses it regulates.

Part I of this chapter includes basic information about the commission, such as the agency's office hours, its physical address and other contact information, and general requirements for communicating with the commission.

Part II includes provisions that relate specifically to rule-making proceedings, such as how a person may submit comments that will be taken into account when the commission considers making changes to its rules.

Part III concerns adjudicative proceedings including hearings on formal complaints, general rate proceedings, applications for authority, petitions for relief, and abbreviated proceedings that may be used in some circumstances.

Part IV concerns other types of commission proceedings, including regular and special open public meetings, interpretive and policy statements, declaratory orders, penalty assessments, and informal complaints.

These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the ~~((principal))~~ statutes that define the commission's authority and ~~((responsibility. These statutes are))~~ responsibilities found principally in Titles 80 and 81 ~~((of the Revised Code of Washington (RCW). These))~~ RCW. The commission's procedural rules should be ~~((read and understood))~~ interpreted in conjunction with ~~((the Administrative Procedure Act and Titles 80 and 81 RCW. Certain of these statutes establish procedural requirements for conducting particular types of business with the commission))~~ these statutes.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-100 Scope of Part I.** Part I of this chapter contains information about the commission~~(;)~~ and general rules that apply in rule-making, adjudicative, and other proceedings described in this chapter.

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

**WAC 480-07-110 Exemptions from and modifications to commission rules; conflicts ~~((involving))~~ with other rules.** (1) **Exceptions and modifications.** The commission, in response to a request or on its own initiative, may grant an exemption from, or modify the application of, any of its rules in individual ~~((eases if))~~ circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes. ~~Consistent with due process and the public interest,~~ the commission may modify the application of procedural rules in this chapter on its own initiative during a particular adjudication ~~((consistent with other adjudicative decisions,))~~ or other docket without following the process identified in subsection (2) of this section.

(2) **Process.**

(a) *How to request an exemption ~~((to))~~ from, or modification ~~((of))~~ to, a rule.* To request a rule exemption or modification, a person must file with the commission a written petition identifying the rule for which the person seeks an exemption ~~((is sought, and provide))~~ and providing a full explanation of the reason for requesting the exemption. Telecommunications companies, gas companies, or electric companies filing petitions for exemption under this section ~~((shall))~~ must provide ~~((a))~~ an electronic copy of the request ~~((with))~~ to the public counsel ~~((section))~~ unit of the attorney general's office by ~~((mail or e-mail, within one business day~~



~~of the)) email on the same day the request is filed with the commission.~~

(b) *Commission process.* The commission will assign the petition a docket number(~~(, if it)~~) if the request does not arise in an existing docket, and will schedule the petition for consideration at one of ~~((its))~~ the commission's regularly scheduled open meetings or ~~(;))~~ in an adjudicative proceeding if appropriate under chapter 34.05 RCW(~~(, in an adjudication)~~). The commission will notify the person requesting the exemption(~~(;))~~) and other interested persons(~~(;))~~) of the date of the open meeting or hearing when the commission will consider the petition.

(c) *Standard for ~~((consideration))~~ determination.* ~~The ((standard for consideration is the public interest standard))~~ commission uses the public interest standard to determine whether to grant an exemption from, or modification to, a commission rule. Factors the commission may consider in making this determination include whether ~~((application of))~~ the rule ~~((would))~~ imposes an undue hardship on the requesting person(~~(;))~~) of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule(~~(-~~

~~(d) **Disposition.** The commission will enter an order granting or denying the petition, or setting it for hearing)) and the public interest.~~

(3) **Conflicts ~~((involving))~~ with other rules.** ~~((In the event of conflict between these rules and statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, applicable to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings))~~ Statutes or other commission rules may establish a process for requesting rule exemption or modification, and if they conflict with this rule, those statutes or ~~((special))~~ other rules govern the request.

(4) **Emergency situations.** In the event of a state of emergency(~~(;))~~) and for good cause shown, the commission may enter an order on its own motion, or upon the motion of any person or public service company affected by the rule, exempting public service companies, the commission, and all affected persons(~~(;))~~) from complying with the requirements of specific rules in this title.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-120 Office hours.** ~~((“Business day,” as used in this chapter, means any day when the commission's offices are open to the public. Commission))~~ The commission's offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on official state holidays(~~(;))~~) as defined in RCW 1.16.050(~~(, Legal holidays and legislatively recognized days))~~.

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

**WAC 480-07-125 ~~((Physical address; telephone; fax; web portal; e-mail; internet.))~~ Commission contact information.** The information included in this section is current at

the time of rule adoption(~~(;))~~) but may change. Persons may obtain current ~~((information))~~ and additional contact information ~~((are available on))~~ for the commission and its personnel by accessing the commission's internet ~~((site,))~~ web site or by requesting the information in person at the commission offices, ~~((or))~~ by a telephone call to the commission's main public number, or through an email to the commission's records center.

Location and mailing address:	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone: Public number	360-664-1160
Records center number	360-664-1234
Consumer inquiries, comments and informal complaints	1-800-562-6150
<del>((Fax:))</del> <u>Public and records center))</u> <u>Conference bridge for participating in proceedings by telephone</u>	<del>((360-586-1150))</del> 360-664-3846
Web portal	www.utc.wa.gov/e-filing
Records center email	records@utc.wa.gov
Internet web site	www.utc.wa.gov

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-130 Time periods specified for acts governed by this chapter. (1) ~~((Computation of time.))~~ Definitions.**

(a) "Day" means calendar day whenever used in this chapter, unless otherwise specified.

(b) "Business day" as used in this chapter, means any day when the commission's offices are open to the public as provided in WAC 480-07-120.

(2) **Computation of time.** The period of time for doing an act governed by this chapter is determined by excluding the first day and including the last day, unless the last day is ~~((an official state holiday, Saturday, or Sunday))~~ not a business day, in which ~~((event))~~ circumstance the period runs until the end of the next business day ~~((that is not an official state holiday, Saturday, or Sunday. For example, if a formal complaint is served on the first day of the month, any answer to the complaint must be filed by the twenty-first day of the same month, unless the twenty-first day is an official state~~

holiday, in which case the answer will be timely if filed on the next business day after the holiday.

(2)).

(3) **Variation from time limits.** The commission may modify the time limits stated in chapter 34.05 RCW, subject to the requirements of RCW 34.05.080. The commission may modify the time limits stated in a commission rule, subject to other requirements of law. WAC 480-07-385 (~~sets out procedures for and~~) governs (~~when the commission will grant~~) continuances or extensions of time in adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

**WAC 480-07-140 ((Communicating with)) General requirements for submitting documents to the commission.** ((1) **Scope of rule.** This rule includes general requirements for effective communication with the commission.

The commission encourages use of the commission's records center web portal for filing and submitting documents with the commission. Customers of regulated companies who have a complaint about their service provider are encouraged to contact the commission as described in WAC 480-07-910. Anyone wishing to comment on a matter before the commission may submit comments by telephone, letter, fax, e-mail or by using the comment form available on the commission's web site.

(a) ~~Electronic filing, limitations.~~ You may *file* documents electronically using the commission's records center web portal (see WAC 480-07-125) if you are submitting documents that are not part of an adjudicative proceeding. Examples include registration applications, tariffs, contracts, rule-making comments, and comments on open meeting items. Electronic filing means the commission accepts the electronic version of the document as the official filing and does not require a paper copy of the documents.

(b) ~~Electronic submission, adjudications.~~ You may *submit* documents electronically using the commission's records center web portal (see WAC 480-07-125) or e-mail if you are submitting documents in an adjudicative proceeding. Electronic submission means the commission allows submission of electronic versions of documents, but requires a paper copy of the document as the official filing. Except for testimony and exhibits filed in general rate cases, parties may submit one paper copy of documents of less than twenty-five pages, but must follow the filing requirements in WAC 480-07-510(1) (nineteen copies) and WAC 480-07-150 (3)(a) (twelve copies) for documents exceeding twenty-five pages.

(c) **Electronic filing of public records requests.** You may file requests for public records electronically using the commission's records center web portal (see WAC 480-07-125). You do not have to file a paper copy of the public records request if it is filed electronically.

(d) ~~Use of e-mail for electronic filing or submission.~~ The commission encourages you to use its records center web portal for filing or submitting electronic documents, because it is more reliable and secure than e-mail. If you are unable to use the records center web portal to file or submit documents,

the commission will accept a filing or submission received via e-mail addressed to the records center.

(e) You must also comply with other requirements when submitting certain documents, as shown below.

Submissions in these dockets or filings:	Must comply with these rules:
Rule-making dockets	This rule, WAC 480-07-143, and Part II of this chapter
Adjudicative dockets	This rule, WAC 480-07-145, and Part III of this chapter, <i>plus any requirements in the specific adjudication</i>
Utility tariffs and contracts	This rule, chapter 480-80 WAC, and WAC 480-07-141
Transportation tariffs and time schedules	This rule, WAC 480-07-141; and
(i) For auto transportation companies	Chapters 480-30 and 480-149 WAC;
(ii) For commercial ferry companies	Chapters 480-51 and 480-149 WAC;
(iii) For solid waste collection companies	Chapter 480-70 WAC
For public records requests	Chapter 42.56 RCW and chapter 480-04 WAC

(2) **Content of letters and e-mail messages to the commission.** Letters and e-mail messages to the commission should include only one subject.

(3) **Where to send letters and e-mail messages.** WAC 480-07-125 includes the commission's mailing address and other contact information current at the time of rule publication. Persons who communicate with the commission are encouraged to do so by e-mail to the commission's records center. The commission's internet site includes current and additional contact information.

(4) **Cover letters.** Persons submitting or filing documents with the commission must include a cover letter with the filing, unless the letter or document is one page and includes the information identified in subsection (5) of this section.

(5) ~~Identification of sender; identification of permit, license, or certificate; identification of proceeding.~~ The following requirements will make sure your message to the commission is delivered promptly to the person or persons who need to receive it, and to allow a prompt response. If you do not include the necessary information, we may not be able to promptly handle your message or provide a prompt response.

(a) **Identification of sender.** All persons who communicate with the commission must provide their full name and are asked to provide a mailing address, telephone, fax, and e-mail address to assist the commission in responding. Persons

who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf the communication is sent, in addition to the contact information described above.

(b) ~~Identification of permit, license, or certificate held by sender.~~ Any person or entity that holds a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) ~~Identification of proceeding.~~ Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding, if known.

(6) **Electronic file format requirements.** The commission requires electronic versions of all documents filed with the commission, including confidential versions of documents that include confidential information.

(a) **Acceptable media.** You may submit documents electronically through the commission's records center web portal, by e-mail file attachment addressed to the commission's records center, or submitted to the records center on a 3 1/2 inch IBM formatted high density disk or compact disc (CD) labeled with the docket number of the proceeding, if a number has been assigned, the name of the entity and the name of the individual submitting the document, and a description of the contents (e.g., "direct evidence," "motion to dismiss," etc.).

(b) **Acceptable format.** Electronic versions of all documents, including confidential versions of documents that include confidential information, must be filed in .pdf (Adobe Acrobat) format, supplemented by a separate file in .doc, .docx, .docm (MS Word), .xls, .xlsx, .xlsm (Excel), or .ppt, .pptx, .pptm (Power Point) formats, so that spreadsheets displaying results of calculations based on formulas include all formulas, and do not include locked, password protected or hidden cells.

(i) The following documents are exempt from the requirement in (b) of this subsection for formatting other than .pdf (Adobe Acrobat):

(A) Documents not created by, for, or on behalf of a party to or a witness in the proceeding for which no version in the required formatting is available; and

(B) Published, copyrighted material and voluminous material not originally prepared in the required format.

(ii) Any person who requests a document to be provided in a format other than .pdf (Adobe Acrobat), whose request is denied, may request relief from the commission.

(iii) **Confidential and redacted versions.**

(A) Parties must separately submit and clearly identify electronic versions of confidential and redacted documents when submitting documents via e-mail or the commission's web portal.

(B) Redacted versions of electronic documents that mask confidential information should be filed exclusively in .pdf format. Parties who cannot create Adobe Acrobat files

directly must provide a copy of the document converted to Adobe Acrobat via scanning or other available technology.

(e) **File naming conventions.** Electronic files must be named in a way that describes the file contents. Parties should use the format identified in the following examples, identifying the docket number, the nature of the document, and the party submitting it:

Testimony	UE-010101-Smith direct (name of party) (date) UT-020202-Jones rebuttal attachment 1 1 (name of party) (date)
Motions	UG-030303-motion to dismiss (name of party) (date) UW-040404-answer to motion to dismiss (name of party) (date)
Correspondence	TG-010203 (name of party) request for continuance (date)

(d) **Acceptable organization.** Each party must submit all files to meet a single deadline at the same time and in the same message or diskette. When a party submits two or more files at the same time, the files must be organized into folders, and the party must provide a printed index. The index may be included in a cover letter or provided as an attachment to a cover letter. The index also must be provided in the form of an electronic file.

**Example:**

Folder and diskette name	I. U-020304 (name of party) direct evidence (date)
Subfolders	A. U-020304 (name of party) (name of witness) direct (date) B. U-020304 (name of party) (name of witness) direct (date)
Files	1. U-020304 (name of witness) direct (name of party) (date) 2. U-020304 (name of witness) direct att 1 (name of party) (date))

**(1) General.**

(a) Informal submissions. Informal submissions are oral or written comments or communications directed to the commission that do not seek, or respond to, formal commission action, are not required by statute or commission rule, and generally are not filed in a docket. Informal submissions include, but are not limited to, consumer complaints other than complaints requesting commencement of an adjudicative proceeding, and public comments made on matters the commission considers at an open public meeting or in an adjudication when submitted by persons who are not, and do not seek to be, parties to that adjudication. A person may make informal submissions by using the comment form available on the commission's web site or by contacting the commission records center or consumer protection section by telephone, letter, or email at the contact information listed in WAC 480-07-125.

(b) *Formal filings.* Formal filings are written submissions that seek or respond to formal commission action or are required by statute or commission rule and that the commission may file in a docket. Unless otherwise provided in this chapter, all documents submitted to the commission for formal filing, including documents that contain confidential information, must be submitted electronically to the commission records center in conformance with this rule. The commission will not accept a document for formal filing unless the commission receives that document in electronic form.

(2) **Where to send written communications.** Persons should send written communications to the commission using the contact information contained in WAC 480-07-125 or on the commission's web site. Correspondence directed to the commission should be addressed to the commission secretary.

(3) **Cover letters.** Persons submitting documents to the commission for formal filing must include a cover letter with the submission unless the sole document submitted is a letter or the document is one page in length and includes the information identified in subsection (4) of this section.

(4) **Requirements.** The following requirements enable the commission to identify submissions and to facilitate prompt delivery of communications to commission personnel.

(a) *Identification of sender.* All persons who communicate with the commission should provide their full name, mailing address, telephone number, and email address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf they are sending the communication. All submissions on behalf of a company the commission regulates must identify the company using the exact name of the company in the commission's records. The commission's web site includes a list of all such companies by the names in the commission's records. The commission may reject or require resubmission of any submission that does not comply with this requirement.

(b) *Identification of permit, license, or certificate.* Any person or entity holding a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) *Identification of proceeding.* Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding.

(d) *Identification of documents.* All documents submitted to the commission must be named in conformance with subsection (6)(b) of this section.

(5) **Electronic submission of documents.** The commission accepts only electronic versions of documents for formal filing. Unless required in a specific rule or order, the commission does not require a paper copy of the document.

(a) *Electronic submission via web portal.* Documents submitted electronically must be submitted using the com-

mission's records center web portal except as provided in this rule.

(i) *How to use the web portal.* To use the web portal to submit documents for filing, persons should navigate to, and follow the instructions on, the web portal at the address specified in WAC 480-07-125.

(ii) *Official commission receipt.* The commission officially receives a document submitted through the web portal on the date and at the time registered by the portal; provided that documents the commission receives after 5:00 p.m. are not considered officially received or filed until the next business day. The web portal will send an automated notification to the person submitting the document when the commission has received the document.

(iii) *Insufficient capacity.* If a submission exceeds the size limitations of the commission's web portal for a single submission, the person may submit the documents in multiple web portal submissions, via one or more emails as provided in subsection (6)(c) of this section, or on a disc or other commonly used electronic storage medium delivered by mail or hand delivery. The commission includes on its web site the current size limitation of submissions on the web portal and instructions for making multiple web portal submissions.

(b) *Electronic submission via email.* If a person is unable to use the web portal to submit documents for filing, the commission will accept a submission via email. The commission may also accept correspondence or comments directed to the commission in the form of an email. An email transmitting documents must explain the reason the documents are not being submitted via the web portal and must comply with the following requirements:

(i) *Where to send electronic documents.* Emails and emailed submissions for filing must be directed to the commission's records center at the email address specified in WAC 480-07-125. Courtesy or informational copies may be sent to other email addresses for individual commission personnel. The commission will receive for filing only email submissions sent to the records center.

(ii) *When deemed received.* An email and any transmitted documents are deemed received only when the email and the entire document or set of documents successfully reach the commission's records center electronic mailbox. Emails or documents wholly or partly received by email in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day.

(iii) *Insufficient capacity.* If a submission exceeds the size limitations of the commission's email system for a single message, the person may submit the documents in multiple messages as provided in subsection (6)(c) of this section or on a disc or other commonly used electronic storage medium delivered via mail or hand delivery. The commission includes on its web site the current size limitation of a single email.

(c) *Electronic submission by mail or hand delivery.* A person may submit for filing electronic copies of documents on a disc or other commonly used electronic storage medium by mail or hand delivery (e.g., courier delivery service) to the commission's business address. The commission deems it has received an electronic document submitted by mail or hand delivery when the commission's records center physically receives it. Documents delivered to the commission's records

center after 5:00 p.m. are not considered officially received or filed until the next business day.

(d) *Additional requirements.* The following additional requirements apply when submitting documents in the circumstances identified below.

<b><u>Submissions in these dockets or types of documents:</u></b>	<b><u>Must comply with these rules and:</u></b>
<u>Rule-making dockets</u>	<u>Part II of this chapter</u>
<u>Adjudicative dockets</u>	<u>Part III of this chapter, plus any requirements in the specific adjudication</u>
<u>Utility tariffs and contracts</u>	<u>Chapter 480-80 WAC and WAC 480-07-141</u>
<u>Transportation tariffs and time schedules</u>	<u>WAC 480-07-141; and</u>
<u>(a) For auto transportation companies</u>	<u>(a) Chapter 480-30 WAC;</u>
<u>(b) For commercial ferry companies</u>	<u>(b) Chapters 480-51 and 480-149 WAC;</u>
<u>(c) For solid waste collection companies</u>	<u>(c) Chapter 480-70 WAC</u>
<u>For public records requests</u>	<u>Chapters 42.56 RCW and 480-04 WAC</u>

(6) **Electronic file format requirements.** Electronic versions of all documents filed with the commission must conform to the following file format requirements.

(a) *Acceptable format.*

(i) All documents other than spreadsheets as described in (a)(ii) of this subsection and email correspondence or comments must be filed in searchable .pdf (adobe acrobat or comparable software) format and to the extent feasible should be saved or otherwise converted directly from the native format in which the document was created. Parties that cannot create .pdf files directly from the document in its native format must provide a copy of the document converted to .pdf via scanning or other available technology. Scanned documents must be searchable unless readily available software does not support searchable scanned documents.

(ii) Any document in the form of a spreadsheet that displays results of calculations based on formulas must be filed in its native Excel format (.xls, .xlsx, .xlsm) or the updated version of, or successor to, that software program. The commission will accept spreadsheets created using a different software program only if the commission has a license to use that program and personnel who know how to use it. Spreadsheets must include all formulas and may not include locked, password protected, or hidden cells or tabs, or any other restrictions that impair or hamper the commission's ability to review or modify the data in those cells.

(iii) Correspondence or comments in the form of an email must conform to generally accepted conventions for email communications.

(b) *File naming conventions.* Documents must be named in a way that describes the contents. Each document a person submits must be labeled with the docket number of the pro-

ceeding (except in the case of original submissions), any confidentiality designation, the name of the document, the name of the person or party on whose behalf the document is submitted, the last name of any witness sponsoring the document, and the date the document is submitted. The prefix to the docket number (e.g., UE-, TG-, etc.) may be omitted, and words may be abbreviated as necessary in the file name of an electronic document if the full name is too long. The cover letter accompanying the submission must list all of the documents included in the submission using the same identifying information. The commission maintains a sample list of acceptable file names and abbreviations on its web site.

(c) *Acceptable organization.* Except as provided in WAC 480-07-160 (4)(d)(vii) when submitting documents that include information designated as confidential, all files required to meet a single deadline must be submitted at the same time and in the same message, if possible, or on the same disc or commonly used electronic storage medium. A person may submit files in more than one submission or message when submitting those files via the commission's web portal or via email as authorized in subsection (5)(a)(iii) and (b)(iii) of this section if the total size of the submission exceeds the size constraints of the commission's web portal or email system for a single submission. If the documents are submitted in multiple email messages, each email message must prominently identify which one it is in the sequence of messages and, to the extent possible, the total number of messages used (e.g., "Message 2 of 4"). The first and final messages in the sequence must be identified as such. The first message also must explain the reason for the multiple messages and must include the cover letter and any required certificate of service. All such messages must be submitted as close to simultaneously as practicable.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-141 ((Receiving and filing) Commission receipt of a document is not filing or acceptance.** The commission ((assigns docket numbers to a filing or proceeding and)) receives documents ((under docket numbers)) for administrative purposes, and such receipt alone does not ((to denote)) constitute filing or legal acceptance of a document. ((Receipt of a document for filing in a docket, or the assignment of a docket number to a document, does not mean that the commission has accepted the document, or waived any deficiencies that would allow the commission to reject the document. After a receiving a document,))

(1) **Compliance review.** Upon receipt, the commission will review a submission to determine whether it complies with applicable filing requirements prior to accepting it for filing and assigning a docket number, if applicable.

(2) **Notice of, and opportunity to correct, noncompliance.** The commission ((may address any deficiencies)) will identify any areas of noncompliance in the ((document, may require)) submission and will notify the person who made the submission within two business days, or as soon thereafter as practicable, of any areas of noncompliance that require corrective action before the commission can accept the docu-

ment for filing. The notification will indicate one of the following:

(a) A requirement to submit one or more additional documents (e.g., a cover letter, certificate of service, etc.);

(b) A requirement to resubmit the document ((to be resubmitted)) with the deficiencies corrected((:)) within a specified period of time; or ((may reject))

(c) Rejection of the document and its return to the sender.

The commission will consider corrected documents to have been filed on the date the original documents were submitted if the deficiencies are not substantive or otherwise do not impair or hamper the commission's ability to timely review, analyze, or act on the merits of the submission. Otherwise, the commission will consider the documents to have been filed on the date the corrected documents are submitted.

**(3) No waiver of noncompliance.** By accepting a submission for filing in a docket or assigning a docket number, the commission does not necessarily certify that the submission complies with all filing requirements or waive the commission's ability to subsequently reject a document as deficient or require deficiencies to be corrected; provided that in the absence of extraordinary circumstances, the commission will not reject a document for failure to comply with applicable filing requirements more than five business days after the document has been submitted, and documents are deemed accepted and filed unless the commission provides notice of noncompliance within that time period.

**AMENDATORY SECTION** (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-150 Commission service of documents ((in adjudicative proceedings)).** (1) **Commission service defined.** Commission service means sending or delivering((; in accordance with RCW 34.05.010(19) and this rule, documents relating to commission adjudications, to parties and any other persons to whom service may be required by statute. Service includes the formal exchange of documents among parties to adjudicative proceedings)) notices, orders, or other commission documents from the commission to parties, regulated companies, or interested stakeholders. Such service includes, but is not limited to, commission service of documents in adjudications pursuant to WAC 480-07-360.

**(2) Designation of person to receive service.**

(a) Each party ((in an adjudicative proceeding)), regulated company, or interested stakeholder must designate at least one person to receive commission service of documents ((relating to the adjudication)).

(b) ((When any party has appeared by an attorney or other authorized representative in a proceeding before the commission, the party must name the representative, or one of the representatives if there is more than one, to receive service of documents. Service on the representative is valid service upon the party, except as provided by law. When an individual party appears on his or her own behalf, she or he must be the person to receive service.

(c) The commission may order different arrangements for service in individual proceedings.

**(3) Person to receive service of orders.**

The commission will serve orders in adjudicative proceedings upon the party's representative and also on the party. Therefore, all parties must provide the name and mailing address of a person for purposes of direct service on the party.

**(4)) Companies the commission regulates must provide the commission with current, accurate, and complete contact information for the company itself and at least one person who owns the company or who is employed or otherwise authorized by the company to receive commission service of documents on behalf of the company. Companies must inform the commission of any changes to this contact information as soon as practicable. The commission is not responsible for a company not receiving commission service of documents if the company fails to comply with this requirement.**

**(3) Contact information.** Each party, regulated company, or interested stakeholder must ((supply)) provide the following information about every individual that it ((names)) designates to receive commission service of documents:

- (a) Name((:)) (and title, if applicable);
- (b) Mailing address((:));
- (c) Telephone number((:)); and
- (d) ((Fax number, if any.
- (e)) Email address((, if any.
- (f) Relationship to party (e.g., executive director, etc.).

**(5) Waiver of service by statutory means.**

(a) A party may choose to waive service of process by means of personal delivery, United States mail or parcel delivery service, in whole or in part, and elect to receive service by electronic means.

(b) Waiver must be made in writing, filed with the commission, and must specify alternative methods of communication to effect service. Alternates may include fax or e-mail.

(c) Waiver excuses other parties and the commission from the obligation to use methods of service specified in rule or statute.

Neither the commission nor any party is foreclosed from making service by statutory means upon a party who has waived such service, and timely service by a method specified in the statute will satisfy legal requirements for service when it is used.

**(6) Service by parties.** Parties must serve documents by delivering one copy to each other party by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.
- (c) By delivering to a commercial parcel delivery company and making or arranging payment of the pertinent fee.
- (d) By fax transmission, if other forms of service are waived.
- (e) By e-mail, if other forms of service are waived.

**(7) Service by commission.** All notices, complaints, petitions, findings of fact, opinions, and orders required to be served by the commission may be served by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.

~~(c) By commercial parcel delivery company.~~

~~(d) By fax transmission, when a paper copy is simultaneously mailed or tendered to a commercial parcel delivery company.~~

~~(e) By e-mail if originals are simultaneously mailed or sent by commercial parcel delivery company.~~

~~(8))~~.

**(4) Forms of service by commission.**

(a) To the full extent authorized by applicable law, the commission will serve documents only in electronic form except where proof of receipt is required.

(b) When applicable law requires the commission to demonstrate that a person received a document, the commission will serve the document in one of the following ways:

(i) By certified United States mail, properly addressed with first class postage prepaid, return receipt requested; or

(ii) By personal delivery with a declaration of service.

(c) When required by applicable law or in the exercise of its discretion, the commission will serve paper copies of documents by United States mail, first class postage prepaid.

**(5) When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, commission service of documents is complete as follows:

(a) Electronic service is complete when the commission sends the document to the recipient's designated email address.

(b) Service by certified mail or personal service is complete on the date indicated on the return receipt or declaration of service.

(c) Service by mail is complete when ~~((a copy of))~~ the commission deposits the document ~~((is))~~, properly addressed ~~((, stamped, and deposited))~~, and postage prepaid in the United States mail.

~~((b) Service by commercial parcel delivery is complete when the parcel delivery company accepts a copy of the document for delivery.~~

~~(c) Service by fax transmission is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by fax transmission, and the document being served has been entirely received in the recipient's fax machine.~~

~~(d) Service by e-mail is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by e-mail, and the document being served has been entirely received at the recipient's designated e-mail address.~~

~~(e) Proof of service by electronic means. Parties effecting service by electronic means are encouraged to secure electronic return receipts or otherwise confirm successful delivery.~~

**(9) Certificate of service.** Each person filing a pleading, motion, response, or brief with the commission must include with or on the original of the document either an acknowledgment of service or the following certificate:

~~"I hereby certify that I have this day served this document upon all parties of record in this proceeding, by (state the authorized method of service selected under WAC 480-07-150)"~~

Dated at ..... this ..... day of .....

(signature of person who served the document))

**AMENDATORY SECTION** (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

**WAC 480-07-160 Confidential information under RCW 80.04.095 or 81.77.210.** The commission will provide special handling ~~((and limited))~~ of, and will limit access to, confidential information submitted in compliance with this rule or WAC 480-07-423. This rule applies to any information ~~((submitted under a claim of confidentiality))~~ the provider claims to be confidential under RCW 80.04.095 or 81.77.210. Title 81 RCW, other than RCW 81.77.210, does not contain a similar statute ~~((See also, WAC 480-07-420 regarding protective orders in adjudicative proceedings))~~, and the commission will not accept documents marked as confidential pursuant to this rule and submitted on behalf of companies regulated under Title 81 RCW other than solid waste collection companies.

**(1) Implementation.**

(a) Designated official. The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.56 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

(b) Provider. Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule or a commission protective order is a ~~((the))~~ provider, ~~((the))~~ as that term is used in this rule.

(c) Requester. Any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW, or a data request in an adjudicative proceeding is a ~~((the))~~ requester, ~~((the))~~ as that term is used in this rule.

**(2) Confidential information defined.** Confidential information is information that meets any of the following criteria:

(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.56 RCW.

(b) Information protected under the terms of a protective order in an adjudicative proceeding.

(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095 or 81.77.210. Only information that satisfies this definition may be designated as confidential.

**(3) Highly confidential information.** The commission may authorize protection of information as highly confidential only pursuant to a protective order. Highly confidential information is confidential information to which even more restricted access is necessary to ensure the information is not disclosed to the detriment of the provider (or the party designating the information as confidential, if not the provider). Highly confidential information remains subject to the requirements in RCW 80.04.095 or 81.77.210, and the provisions of this section apply to highly confidential information

as well as confidential information unless this rule or the protective order authorizing highly confidential treatment of information states otherwise.

~~((3))~~ (4) **How to designate and seek protection of confidential information under this section.** A provider may claim the protection of this rule only by strict compliance with the following requirements. ~~((Any failure))~~ The commission may refuse to accept for filing any document that fails to comply with these requirements ((may result in the submission not being accepted as one including confidential information)). Failure to properly designate information as confidential also may result in the information not being treated as confidential.

(a) *Contents.* The provider must submit the claim of confidentiality in writing ~~((, in the same form (i.e., paper or electronic) and))~~ at the same time the information claimed to be confidential is submitted. The provider must state the basis ~~((upon))~~ on which the information is claimed to be confidential ((under this rule)), and if the document is not submitted pursuant to a protective order in an adjudicative proceeding, the provider must identify any person (other than the provider) ((that)) who might be directly affected by disclosure of the confidential information.

(b) *Documents with information designated as confidential or information designated as highly confidential.* The provider must submit two versions of all documents claimed to include either (but not both) confidential or highly confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential (confidential version) or highly confidential (highly confidential version); and

(ii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks the information claimed to be confidential or highly confidential (redacted version).

(c) *Documents with information designated as confidential and information designated as highly confidential.* The provider must submit three versions of all documents claimed to include both highly confidential and confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as highly confidential or confidential (highly confidential version);

(ii) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential and masks all information designated as highly confidential (confidential version); and

(iii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks all information claimed to be highly confidential or confidential (redacted version).

(d) *Marking and submission.*

(i) ~~((Paper copies. When the document is in paper format, and there is no protective order in place,))~~ Documents

containing information designated as confidential or highly confidential must be marked as follows:

(A) The provider must clearly mark each copy of the confidential version of the document with the designation (("), "Designated information is confidential per protective order in Docket [insert docket number]" if the provider submits confidential information under the provisions of a protective order, or "Designated information is confidential per WAC 480-07-160((-)" if not submitted under the terms of a protective order. The provider must clearly mark each copy of the highly confidential version of the document with the designation "Designated information is highly confidential per protective order in Docket [insert docket number]." The provider must place ~~((this))~~ the applicable mark on the first page of a multipage document and each specific page ~~((where))~~ on which the provider claims there is confidential or highly confidential information. ~~((ii) Electronic copies. When the document is in electronic format, such as an e-mail message, or a word processing or spreadsheet file, the "confidential per WAC 480-07-160" mark must be inserted in the e-mail message or on the disk or diskette, on the first page in the file and on each page that the provider claims contains confidential information. The provider must follow the requirements in (c) of this subsection and the format requirements in WAC 480-07-140(6) for submitting electronic documents. Specifically, parties must separately submit and clearly identify electronic versions of confidential and redacted documents when submitting documents via e-mail or the commission's web portal.~~

~~((iii) Protective order, if any, must be cited. If the provider submits confidential information under the provisions of a protective order, the "confidential" identification on the disk, diskette, or e-mail, on the first page of the document and each page that includes confidential information must state: "Confidential per protective order in WUTC Docket [insert docket number]."~~ When the provider submits confidential information in an electronic format, the provider must mark the document as with a paper copy and follow the format requirements in WAC 480-07-140(6) for submitting electronic documents.

~~((e) Unredacted version under seal; redacted version. The provider must submit an original and the required number of complete copies of the version of the document as to which confidentiality is claimed (unredacted version) and an original and one complete copy of the version of the document with the information claimed to be confidential masked (redacted version). If the provider submits a document under a claim that the entire document is confidential, the provider may submit only the first page of the redacted version if the page indicates that the entire document is claimed to contain confidential information.~~

(i) *Sealing and labels.* ~~The redacted version must be so labeled and submitted along with a set of any confidential documents. The confidential unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. A party submitting multiple confidential documents must collate the documents into sets and, to the extent feasible, must enclose each set of confidential documents in a separate envelope and each set of highly confidential documents for filing in a separate envelope.~~



(ii) Marking. Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper with the confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the confidential information in a box or border, or setting the text off with asterisks). Similarly, each page of the unredacted version that contains information designated highly confidential under a protective order, must be printed on light blue paper with the highly confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the highly confidential information in a box or border, or setting the text off with asterisks). The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

(iii) Number of copies. The provider must submit an original and ~~one~~ redacted copy of each confidential or highly confidential document and an original and ~~twelve~~ copies of the unredacted version of each confidential or highly confidential document, unless the commission has required a different number of copies to be filed. If a document includes both confidential and highly confidential information, the provider must submit unredacted copies including both the confidential and highly confidential information in the same document.

(4)) In the subject line of the email or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain information designated as confidential or highly confidential under a protective order or WAC 480-07-160, as applicable.

(B) Each page of the electronic document and any required paper copies of the confidential version that includes information claimed to be confidential must clearly designate that information on each page by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on yellow paper.

(C) Each page of the electronic document and any required paper copies of the highly confidential version that contains information designated as highly confidential under a protective order must clearly designate the highly confidential information by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on light blue paper.

(D) If a document includes both confidential and highly confidential information, each page of any paper copies of the confidential version that contains only information designated as confidential must be printed on yellow paper, and pages containing information designated as highly confidential must be printed on light blue paper, including pages that contain both highly confidential and confidential information. The provider is responsible for ensuring that highly confidential information is clearly distinguished from confidential information when a document includes both highly confidential and confidential information.

(E) Any required paper copy of the confidential or highly confidential version of a document, in its entirety, must be

submitted in a sealed envelope. A person submitting more than one confidential or highly confidential document in a single submission must collate all of the confidential documents into a set and all of the highly confidential documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be submitted, each set of confidential or highly confidential documents must be submitted in a separate envelope to the extent feasible.

(F) The redacted version of the document must be labeled as redacted and submitted simultaneously with the corresponding confidential or highly confidential document. The redacted version must completely black out the information claimed to be confidential or highly confidential or leave a blank space where that information is located in the document. The redacted and confidential or highly confidential versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is confidential or highly confidential, the provider may submit a single page in the redacted version for the contiguous confidential pages if that page identifies the pages claimed to be confidential or highly confidential.

(ii) Documents containing information designated as confidential or highly confidential must be submitted as follows:

(A) All documents containing information designated as confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as highly confidential or that do not include any information designated as confidential.

(B) All documents containing information designated as highly confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as confidential or that do not include any such information.

(C) The fully redacted versions of all documents containing information designated as confidential or highly confidential, along with any other nonconfidential documents that are part of the filing, must be submitted separately from the documents containing information designated as confidential or highly confidential, and all of the nonconfidential documents must be submitted in a single message or on the same electronic storage medium.

(D) If the volume of documents of any type exceeds the size constraints of the commission's web portal or email system for a single submission, those documents may be submitted in multiple submissions as provided in WAC 480-07-140 (6)(c).

(E) All submissions comprising a single filing must be made as close to simultaneously as practicable.

(5) **Challenges to claims of confidentiality.** The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission

will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter 42.56 RCW, RCW 80.04.095, 81.77.210, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

~~((5))~~ **(6) Requests for ("")information designated as confidential((" information)).** Subject to the requirements of this subsection(~~(s (6) and (7) of this section)~~), the commission will release information designated as confidential or highly confidential in response to a written request (~~(properly filed under the following requirements:~~

(a) The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

(b) The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make arrangements with the commission's secretary to pay the designated copying fees, if any.

~~(6) Informal resolution.~~ When the secretary) for public records made in compliance with WAC 480-04-090.

(a) *Avoidance of disclosure.* If the public records officer and the requester agree that the (~~(secretary))~~ commission can satisfy the (~~(requester's need))~~ request for information without disclosing information designated as confidential (~~(information, the secretary will make the information available))~~ or highly confidential, the public records officer will provide or make available for review the publicly available information in the commission's possession that is responsive to the request.

~~((7))~~ (b) *Notice of request for ((information designated confidential;)), and release of information designated confidential.* If the requester does not agree that the commission can satisfy the request without disclosing information designated as confidential or highly confidential, the commission will implement the following procedure:

(i) Pursuant to RCW 80.04.095 or 81.77.210, as applicable, the commission will provide written notice of any request for information designated as confidential or highly confidential to the provider and any person that has been identified (~~(by the provider))~~ as a person who might be directly affected by release of the information. (~~(This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the~~

records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding.)) The commission will issue such notice not more than two business days after (~~(the requested materials are located and it determines that they contain))~~ receiving confirmation that the requester requests information (~~(claimed to be))~~ designated as confidential or highly confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

(ii) The commission need not assist any person in seeking or resisting judicial intervention to protect from disclosure any information designated as confidential or highly confidential, but the commission may participate in any such proceeding.

(iii) If the provider consents in writing to the release of the information(~~(;))~~ designated as confidential or highly confidential or does not restrain disclosure of that information by (~~(way of))~~ obtaining a court order within ten days following the commission's notice of the request, the commission will consider the information public, remove the confidential or highly confidential designation from its files, and release the information to the requester.

~~((8) Judicial intervention by the commission.~~ The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.

~~(9))~~ (7) *Designation or redesignation of confidential information ((in adjudications. At the conclusion of)),* No later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record in an adjudication in which (~~(confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record, do the following:~~

(a)) a party has designated information as confidential or highly confidential, that party must verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final, and the commission will (~~(be changed))~~ change those designations only if the (~~(party asserting confidentiality))~~ provider (or the party that has designated the information as confidential or highly confidential, if different) voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the commission will adopt the designation that is least restrictive to public access (~~(will be adopted).~~

(b) File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.

(c) File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony, and similar documents, the authoring party must file the unredacted version).

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-170 Official communications from the commission.** (1) **Definition.** An official communication from the commission notifies interested parties and the public of the agency's position, anticipated action, or resolution of issues in matters that come within the commission's statutory authority.

(2) **When a communication is official.** A communication from the commission is ~~((not))~~ an ~~(( ))~~ official communication ~~(( "unless"))~~ only if it is signed or otherwise verifiably issued or entered by the commissioners, the commission's secretary or other assistant deputized, designated, or delegated to perform commission duties pursuant to RCW 80.01-030, or the secretary's designee ~~((signs it))~~. In addition, the presiding administrative law judge or the administrative law judge's designee may sign, issue, or enter official communications relating to an adjudicative proceeding.

**NEW SECTION**

**WAC 480-07-175 Inspection and production of documents in commission investigations.** (1) **Inspection.** Every public service company must make its accounts, books, papers, and documents available for commission inspection at any and all times.

(2) **Production.** The commission may require a public service company to provide copies of documents to the commission for inspection at the commission's offices.

(a) *Format.* The commission will require a public service company to provide documents for commission inspection by serving the company with a letter or other writing signed by the secretary or an administrative law judge.

(b) *Response.* The public service company must provide the required documents, or any objections to providing those documents, to the commission within ten business days of the date the commission serves the letter or other writing unless the commission specifies a different deadline.

(c) *Objections.* Any objections the public service company gives in lieu of providing the requested documents must describe in detail the legal and factual basis for the company declining to provide the documents. Commission staff must file a response to the objections within five business days. The commission will notify the company of the disposition of its objections and the date by which the company must provide any requested documents the commission determines that the company must provide.

**AMENDATORY SECTION** (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

**WAC 480-07-180 Incorporated and referenced materials in commission rules and orders.** Any document that is incorporated by reference in a commission rule or order is available for public inspection at the commission unless exempt from the public disclosure requirements in

chapter 42.56 RCW, or under a protective order in an adjudicative proceeding. The commission's secretary or public records officer will provide a copy of a referenced document upon request, allowing reasonable time for any necessary copying, subject to any ~~((pertinent))~~ applicable charge, and subject to copyright restrictions or statutory exemptions from public disclosure. The commission incorporates or references the version of the incorporated or referenced material that is current on the day the commission adopts a rule, makes a ruling, or enters an order that makes the incorporation or reference, unless the commission specifies another version or unless another version is apparent from the reference. In most instances, such information is available to the public on the commission's web site ~~((see WAC 480-07-125))~~.

**NEW SECTION**

**WAC 480-07-190 Electronic signatures.** (1) **Authorization.** To the extent authorized under RCW 19.360.020, the commission will accept electronic signatures on all documents submitted to the commission for filing that applicable law requires or allows to be signed by hand if the electronic signature complies with this rule and any other applicable requirements (e.g., of the entity on whose behalf the person is signing). The commission may use electronic signatures on documents it issues, enters, or serves including, but not limited to, orders, notices, and correspondence, to the extent authorized under RCW 19.360.020.

(2) **Definitions.**

(a) An electronic signature is one or more letters, characters, numbers, or other symbols in digital form incorporated in, attached to, or otherwise logically associated with an electronic document that:

(i) Identifies and authenticates a particular person as the source of the document; and

(ii) Indicates such person's intent to sign the document and approval of the information contained in that document.

(b) A secure electronic signature is an electronic signature that:

(i) Is unique to the person making the signature;

(ii) The technology or process used to make the signature is under the sole control of the person making the signature;

(iii) The technology or process can be used to identify the person using the technology or process; and

(iv) The electronic signature can be linked with the document in such a way that the signature can be used to determine whether the document has been changed since the electronic signature was incorporated in, attached to, or otherwise associated with the document.

(3) **Requirements.**

(a) *Attorney signatures.* An electronic document that requires an attorney's signature must include the date on which the document was signed and be signed:

(i) With a secure electronic signature;

(ii) With the symbol "/s/" followed by the attorney's name, state bar number, and full contact information; or

(iii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document

for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review.

(b) *Other signatures.* An electronic document that requires a signature and is signed by a person who is not an attorney acting in a representative role must include the date on which it was signed and be signed:

(i) With a secure electronic signature;

(ii) With the symbol "/s/" followed by the person's name, title, company, street address, telephone number, and email address; or

(iii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review, or for as long as the document is effective, whichever period of time is longer.

(c) *Signatures subject to penalty of perjury.* An electronic document required to be signed under penalty of perjury must include the date on which it was signed and be signed by the person subject to penalty of perjury:

(i) With a secure electronic signature; or

(ii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review, or for as long as the document is effective, whichever period of time is longer.

(4) **Effect.**

(a) *Submissions.* An electronic document submitted to the commission in compliance with this rule shall bind each person whose electronic signature is incorporated in, attached to, or otherwise logically associated with the document and shall be deemed the equivalent of an original signed document.

(b) *Commission communications.* All notices, orders, or other documents issued, entered, or served by the commission with one or more electronic signatures in compliance with this rule and WAC 480-07-170 are official communications of the commission.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-07-143 Submitting documents in rule-making proceedings.

WAC 480-07-145 Filing documents in adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-220 Monitoring rule-making proceedings; lists of interested persons.** (1) ~~((Internet.))~~ **Informa-**

**tion.** The commission's ~~((internet))~~ web site includes information about each pending rule-making proceeding((s)) under the docket number the commission has assigned to that rule making.

(2) ~~((Mail or e-mail.))~~ **Notification.** The commission maintains lists of persons interested in potential rule-making proceedings that concern particular regulated industries and other areas of potential interest. The commission sends notice of rule-making proceedings via e-mail to persons on these lists. Any person may request in writing that the commission's records center include them on the relevant list or lists ~~((for the person's area(s) of interest)).~~ Such requests must include the person's name, entity and title (if the person is representing a company, association, or other organization), and e-mail address. The commission may establish a fee for this service.

(3) **Individual rule making.** The commission also maintains a distribution list of persons to whom it sends electronic copies of notices, orders, or other documents it issues in individual rule making. Any interested person may be included on the distribution list the commission maintains for specific rule making by requesting in writing to be included on that list. Such requests must include the person's name, entity and title (if the person is representing a company, association, or other organization), and e-mail address. In addition, the commission generally will include on that distribution list persons who file comments in the rule making unless those persons submit only generic comments as a member of an organization or other entity that prepared, sponsored, or otherwise generated or arranged for those comments.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-230 Inquiring about rule-making proceedings.** Persons who wish to inquire about rules being proposed or considered by the commission may contact the commission's rules coordinator, whose contact information is available on the commission's ~~((internet))~~ web site.

#### NEW SECTION

**WAC 480-07-250 Submitting documents in rule-making proceedings.** (1) **Scope of rule.** This section governs communications to the commission in rule-making proceedings. These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Submitting comments.** All written comments submitted in a rule making must be addressed to the commission secretary.

(3) **Methods for delivering comments and other communications.** The commission will accept only electronic copies of comments or other documents submitted for filing in a rule-making proceeding. A person must submit such documents by sending them to the commission through the records center web portal, at the address provided in WAC 480-07-125 or the commission's web site, without providing a paper copy. If a person is unable to use the records center web portal to submit documents for filing, the commission will accept a submission via e-mail as provided in WAC 480-07-140 (5)(b) or on a disc or other commonly used electronic

storage medium by mail or hand delivery as provided in WAC 480-07-140 (5)(c), without providing a paper copy.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-300 Scope of Part III.** (1) **Scope.** The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). An (~~(<sup>u</sup>)~~) adjudicative proceeding(~~(<sup>u</sup>)~~) for purposes of this chapter(~~(<sup>u</sup>)~~) is a proceeding in which an opportunity for hearing is required by statute or constitutional right (~~(before or after the commission enters an order, or as to which)~~) or is a proceeding the commission voluntarily (~~(enters)~~) commences as an adjudication(~~(, and)~~) as defined and described in chapter 34.05 RCW.

(2) **Examples of adjudicative proceedings before the commission.** The following are nonexclusive examples of (~~(proceedings that are)~~) adjudicative proceedings for purposes of this chapter(~~(, if set for hearing)~~) once the commission takes formal action to commence such a proceeding pursuant to WAC 480-07-035:

(a) Formal complaint proceedings commenced pursuant to RCW 80.04.110 or 81.04.110 or complaints the commission initiates.

(b) (~~(General rate proceedings.)~~) Suspended tariff filings including, but not limited to, tariffs increasing rates.

(c) Applications for authority (e.g., certificates, licenses, and permits) to which a person has filed an objection or protest or as to which the commission has issued a notice of intent to deny the application and grants a request for hearing.

(d) Petitions for enforcement of interconnection agreements.

(e) Objections to closures of highway-railroad grade crossings.

(f) Declaratory order proceedings.

(g) Challenges to, or requests for mitigation of, a penalty assessment when the commission grants a request for a hearing.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-305 Commencement of an adjudicative proceeding.** (1) **Commencement.** The commission may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority. An adjudicative proceeding begins when the commission (~~(or presiding officer)~~) notifies a party that the commission will conduct a prehearing conference, hearing, or other stage of an adjudicative proceeding (~~(will be conducted)~~).

(2) **Who may (~~(file a pleading seeking to initiate)~~) seek to commence an adjudicative proceeding.** A person involved in an actual case or controversy subject to the commission's jurisdiction may apply to the commission (~~(for)~~) to commence an adjudicative proceeding by (~~(filing)~~) submitting the appropriate form of pleading.

(3) **Types of pleadings that (~~(may initiate)~~) request an adjudicative proceeding.** The following pleadings, when properly and timely (~~(filed)~~) submitted for filing, constitute applications for adjudicative proceedings:

(a) Formal complaints submitted by persons other than commission staff.

(b) Petitions(~~(,)~~) for commission action when the (~~(action sought)~~) relief requested requires adjudication or when the commission determines the issues presented should be resolved through adjudication.

(c) Petitions for declaratory orders under RCW 34.05-240, when the commission determines that an adjudicative process is necessary to provide parties the opportunity to resolve contested issues.

(d) (~~(Filings for general rate increases, as defined in this chapter)~~) Requests for a hearing to contest, or seek mitigation of, penalties assessed without a prior hearing.

(e) Protests of, or objections to, applications for authority (~~(that are not protested, if the commission is required by law to conduct a hearing or determines, in its discretion, that it should set the matter for hearing)~~).

(f) (~~(Petitions for review of the denial of)~~) Requests for hearing to contest a commission notice of intent to deny an unprotested application for authority (~~(and petitions for mitigation of penalties assessed without hearing)~~).

(g) Protests to applications for authority.

The commission will not initiate an adjudicative proceeding in response to such an application when contrary to statute or rule, when the application is presented during an existing adjudication (except pursuant to the commission's discretion under RCW 34.05.413(1)), or when the subject raised by the application is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW).

(4) **Commission notification of any deficiencies in a pleading.** Within thirty days after receiving an application for an adjudicative proceeding, the commission may notify the applicant of any obvious errors or omissions, request any additional information (~~(it)~~) the commission requires regarding the application (~~(for adjudicative proceeding)~~), and notify the applicant of the name, (~~(mailing)~~) e-mail address, and telephone number of a person on the commission staff (~~(that may be contacted)~~) who the applicant may contact regarding the application.

(5) **Commission determination whether to conduct an adjudicative proceeding.** Within ninety days after (~~(a party files and serves a pleading or a party files and serves a response, whichever comes later)~~) receiving an application for an adjudicative proceeding, the commission will:

(a) Commence an adjudicative proceeding by serving (~~(the parties with)~~) a notice of hearing pursuant to RCW 34.05.434; or

(b) Decide not to conduct an adjudicative proceeding and furnish the applicant with a (~~(copy of its written decision, which will include a)~~) brief written statement of the reasons (~~(and notice of any administrative review available)~~) for that decision. While other circumstances may justify not commencing an adjudicative proceeding, the commission will not commence an adjudicative proceeding under the following circumstances:

(i) The commission lacks jurisdiction or the authority to grant the requested relief.

(ii) The matter is not ripe for commission determination.

(iii) An adjudicative proceeding would be contrary to statute or rule.

(iv) The subject matter is being, or will be, considered in another proceeding.

(v) The applicant lacks standing to request the relief it seeks from the commission.

(vi) The subject matter is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW, or would be better addressed informally or in a different proceeding.

(c) The commission will conduct any administrative review of a decision not to conduct an adjudicative proceeding using the same procedures applicable to review of initial orders set forth in WAC 480-07-825.

AMENDATORY SECTION (Amending WSR 06-17-126, filed 8/21/06, effective 9/21/06)

**WAC 480-07-307 Probable cause determinations.** An administrative law judge will review the information or evidence supporting ~~((a proposed complaint or penalty assessment and))~~ any complaint commission staff proposes to have the commission issue and will determine whether probable cause exists to issue the complaint ((or assess penalties. If the judge determines)), Upon determining that the information would ((support the proposed penalties or)) sustain the complaint((;)) if proved at hearing and ((if)) not rebutted or explained, the judge will sign the complaint ((or penalty assessment)) on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for ((the proposed penalties or)) the complaint.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-310 Ex parte communication.** (1) **General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final ~~((determination))~~ resolution of the proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy((;)) or investigative((; or prosecutorial)) staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge assigned to the adjudication, or the commissioners' ~~((staff))~~ assistants, advisory staff, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding((;)) so that they may participate in, or respond to, the communication.

(2) **Communications not considered ex parte for purposes of this section.** The following communications are not considered ex parte:

(a) *Procedural aspects.* Communications ~~((necessary to))~~ concerning procedural aspects of ~~((maintaining an orderly process))~~ the proceeding, such as scheduling, are not

ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) ~~Commissioners((The commissioners may communicate with one another regarding the merits of any adjudicative proceeding.~~

~~((;))~~, commission employees, and consultants. ~~((A))~~ As presiding officers, commissioners and administrative law judges may receive legal counsel((;)) or consult with ~~((staff))~~ assistants, advisory staff, or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or ~~((prosecutorial))~~ advocacy functions in the same or a factually related case. The presiding officers and these assistants, advisory staff, and consultants also may communicate with one another regarding the merits of any adjudicative proceeding.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving in that capacity, the presiding officer, after starting to serve, must promptly disclose the communication as prescribed in subsection (4) of this section ~~((promptly after starting to serve)).~~

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives or becomes aware of any communication that appears to violate RCW 34.05.455((;)) or this section((;)) will ~~((place on))~~ include documentation of the communication in the record of the pending matter. Such documentation will include any ~~((such))~~ written communication received((;)) and any written response ((to the communication, and)), or a memorandum stating the substance of any ((such)) oral communication received((; any)) and response made, ((and)) as well as the identity of each person ~~((from whom the presiding officer received an ex parte))~~ involved in the communication. The presiding officer will ~~((advise))~~ notify all parties that ~~((these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party who wants to respond to the communication may place a written rebuttal statement on the record. Portions of the record))~~ this documentation has been included in the record and will provide parties with the opportunity to file and serve a written rebuttal statement in response to the notice of ex parte communication. Materials pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of ~~((the))~~ them into the evidentiary record for purposes of establishing a fact at issue and the commission admits that portion ~~((is admitted))~~ into the record pursuant to RCW 34.05.452.

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission ~~((will, and))~~ or any party may((;)) report ~~((any))~~ a violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-330 Presiding officers.** (1) **Commissioners.** The commissioners may preside in any adjudicative proceeding with or without the assistance of an administrative law judge. When the commissioners preside, they are ~~((<sup>(1)</sup>)presiding officers(<sup>(2)</sup>)~~) as that term is used in chapter 34.05 RCW and in this chapter. When the commissioners preside with the assistance of an administrative law judge, the administrative law judge also is a presiding officer, except for purposes of making final decisions on substantive matters in the proceeding. The administrative law judge may enter procedural and other interlocutory orders. When the commissioners preside, they may enter procedural and other interlocutory orders and will enter one or more final orders in the proceeding to resolve the substantive matters presented.

(2) **Administrative law judge.** The ~~((supervisor))~~ director of the administrative law ~~((judge function within the agency))~~ division will designate ~~((one or more))~~ an administrative law judge ~~((s))~~ to preside in individual proceedings, ~~((subject to the commissioners' approval. An administrative law judge may be designated))~~ either to assist the commissioners in their role as presiding officers as described in subsection (1) of this section, or ~~((may be designated))~~ to serve alone as the presiding officer. When serving alone as the presiding officer, the administrative law judge will enter one or more initial orders, unless the parties and the commission agree to waive an initial order, or applicable law prohibits entry of an initial order. An initial order becomes final if no party petitions for administrative review within twenty days and the commissioners do not review the order on their own motion. The commissioners will enter a final order ~~((following the opportunity for))~~ if a party petitions for, or the commission on its own motion undertakes, administrative review of an initial order, ((upon waiver of)) if the parties and the commission agree to waive an initial order, or as otherwise provided by law.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-340 Parties—General.** (1) **Definitions.**

(a) *Person.* As defined in RCW 34.05.010(14), a ~~((<sup>(1)</sup>)person(<sup>(2)</sup>)~~) is any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(b) *Party.* As defined in RCW 34.05.010(12), a ~~((<sup>(1)</sup>)party(<sup>(2)</sup>)~~) is a person to whom the agency action is specifically directed ~~((; or))~~. A party is also a person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

~~((e))~~ **Interested person.** An "interested person" is a person who does not want to participate in a pending docket as a party or is not permitted to do so, but who wants to receive copies of all documents that the commission serves on parties, simultaneous with service, as well as documents served on the commission and other parties. The commission may charge for this service.

~~((d))~~ **Docket monitor.** A "docket monitor" is a person who would like to receive orders entered by the commission in a docket.)

(2) **Appearance requirement.** The commission will not grant party status to a person who fails to appear at the earliest prehearing conference ~~((;))~~ if one is held, or hearing session ~~((;))~~ if there is no prehearing conference, unless the ~~((party))~~ person is excused from appearing by the presiding officer or shows good cause for failing to timely appear. The commission staff and the public counsel ~~((section))~~ unit of the attorney general's office become parties to an adjudicative proceeding for all purposes upon entering an appearance. ~~((When the commission's regulatory staff appears as a party it will be called "commission staff" or "staff." When the public counsel section of the office of the Washington attorney general appears as a party, it will be called "public counsel."))~~

(3) **Classification of parties.** The commission generally will refer to parties ~~((to))~~ in commission proceedings ~~((before the commission will be called applicants, complainants, petitioners, respondents, intervenors, or protestants.))~~ by their names but may refer to them according to ~~((the nature of))~~ their classification in the proceeding ~~((and the relationship of the parties))~~, as follows:

(a) *Applicants.* Persons applying for any right or authority that the commission has jurisdiction to grant are ~~((<sup>(1)</sup>)applicants.<sup>(2)</sup>)~~

(b) *Complainants.* Persons who file a formal complaint with the commission are ~~((<sup>(1)</sup>)complainants.<sup>(2)</sup>)~~ When the commission commences an adjudicative proceeding on its own complaint ~~((seeking to impose a penalty or other sanction based upon alleged acts or omissions of the respondent))~~, the commission is the ~~((<sup>(1)</sup>)complainant.<sup>(2)</sup>)~~

(c) *Petitioners.* Persons petitioning for relief other than by complaint are ~~((<sup>(1)</sup>)petitioners.<sup>(2)</sup>)~~

(d) *Movants.* Persons filing a motion for relief are ~~((<sup>(1)</sup>)movants(<sup>(2)</sup>) or (<sup>(1)</sup>)moving parties.<sup>(2)</sup>)~~

(e) *Respondents.* Persons against whom any formal complaint, petition, or motion is filed are ~~((<sup>(1)</sup>)respondents.<sup>(2)</sup>)~~ ~~((In general rate proceedings that are set for hearing on the commission's motion or complaint, the party seeking to increase rates is a "respondent," but bears the burden of proof in the proceeding pursuant to RCW 80.04.130 or 81.04.130.))~~

(f) *Intervenors.* Persons ~~((;))~~ other than the original parties, ~~((that are permitted))~~ commission staff, and public counsel that the commission permits to appear and participate as parties are ~~((<sup>(1)</sup>)intervenors.<sup>(2)</sup>)~~

(g) *Protestants.* Persons ~~((that))~~ who file a protest to oppose an application are ~~((<sup>(1)</sup>)protestants.<sup>(2)</sup>)~~

(h) Objectors. Persons who file an objection to oppose an application are objectors.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-345 Appearance and practice before the commission.** (1) **Minimum qualifications.** No person may appear before the commission as a representative of a party to an adjudicative proceeding without meeting at least one of the following qualifications:

(a) Membership in good standing in the Washington State Bar Association;

(b) Admission to practice, in good standing, before the highest court of any other state or the District of Columbia;

(c) Status as an officer or employee of a party or person seeking party status, if granted permission by the presiding officer to represent the party; or

(d) Status as a legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admission to practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the presiding officer approves the intern's sole appearance in advance.

The presiding officer may refuse to allow a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

**(2) Written notice of appearance and withdrawal by counsel or other representative is required.**

(a) Attorneys or other authorized representatives ((that) who wish to appear on behalf of a party or person seeking party status ((-or to withdraw from a proceeding, must immediately provide separate)) must file a written notice ((to) of appearance with the commission and serve all parties to the proceeding ((-Parties must supplement the written notice by submitting the document in electronic form as specified in WAC 480-07-140(5))) prior to acting in a representative capacity unless the attorney or authorized representative has previously appeared through the party's initial pleading or written petition to intervene.

(b) A party's initial pleading or written petition to intervene filed in ((the) a proceeding must designate the party's attorney or other representative ((-Later)) authorized to accept service on behalf of the party.

(c) A party must file a written notice with the commission and serve all parties to make any changes to ((the) its designation of authorized ((representative must be made by written notice to the commission, and a copy must be served on each other party in the proceeding. The party's initial pleading must also designate one person as its representative to accept service for the party itself)) representative(s).

(d) Attorneys or other authorized representatives who wish to withdraw from representing a party must file a separate written notice of withdrawal with the commission and serve all parties to the proceeding.

**(3) Unethical conduct is not permitted.** Persons appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. Representatives are required to be familiar with, and conform to, the requirements of the rules of professional conduct that are part of the Washington court rules. If any representative fails to conform to those standards, the commission may exclude the person from the proceeding, may report the ethical violation to any appropriate licensing authority, and may refuse to permit the person to appear before ((#) the commission in a representative capacity in any future proceeding.

**(4) Former employees.** Former employees of the commission are subject to the provisions of RCW 42.52.080, which governs employment after public service.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-355 Parties—Intervention. (1) Petition to intervene.**

(a) Who may petition; when petitions must be filed. The commission strongly prefers written petitions to intervene from any person ((#) who seeks to appear and participate as a party in a proceeding before the commission other than the original parties ((to any proceeding before the commission)), commission staff, and public counsel ((-who desires to appear and participate as a party)). Written petitions to intervene should ((file a written petition for leave to intervene)) be filed at least three business days before the initial hearing date or prehearing conference date, whichever occurs first. A person may petition orally for leave to intervene at the time of the initial hearing or prehearing conference, whichever occurs first, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date. ((The commission may extend the period for filing timely petitions to intervene.))

(b) Late-filed petition to intervene. ((Any)) The commission may grant a petition to intervene made after the ((deadline for filing or presenting the petition is a "late-filed petition to intervene." The commission will grant a late-filed petition to intervene)) initial hearing or prehearing conference, whichever occurs first, only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.

(c) Contents of petition. Any petition to intervene must disclose:

(i) The petitioner's name and ((address-)) contact information as specified in WAC 480-07-360(3);

(ii) The petitioner's interest in the proceeding((-);

(iii) The petitioner's ((position(s))) position with respect to the matters in controversy((-);

(iv) Whether the petitioner proposes to broaden the issues in the proceeding and, if so, a statement of the proposed issues ((and an affidavit or declaration)) that clearly and concisely sets forth the ((facts supporting)) basis for the petitioner's ((interest in broadening)) proposal to broaden the issues((-); and

(v) The name and ((address of petitioner's attorney or other representative, if any. Attorneys and other party representative must separately file their notice of appearance as required by WAC 480-07-345(2))) contact information as specified in WAC 480-07-360(3) of the persons the petitioner has authorized to act as the petitioner's representatives, including attorneys, if any.

**(2) Response.** Parties may respond to any petition to intervene. Responses may be written((-) or may be heard orally at ((#) the prehearing conference or ((#) hearing at which the commission considers the petition. A party's written response to a timely filed written petition to intervene ((must)) should be filed and served at least two business days before the ((next)) prehearing conference or hearing ((date)) at which the commission will consider the petition, or at such other time as the commission may establish by notice.

**(3) Disposition of petitions to intervene.** The commission ((may)) generally will consider petitions to intervene at the prehearing conference or at the initial hearing((-or)) if



the commission does not conduct a prehearing conference (or, if persons have responded to a petition, before or after a hearing or prehearing conference. If the petition discloses), the presiding officer may grant a petition to intervene if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest (the presiding officer may orally grant the petition at a hearing or prehearing conference, or in writing at any time. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2)). If the commission grants intervention, the petitioner becomes a party to the proceeding as an intervenor. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2).

(4) **Dismissal of intervenor.** The commission may dismiss an intervenor from a proceeding at any time after notice and a reasonable opportunity to be heard if the commission determines (at any time) that the intervenor has no substantial interest in the proceeding (or that) and the public interest will not be served by the intervenor's continued participation.

(5) **Interlocutory review by commission.** The commission may review a decision regarding a petition to intervene or dismissal of an intervenor pursuant to WAC 480-07-810.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-360 Parties—Service and master service list.** (1) **Service defined.** Service means sending or delivering, in accordance with RCW 34.05.010(19) and this rule, the following documents in an adjudicative proceeding:

(a) Documents submitted to the commission for filing that must be sent or delivered to the parties in that proceeding;

(b) Documents that are not submitted to the commission for filing but that are formally exchanged between parties (e.g., data requests and responses); or

(c) Orders, notices, or other documents the commission enters or issues that must be sent or delivered to the parties or to any other persons to whom service may be required.

(2) **Designation of person to receive service.** Each party in an adjudicative proceeding must designate at least one person to receive service of documents relating to the adjudication. A party may designate more than one person to receive electronic service subject to any limits the presiding officer may establish on the number of persons each party may designate. Service on the person or persons who a party has designated as its representative(s) is valid service upon the party, except as provided by law.

(3) **Contact information.** In its initial filing in the adjudicative proceeding, each party or person seeking to become a party must designate the individuals to receive service on behalf of the party or person and must supply the following information about each such individual:

(a) Name;

(b) Mailing address;

(c) Telephone number;

(d) E-mail address; and

(e) Relationship to party (e.g., counsel, executive director, etc.).

(4) **Master service list.** The commission will maintain a master service list for each adjudicative proceeding. (It will be available upon request and if feasible, on the commission's web site.) The commission will include an initial master service list as an appendix to the prehearing conference order, if any, in the proceeding and will maintain a current master service list on the commission's web site as a separate document under the docket number for the proceeding. Parties must provide written notice to the commission and the other parties of any changes to the master service list.

(5) **Contents of master service list.** The master service list will contain the (name, mailing address, e-mail address, telephone number, and fax number of) contact information for each party to the proceeding and (of) each party's (representative. The commission will provide a courtesy copy to the parties of contact information provided by each party at the initial prehearing conference. Parties must designate persons to receive service in accordance with WAC 480-07-150.) designated representative(s) for service. If the commission requires both paper and electronic service, the master service list will identify the one person representing each party who must be served paper copies in addition to electronic service.

(6) **Electronic service required.**

(a) Each party must serve documents by delivering electronic copies to each person on the master service list. Unless otherwise required by law, a party need not deliver a paper copy of the documents to any other party to perfect service but may serve a paper copy of any documents in addition to the electronic copies on a party that requests a paper copy.

(b) The commission will only serve documents electronically on each party's designated representatives, except as required otherwise by law. To the extent a statute requires a party's agreement to electronic service, the commission presumes that by participating as a party to an adjudicative proceeding, each party agrees to electronic service of all documents in that proceeding, including orders and notices the commission serves, unless the party states on the record at or before the initial prehearing conference or the hearing, whichever occurs first, that the party does not agree to electronic service. If a party lawfully insists on paper service, the commission will serve all documents electronically and also will serve on that party the paper documents the applicable statute requires be served in paper form.

(7) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, service is complete when the document being served has been verifiably sent to the recipient's designated e-mail address. Parties serving documents should maintain records of documents sent by e-mail and, to the extent practicable, should confirm successful delivery.

(8) **Certificate of service.** Each submission of one or more documents for filing to meet a single deadline in an adjudicative proceeding must include a certificate of service that states substantially as follows:

"I hereby certify that I have this day served [name of document(s)] upon all parties of record in this proceeding, by electronic transmission to the e-mail address(es) of each party or party representative listed in the commission's master service list for this docket."

Dated at . . . . . this . . . . . day of . . . . .

(Signature of person who served the document)

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

**WAC 480-07-365 Filing documents in adjudicative proceedings.** (1) **Scope of rule.** The requirements in this section are in addition to the general requirements for submitting documents to the commission in WAC 480-07-140 and any requirements in a specific adjudication. The commission will not consider documents to be filed until all applicable requirements are satisfied.

(2) **Electronic filing is required.** Except as otherwise required by these rules or other law, documents filed in an adjudicative proceeding must be submitted electronically using the commission's records center web portal no later than 5:00 p.m. on the date the documents are required to be filed unless the commission establishes an earlier time.

(a) *Submissions exceeding size limitations.* If the submission exceeds the size limitations of the commission's web portal, the submission will be timely if the documents are submitted by 5:00 p.m. through one of the options specified in WAC 480-07-140(5).

(b) *Exact copy.* Any paper copies of the document the commission requires by rule or order must conform exactly in form and content to the electronic version.

(c) *Simultaneous delivery to all parties and presiding officer.* All electronic documents submitted to the commission through the web portal or by e-mail on a filing deadline date must be delivered to all parties and the presiding administrative law judge by e-mail at the same time the documents are submitted to the commission or immediately thereafter. Copies intended for the presiding administrative law judge must be sent to the judge's individual e-mail address. Submissions should **not** be sent directly to the commissioners.

(3) **Exception for documents offered and received at hearing.** When authorized by the presiding officer, a document may be officially received for purposes of an adjudicative proceeding when the presiding officer receives the document for the record at a hearing. The commission's receipt of the document for filing is contingent on submission of electronic copies as required in this section by 5:00 p.m. on the next business day, unless the presiding officer establishes a different submission deadline.

(4) **Failure to file required copies.** If a person fails to file the required types of electronic copies of a document and any required paper copies of a document, the commission may reject the filing or may require the person to file the

required electronic and paper copies. The commission will not consider the document to be officially filed until the commission receives all required copies.

(5) **Service required.** Submission of any document with the commission for filing in an adjudicative proceeding is not complete until the party submitting the document has served all other parties to the proceeding pursuant to WAC 480-07-360.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-370 Pleadings—General.** ~~((+))~~ **Types of pleadings permitted.** Pleadings include, but are not necessarily limited to, formal complaints, ~~((petitions;))~~ answers to complaints, petitions, responses to petitions, replies, ~~((counterreclaims, answers to counterreclaims, cross-claims, answers to cross-claims, third-party complaints, answers to third-party complaints;))~~ applications for authority, ~~((and))~~ protests, and objections. The commission may allow other pleadings upon written motion or on the commission's own motion.

~~((a))~~ (1) *Formal complaints.*

~~((+))~~ (a) Defined. ~~((=))~~ Formal complaints ~~((=))~~ are complaints filed in accordance with RCW 80.04.110 ~~((and))~~ or 81.04.110, complaints filed under RCW 80.54.030, and commission complaints in proceedings designated by the commission as formal commission proceedings. For purposes of this rule, a formal complaint does not include an informal complaint filed pursuant to WAC 480-07-910 or a commission complaint and order suspending a rate increase or other tariff filing.

~~((+))~~ (b) Contents. A formal complaint must be in writing and must clearly and concisely set forth the ~~((ground(s)))~~ grounds for the formal complaint ~~((and))~~, the relief requested, and the commission's jurisdiction to commence an adjudication and grant the requested relief. A formal complaint must state:

~~((A))~~ (i) The complainant's name and address ~~((of the complainant))~~ and the ~~((name and address of complainant's attorney or other representative, if any))~~ contact information for the individuals to receive service on behalf of the complainant as required under WAC 480-07-360(3);

~~((B))~~ (ii) The full name and address of the person complained against, which should be the name and address contained in the commission's records if the respondent is a public service company;

~~((C))~~ (iii) Facts that constitute the basis of the formal complaint and requested relief, including relevant dates; ~~((and~~

~~((D))~~ (iv) Citations to ~~((relevant))~~ statutes or commission rules(~~(-~~

~~((iii))~~ Proceedings under RCW 80.04.110 or 81.04.110. In proceedings under RCW 80.04.110 or 81.04.110, the provisions of the respective statute will also apply.

~~((b))~~ the complainant alleges that the respondent has violated and that provide the commission with jurisdiction to resolve the complaint and grant the relief the complainant requests; and

(v) Facts and law sufficient to demonstrate that the complainant has complied with all other prerequisites including, but not necessarily limited to, the requirements in RCW 80.04.110 or 81.04.110, if applicable.

(2) Answer to formal complaint.

(a) Defined. A pleading responding to a formal complaint is an answer.

(b) Timing. If the commission decides to commence an adjudicative proceeding on its own complaint or in response to a formal complaint brought by another person, the commission will serve the complaint on the respondent. A respondent must file any answer to a formal complaint, whether required or optional, within twenty days after the commission serves the complaint or such other time as the commission specifies in the notice accompanying the complaint.

(c) When required. A named respondent must file an answer to a complaint brought by any party other than the commission.

(d) When optional. A party may file an answer to a complaint brought by the commission.

(e) Content. Answers must include the following information:

(i) The name and contact information of the respondent and the individuals to receive service on behalf of the respondent as required under WAC 480-07-360(3);

(ii) Admissions or denials, specifically and in detail, of all material allegations of the formal complaint; and

(iii) Full and complete disclosure of the respondent's affirmative defenses, if any.

(3) Petitions.

~~((i)) (a) Defined. ((Except for formal complaints and applications, as defined in this section,)) All original pleadings that seek relief other than formal complaints and applications as defined in this section and all pleadings that seek relief from a commission order, are ((<sup>(b)</sup>)) petitions. ((<sup>(c)</sup> Examples of petitions are petitions to intervene, petitions for declaratory orders that the commission converts into adjudications under RCW 34.05.310, petitions for enforcement of interconnection agreements under WAC 480-07-650, petitions for accounting orders, petitions for crossing or alteration of railroad crossings under RCW 81.53.030 and 81.53.060 and petitions for exemptions from or waiver of commission rules. Petitions that seek relief from a commission order include petitions for administrative review of an initial order, petitions for reconsideration of a final order, petitions for rehearing of a final order, and petitions for stay of the effectiveness of a final order.)) The commission may undertake an action that would be the proper subject of a party's petition, such as authorizing exemption from a commission rule, without receiving a petition from a party. The commission will provide written notice and allow for appropriate process when it acts in the absence of a party's petition.~~

~~((ii)) (b) Contents.~~ A petition must be in writing and must clearly and concisely set forth the ~~((ground(s))) grounds~~ for the petition ~~((and)), the relief requested, and the commission's jurisdiction to grant the requested relief.~~ A petition must state:

~~((A) The petitioner's name and address and the name and address of the petitioner's attorney or other representative, if any;~~

~~(B)) (i) For original petitions, the name and contact information of the petitioner and the individuals to receive service on behalf of the petitioner as required under WAC 480-07-360(3) if the petitioner is requesting that the commission commence an adjudicative proceeding in response to the petition;~~

~~(ii) Facts that constitute the basis of the petition and requested relief, including relevant dates; and~~

~~((C)) (iii) Citations to ((relevant)) statutes or commission rules that provide the commission with jurisdiction and authority to grant the requested relief.~~

~~((e) Answer to formal complaint or petition.~~

~~(i) Defined.~~ A response to a formal complaint or petition is an answer. Answers must admit or deny specifically, and in detail, all material allegations of the formal complaint or petition and must fully and completely disclose the nature of the respondent's affirmative defenses, if any. A respondent must separately state and number each affirmative defense asserted.

~~(ii) When required.~~ A named respondent must file an answer to a complaint brought by any party other than the commission.

~~(iii) When optional; when prohibited.~~ A party may file an answer in any case, but an answer may not be filed in response to petition for reconsideration unless the commission expressly requests an answer be filed.

~~(iv) Timing of answer.~~ A respondent must answer a formal complaint within twenty days after the commission serves the formal complaint on the respondent or such shorter time as the commission specifies in its notice. A person who desires to respond to a petition must file the answer within twenty days after the petition is filed. The presiding officer will establish the time for answers to interlocutory petitions. The commission may alter the time allowed for any answer to be filed.

~~((d)) (4) Response to a petition.~~

~~(a) Defined.~~ A pleading responding to a petition is a response.

~~(b) Timing of response.~~ Responses to a petition must be filed within twenty days after the petition is filed unless the commission or these rules establish a different deadline or the petition seeks commission action that the commission generally considers taking at an open public meeting (e.g., an accounting petition). Responses to petitions the commission considers at an open meeting should be filed no later than three business days before that open meeting. The presiding officer will establish the time for responses to interlocutory petitions in an adjudicative proceeding.

~~(c) When permitted.~~ Any person directly affected by an original petition may file a response. Any party to the adjudicative proceeding may file a response to a petition filed in that proceeding except as otherwise provided in this chapter or a commission order.

~~(d) Content.~~ Responses must include the following information:

~~(i) For original petitions, the name and address of the respondent and the individuals to receive service on behalf of~~

the respondent as required under WAC 480-07-360(3) if the respondent seeks to become a party to any adjudicative proceeding the commission commences in response to the petition;

(ii) All legal and factual bases that support the respondent's position either to grant or deny the petition.

(5) Reply to an answer or response.

((i)) (a) Defined. The pleading responding to an answer or response is a ((=))reply. ((=)) A party must not file a reply without ((authorization)) permission from the commission, which the commission will grant only upon a showing of good cause.

((i)) (b) Motion for permission to reply. A party that wishes to ((respond)) reply to an answer or response must file a motion requesting permission to reply within five business days after the respondent serves the answer ((is served. Motions for permission to reply should address)) or response. The motion must explain why a reply is necessary including, but not necessarily limited to, whether the answer or response raises new ((material)) facts or legal argument requiring ((a response, or state other reason(s) why)) a reply ((is necessary)). A party ((may)) should file a proposed reply as an attachment to its motion. ((If the commission grants a motion to file a reply and no reply is attached to the motion, the commission will set the time for filing the reply.)) The motion is deemed denied unless the commission grants ((a)) the motion ((for permission to reply)) within five business days after ((filing, it is deemed denied)) the movant files it.

((i)) (c) Commission direction or invitation for a reply. The commission may require or invite a party to file a reply.

((e)) (6) Application. An ((=))application ((=)) is a request for ((authority,)) a license, ((or a)) certificate ((authorizing a person)), permit, or other authority to provide a service regulated by the commission ((The term also includes)) or a request to transfer or amend any such authority ((license, or certificate. Examples of applications are requests for certificates of convenience and necessity under Title 81 RCW and requests for transfers of property under chapter 80.12 or 81.12 RCW.

((f)).

(7) Protest. ((A)) Persons who assert ((s)) that ((its)) their interests would be adversely affected if the commission grants an application ((is granted)) other than an application for auto transportation service pursuant to WAC 480-30-096 may file a ((=))protest. ((=)) A protest to an application must conform to the requirements of any ((special)) rules that apply to the type of application ((being protested)) the person is protesting. A protestant must serve a copy of the protest ((upon)) on the applicant.

(8) Objection. Persons who assert that their interests would be adversely affected if the commission grants an application for auto transportation service pursuant to WAC 480-30-096 may file an objection. An objection must conform to the requirements of WAC 480-30-116. The objector must serve a copy of the objection on the applicant.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-375 Motions.** (1) **Defined.** Except for pleadings identified as petitions under these rules, a party's written or oral request for commission action in the context of an adjudicative proceeding is a ((=))motion. ((=)) Persons who file motions are "movants" or "moving parties." Motions should be in writing unless made on the record during a hearing ((session)) before the presiding officer. The commission may take or require an action that would be the proper subject of a party's motion ((such as the rejection of proffered evidence)) without receiving a motion from a party. The commission will provide oral or written notice prior to taking or requiring such action and allow for appropriate process when it acts in the absence of a party's motion. The commission recognizes four basic categories of motion:

(a) *Dispositive motions.* Dispositive motions request that the commission ((to determine)) terminate a proceeding, resolve one or more of the substantive issues presented in ((a)) the proceeding, or ((to)) terminate a party's participation in the proceeding. ((Examples of dispositive motions are motions to dismiss all or part of a complaint, petition, or application (see WAC 480-07-380(1)); motions for summary determination (see WAC 480-07-380(2)); and motions to dismiss an intervenor (see WAC 480-07-355(4) and 480-07-450) or find a party in default (see WAC 480-07-450).))

(b) *Procedural motions.* Procedural motions request ((establishment of or modifications to)) that the commission establish or modify the process or the procedural schedule in a proceeding. ((Examples of procedural motions are motions for continuance (see WAC 480-07-385), motions for extensions of time (see WAC 480-07-385), and motions to reopen the record (see WAC 480-07-830).))

(c) *Discovery motions.* Discovery motions are requests to ((promote or limit)) resolve disputes concerning the exchange of information among parties during the discovery phase of a proceeding. ((Examples of discovery motions are motions to compel (see WAC 480-07-405(3) and 480-07-425), motions for sanctions (see WAC 480-07-425), and motions for protective orders (see WAC 480-07-420).))

(d) *Evidentiary motions.* Motions related to evidence are requests to limit or add to the evidentiary record in a proceeding. ((Examples of motions related to evidence are motions to strike, motions in limine, and motions requesting authority to file supplemental or additional testimony.))

(2) **Written motions must be filed separately.** Parties must file motions separately from any pleading or other communication with the commission. The commission will not consider motions that are merely stated in the body of a pleading or within the text of correspondence. The commission may refer to the Washington superior court rules for civil proceedings as guidelines for handling motions.

(3) **Oral motions.** A party may ((bring)) make an oral motion during a hearing, unless foreclosed from doing so by rule or in the presiding officer's discretion. The presiding officer will provide an opportunity for other parties to respond to any oral motion. The presiding officer may require that an oral motion be reduced to writing and may provide an opportunity for written response.

(4) **Responses to written motions that are not dispositive or do not seek a continuance.** A party (~~who~~) that opposes a written motion, other than a dispositive motion (~~(f)~~) governed by WAC 480-07-380(~~(3)~~) or a motion for continuance (~~(f)~~) governed by WAC 480-07-385(~~(3)~~), may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.

**AMENDATORY SECTION** (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-380 Motions that are dispositive— Motion to dismiss; motion for summary determination; motion to withdraw. (1) Motion to dismiss.**

(a) *General.* A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief. When ruling on such a motion, the commission will consider the standards applicable to a motion made under ((CR 12 (b)(6) and 12(c) of the)) Washington superior ((court's civil rules in ruling on a motion made under this subsection)) court civil rule 12 (b)(6) and 12(c). If a party presents an affidavit, declaration, or other material in support of its motion to dismiss(~~, and the material is not excluded by the commission~~), the commission will treat the motion as one for summary determination as provided in subsection(~~s (2) and (3)) (2)~~ of this section unless the commission rules on the motion without relying on the material.

(b) *Time for filing motion to dismiss.* A party that opposes a pleading must file any motion directed to the pleading no later than the time the responsive pleading is due, or within twenty days after the pleading is served, whichever time is less, unless the party shows good cause for delay. Filing a motion to dismiss a pleading(~~(s)~~) or seeking a similar remedy(~~(s)~~) does not extend the time for answering the pleading.

(c) *Response.* A party (~~who~~) that opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as (~~may be set by~~) the commission (~~or the presiding officer. The commission may allow oral argument~~) may set.

**(2) Motion for summary determination.**

(a) *General.* A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, declarations, fact stipulations, or matters of which the commission may take official notice (~~may be taken~~)), show that there is no genuine issue (~~as to any~~) of material fact and that the moving party is entitled to judgment as a matter of law. (~~In considering~~) When ruling on such a motion ((made under this subsection)), the commission will consider the standards applicable to a motion made under (~~CR 56 of the~~) Washington superior (~~court's~~) court civil rule(~~(s)~~) 56.

(b) *Time for filing motion for summary determination.* A party must file any motion for summary determination at least thirty days before the next applicable hearing ses-

sion(~~(s)~~) unless the commission establishes by order a different (~~specific~~) date for any such motion to be filed.

(c) *Response.* A party (~~who answers~~) must file any answer to a motion for summary determination ((must file its answer)) and any cross-motion for summary determination within twenty days after the movant serves the motion ((is served,)) unless the commission establishes a different (~~specific~~) filing date (~~for a response to be filed~~).

(d) *Continuance not automatic.* Filing a motion for summary determination will not automatically stay any scheduled procedures. The commission may order a continuance of any procedure and may order that an oral or written response to a motion for summary determination be made at a time that is consistent with any established hearing schedule in the proceeding.

**(3) Motion to withdraw.**

(a) *General.* Once the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW, a party may withdraw from ((a)) that proceeding, or may withdraw the party's tariff, complaint, petition, or application on which a proceeding is based, only upon permission granted by the commission in response to a written motion ((if:

(a) In the case of a matter initiated by a tariff filing, the commission has entered a complaint and order suspending the filing; or

(b) In all other cases, the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW). The motion must include any settlement or other agreement pursuant to which the party is seeking withdrawal.

(b) *Response.* No party may file a response to a motion to withdraw unless the commission authorizes a response. The commission will grant such a ((party's)) motion ((to withdraw from a proceeding)) when the ((party's)) requested withdrawal is in the public interest. A company need not file a motion to withdraw a tariff filing after the commission has entered a complaint and order suspending that tariff but before the commission commences an adjudicative proceeding. In such circumstances, the company need only file a written notice that it is withdrawing that filing.

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-385 Motion for continuance(~~, postponement, or extension of time~~) or suspension. (1) Definitions.**

(a) (~~"Continuance," means~~) A continuance is any postponement of a deadline established by commission rule or order or any extension of time to comply with such a deadline.

(b) (~~A continuance to which all parties agree is an "agreed request."~~) A suspension holds all procedural deadlines established by the commission in abeyance pending further commission action.

**(2) Procedure.**

(a) *Continuance.* Any party may request a continuance by oral or written motion. The commission may require a confirmation letter or e-mail if a party makes an oral request.

The presiding officer may rule on such motions orally at a prehearing conference or hearing session, or by ~~((letter,))~~ written notice(~~(s)~~) or order. The commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission. A party may request a continuance by e-mail to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will grant such a ~~((timely))~~ request ~~((to which all parties expressly agree))~~ unless it is inconsistent with the public interest or the commission's administrative needs.

(b) Suspension. A party may request that the commission suspend the procedural schedule through a letter or e-mail to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will grant such a request unless it is inconsistent with the public interest or the commission's administrative needs.

### (3) Timing.

(a) Written motion for continuance. A party must file and serve any written motion for continuance other than an agreed request at least five business days prior to the deadline ~~((as to which the continuance is requested and must serve the motion by means that ensure its receipt by other parties the next business day after filing))~~ the party requests to continue. Parties must file any written response to the motion within three business days after the motion is served ~~((or two days prior to the deadline that is sought to be continued, whichever is earlier. Parties may orally respond when a hearing session is held prior to the stated deadline for a written response))~~ unless the commission establishes a different date for responses. Parties should submit an agreed request for continuance in writing at least two business days prior to the deadline the parties request to continue.

(b) Oral request for continuance. A party must make any oral request for continuance on the record in a proceeding at least two business days prior to the deadline ~~((as to which the continuance is requested))~~ the party seeks to continue. The commission will permit oral responses at the time the oral request is made.

~~((The commission may consider requests for continuance that are made after the deadlines stated in this rule if the requester demonstrates good cause that prevented a timely request.))~~ Request for suspension. A party should request that the commission suspend the procedural schedule at least five business days prior to the next scheduled deadline in that schedule.

(4) Date certain. The commission will grant continuances only to a specified date.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-390 Briefs; oral argument**~~((s findings and conclusions)).~~ The commission may permit or require the parties to a proceeding to present their arguments and authority ~~((orally))~~ in support of their positions after the conclusion of any evidentiary hearing. Such a presentation may be in the form of written briefs, oral argument at the close of

the hearing, ~~((by written brief,))~~ or both. ~~((The commission may require parties to file proposed findings of fact and conclusions of law. The first brief filed following the close of hearing, if any, should be captioned "initial brief of [party]." A responding brief, if any, should be captioned "reply brief of [party]."))~~

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

**WAC 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment.** (1) **Format.** All pleadings, motions, and briefs must meet the following format requirements:

(a) ~~((Paper size; legibility; margins. All pleadings, motions, and briefs must be:~~

~~• Submitted on three-hole punched (oversize holes are preferred) 8 1/2 x 11 inch paper.~~

~~• Presented in) Appearance.~~

(i) Text must be double-spaced, 12-point(~~(s)~~) type, and in palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type(~~(s)~~ ~~• Presented with))~~;

(ii) Each paragraph(~~(s)~~) must be numbered(~~(s)~~ ~~• Printed with))~~;

(iii) Margins must be at least one inch from each edge of the page(~~(s)~~ ~~Documents that are electronically filed must meet these requirements when printed))~~; and

(iv) Any required paper copies must be submitted on three-hole punched, 8 1/2 x 11 inch paper.

(b) Length. Pleadings, motions, and briefs must not exceed sixty pages ~~((f))~~ exclusive of table of contents, table of authorities, signature blocks, exhibits, appended authorities, supporting affidavits or declarations, and other documents(~~(g))~~). The presiding officer may alter the page limit ~~((s)~~ ~~either shortening or lengthening the number of pages allowed, considering))~~ to accommodate the number and complexity of the disputed issues presented for commission resolution.

(c) Organization. Every pleading, motion, and brief must be organized as follows:

(i) Caption. The commission notice initiating an adjudicative proceeding will include a caption that parties must use for all pleadings, motions, and briefs they file in that proceeding. Pleadings that request that the commission initiate an adjudicative proceeding should include a preliminary caption. At the top of the first page must appear the phrase, ~~((before the Washington utilities and transportation commission.))~~ "BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION." On the left side of the page, the ~~((caption))~~ name of the proceeding must be set out as either "[Name], Complainant, v. [Name], Respondent." for a formal complaint or ~~((s if no caption exists, the following:))~~ "In the matter of the ~~((complaint.))~~ [petition, ~~((motion.))~~ application, etc.~~((h))~~] of ~~((f))~~[Name of the pleading party~~((h))~~] for ~~((f))~~[identify relief sought~~((h))~~]." On the right side of the page ~~((s opposite the caption, the pleading party))~~ for all pleadings, the caption must include the docket number if one

has been assigned, (identify) the name of the party submitting the document, and the name of the document (e.g., (petition, motion, answer, reply, etc., of (role of party: E.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "petition for an accounting order"; "motion for continuance") staff motion for continuance).

(ii) Body of pleading. (The body of the) A pleading must (be set out in numbered paragraphs.) include the following information:

(A) The (first paragraph must state the) pleading party's name and (address and if it is the party's) the nature of the pleading, and an initial pleading(, the name and address of) also must include the contact information as specified in WAC 480-07-360(3) for the party and its representative, if any(, The second paragraph must state);

(B) All rules or statutes that the pleading puts in issue(, Succeeding paragraphs must set out the);

(C) A statement of facts (relied upon) on which the party relies in a form (similar) comparable to complaints in civil actions before the superior courts of this state(, The concluding paragraphs must state); and

(D) The relief the pleading party requests.

(iii) Body of motion. A motion must include the following information:

(A) ((Relief requested.) A statement of the specific relief the movant requests that the commission ((is requested to) grant or deny(,);

(B) ((Statement of facts.) A succinct statement of the facts that the ((moving party) movant contends are material to the requested remedy(,);

(C) ((Statement of issues.) A concise statement of the legal issue or issues ((upon) on which the movant requests the commission ((is requested) to rule(,); and

(D) ((Evidence relied upon.) Any evidence on which the motion ((or opposition) is based ((must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified)). If a party relies on declarations, affidavits, deposition transcripts, or documentary evidence, the party must specify those documents, quote the cited material verbatim ((or), and attach a ((photocopy) copy of relevant pages to ((an affidavit) a declaration that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence ((upon) on which they place substantial reliance.

(iv) Body of brief. Unless excused by the presiding officer, the parties must include in their briefs that exceed ten pages in length a table of contents in outline format. ((The commission may require parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of any common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs.)) The conclusion of any brief must state the relief the party requests.

(v) Citation to record. Portions of the record relied on or quoted in the body of a brief must be cited using footnotes.

(A) Transcript. Transcript references should be as follows: [witness's surname], TR. [page]:[line(s)]. If the tran-

script reference spans multiple pages, the reference should be as follows: [witness's surname], TR. [page]:[line] - [page]:[line]. Examples: Smith, TR. 21:5-14; Jones, TR. 356:4 - 357:21.

(B) Exhibits. Exhibits must be marked as required under WAC 480-07-460, and references to those exhibits should be as follows: Exh. ((No:)) ((insert)) number ((assigned at hearing)). In the case of prefiled testimony offered or received as an exhibit, page ((number(s)) numbers, line ((number(s)) numbers, and the witness's surname should be added following the style specified in this section for transcript references (e.g., Smith, Exh. ABS-1T at 21:15-17). In other exhibits, references to ((page(s), line(s)) pages, lines for text, ((row(s) and column(s)) rows and columns for tables, or other specific references may be added in addition to the sponsoring witness's surname, if applicable, to clarify the information cited (e.g., Smith, Exh. ABS-5 at 12, Table 2).

(vi) Citation to authority. Parties must use the citation formats specified in the current edition of the style sheet of the Washington supreme court reporter of decisions. The presiding officer may require parties to file copies of the text of authorities that are cited in parties' briefs and upon which parties place substantial reliance. Unless excused by the presiding officer, parties must include a table of cited authorities, with the full citation of each reference and its location in the brief.

(vii) Attachments or appendices. If a party attaches more than ((two) one attachment(s) or ((appendices) appendix to a pleading, the party must ((individually) separate the body of the brief and each attachment((s by) or appendix in any required paper copies with a tabbed blank sheet((s with tabs) of paper.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion, must be dated and signed either by ((at least one attorney or) a party representative of record in his or her individual name(, stating his or her address), or by the party, if the party is not represented. Parties ((who) that are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties ((who) that bring ((certain) complaints under RCW 80.04.110 or 81.04.110 ((that challenge) challenging the reasonableness of the rates or charges of ((jurisdictional) utilities the commission regulates must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on the name of the document. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings,

motions, or other documents that do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-400 Discovery. (1) General.**

(a) *No limitation on commission authority to audit and inspect.* Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or ~~((the))~~ public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

(b) *Informal discovery procedures.* Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

(c) *Definitions.* For purposes of WAC 480-07-400 through 480-07-425, the following terms have the following meanings:

(i) *Party.* Any party as defined by WAC 480-07-340.

(ii) *Data.* As used in this section, ~~(("))~~data ~~("means")~~ is information of any type, in any form.

(iii) *Data request.* A party's written request that calls for another party to produce data in connection with an adjudicative proceeding is a ~~(("))~~data request.~~(("))~~ Generally, data requests seek one or more of the following: Existing documents~~((;))~~; an analysis, compilation, or summary of existing documents into a requested format~~((;))~~; a narrative response ~~((explaining a))~~ describing a party's policy, practice, or position~~((, or a document,))~~; or the admission of a fact asserted by the requesting party. If a party relies on a cost study, ~~((it is expected that))~~ model, or proprietary formula or methodology, the party ~~((will))~~ must be willing, on request, to rerun or recalculate the study, model, formula, or methodology based on different inputs and assumptions, subject to the standards in subsection ~~((5))~~ (3) of this section. The commission otherwise will not order a party to respond to a data request that ~~((seeks production of a new cost study))~~ would require creation of new data or documents unless there is a compelling need for such ~~((production))~~ information.

(iv) ~~((Record requisition. A request for data made on the record during a conference or hearing session or during a deposition is a "record requisition."~~

~~((v))~~ Bench request. A request for data made by or on behalf of ~~((the))~~ a presiding officer is a ~~(("))~~bench request.~~(("))~~

~~((vi))~~ Depositions. ~~Depositions are described in WAC 480-07-410.)~~

**(2) When discovery available.**

(a) *Subpoenas always available.* Subpoenas are available as a means of discovery as provided in Title 80 or 81 RCW and chapter 34.05 RCW.

(b) *When other discovery methods available.* If the commission finds that an adjudicative proceeding meets one of

the following criteria, the methods of discovery ~~((described in subsections (1)(c)(iii) through (vi) of this section and in WAC 480-07-410 and))~~ set forth in WAC 480-07-405 through 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of ~~((an electric company, natural gas company, pipeline company, telecommunications company, water company, solid waste company, low-level radioactive waste disposal site, or a segment of the transportation industry;~~

~~((ii))~~ Any proceeding that the commission declares to be of a potentially precedential nature;

~~((iii))~~ a public service company;

~~((ii))~~ Any complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, or violations of provisions in Title ~~((s))~~ 80 ~~((and))~~ or 81 RCW; or

~~((iv))~~ ~~((iii))~~ Any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule.

(3) ~~((Frequency, extent, and))~~ **Scope of discovery.** ~~((Data requests))~~ Discovery must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to ~~((a data request))~~ discovery on grounds that the information sought will be inadmissible at the hearing, if ~~((the))~~ that information ~~((sought))~~ appears reasonably calculated to lead to discovery of admissible evidence. Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information ~~((sought))~~ the party seeks or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation. The commission may impose sanctions for abusive discovery practice.

(4) **Schedule.** The commission may establish and set forth in a prehearing order a schedule for discovery. Any such schedule will provide deadlines sufficient to allow a timely opportunity for responses and for disputes to be resolved. The presiding officer may impose or modify time limits to the extent necessary to conform to the commission's hearing schedule.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-405 Discovery—Data requests~~((; record requisitions,))~~ and bench requests. (1) Grouping and numbering.**

(a) *Grouping.* Parties must group their data requests by subject or witness ~~((and present data requests in an electronic format agreed upon by the parties whenever possible, unless the parties agree to a different procedure or the presiding offi-~~



er orders a different procedure. Requests not presented in electronic format must include no more than one request per page. Parties with similar interests are encouraged, and may be required, to coordinate their issuance of data requests to avoid duplication).

(b) **Numbering.** Each party must number sequentially its data requests ~~((, as submitted))~~ to each other party. Numbering of subsequent data requests to the same party must begin with the number next in sequence following the number of the last previously propounded data request (e.g., if the last data request in an initial set of requests is number 10, the first data request in the next set of requests must be number 11). The presiding officer will ensure that ~~((record requisitions and))~~ bench requests are adequately described on the record and consecutively numbered.

**(2) Service of data requests ~~((, records requisitions, and responses to parties.~~**

(a) **Written.** A party must serve data requests ~~((must be sent to))~~ electronically in native format on the party to whom the requesting party makes the requests ~~((is made))~~, with copies to all other parties. ~~((The commission staff copy must be sent to the assistant attorney general who represents the commission staff. The commission encourages parties to agree to exchange data in electronic format by e-mail, on diskette, or by other mutually acceptable electronic means.~~

(b) If parties agree to the service of data requests and responses to requests by e-mail, the party serving the data requests or responses must serve copies electronically on all parties, including the assistant attorney general who represents the commission staff.

(c) ~~Except when appropriate for other purposes, parties))~~ When propounding data requests to other parties, a party must not file those data requests ~~((or responses to data requests))~~ with the commission ~~((, or provide them to))~~ or copy any person who is presiding or advising the presiding officer. ~~((Responses that are later offered in evidence must be distributed as required for other proposed exhibits.))~~

(3) **Motion to compel.** A party's motion to compel responses to data requests must include the relevant data request, any objection to the request, and any response to the objection.

(4) **Limitation on numbers of data requests.** The presiding officer may limit the total number of data requests that a party may ~~((submit and))~~ propound to another party. Each party must make reasonable efforts to ensure that its data requests do not duplicate other parties' requests. The presiding officer may require parties to ~~((certify that they have coordinated))~~ coordinate discovery with other parties of similar interest ~~((and that no substantial duplication exists with other parties' submissions)).~~

(5) **Responding party to seek clarification.** If a party to whom a data request is ~~((submitted))~~ propounded finds the meaning or scope of a request unclear, the responding party must immediately contact the requesting party for clarification. Lack of clarity is not a basis for objection to a data request unless the responding party has made a good faith effort to obtain clarification.

**(6) Objections; consequence of failure to object.**

(a) **Data requests.** A party ~~((who wishes to object to a data request))~~ must present ~~((the))~~ any objections to a data

request to the requesting party in writing by the time the response is due, or at such other time as ~~((may be ordered))~~ the presiding officer orders. A party objecting to a data request must state the objection and explain the basis for the objection. A party ~~((who))~~ that fails to interpose a timely objection to providing a full response to a data request waives any right to object for purposes of discovery and must provide a full response. A party ~~((who))~~ that fails to make an objection when responding to data requests does not lose the opportunity to raise an objection at hearing if another party seeks to introduce as evidence all or part of the party's response to a data request.

(b) ~~((Records requisition.~~ A party to whom a record requisition is addressed may object to the request at the time it is made or, if it later discovers a reason for objection not reasonably known at the time of the record requisition, within five days after discovering the reason. A party may object to the admission of its response to a records requisition at the time the response is offered into evidence.

(c) **Bench request.** Any party may object to the issuance of, or response to, a bench request. A party may object at the time the bench request is made, or if made in writing or the party later discovers a reason for an objection not reasonably known at the time the bench request was made in hearing, within five days after discovery. A party may raise an objection based on the content of a bench request response within five days after distribution of the response. Responses to bench requests will be received in evidence unless a party objects to the bench request or response, or the commission rejects the response.) **Bench requests.** Any party may object to a bench request made orally during a hearing at the time the presiding officer makes the request. A party may subsequently object in writing to such a bench request within five days after the presiding officer makes the request if the objection is based on facts or law the party did not reasonably know at the time the presiding officer made the request. A party may object to a written bench request within five days after the commission serves the request.

**(7) Responses.**

(a) **Data requests ~~((and record requisitions)).~~**

(i) **Service.** Parties must serve responses to data requests ~~((and record requisitions))~~ electronically on the requesting party and on any other party ~~((who))~~ that requests a copy, consistent with the terms of any protective order entered in the proceeding. ~~((Parties must send the commission staff copy to the assistant attorney general who represents the commission staff unless the attorney requests an alternative method. Parties may agree to serve responses to data requests and record requisitions through e-mail.~~

~~((b))~~ Except when designated as exhibits to be offered into the evidentiary record, parties must not file responses to data requests with the commission or copy any person who is presiding or advising the presiding officer when serving those responses. The commission will not receive into evidence responses to data requests unless a party offers the responses into evidence. A party may object to the admission of a response to a data request at the time the response is offered into evidence whether or not the party timely objected to providing the response.

(ii) **Timing.** A party to whom a data request is directed must provide a full response ~~((to the data request))~~ within ten business days after the request is ~~((received))~~ served. If the ~~((data cannot be supplied))~~ responding party cannot provide a full response within ten business days, the responding party must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the responding party cannot comply with the ten-day ~~((limit cannot be met))~~ deadline. The responding party must also provide a schedule by which it will produce the requested data and must explain why the party cannot provide any portion of the data ~~((cannot be supplied))~~. The presiding officer may modify these time limits.

~~((e))~~ (iii) **Identification of respondent and witness.** Each ~~((data))~~ response to a data request must state the date the response is produced, the name of the person who prepared the response, and the name of any witness testifying on behalf of the responding party who is knowledgeable about, and can respond to, questions concerning the response.

~~((d))~~ (b) **Bench requests.** Parties must file responses to bench requests with the commission and serve all parties within ten business days after the commission makes the request ~~((is made))~~, unless the presiding officer specifies another ~~((schedule))~~ deadline. A party may object to a bench request response within five days after filing and service of the response. The commission will receive responses to bench requests in evidence without further process unless a party objects to the response or the commission rejects the response.

(8) **Supplementation.** Parties must immediately supplement any response to a data request ~~((, record requisition,))~~ or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response ~~((,))~~ that was correct and complete when made, is no longer correct or complete.

~~((9))~~ **Use of responses to data requests, record requisitions or bench requests.** ~~The commission will not consider or treat as evidence any response to a data request, record requisition, or bench request unless and until it is entered into the record.)~~

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-410 Discovery—Depositions.** (1) **Who may be deposed.** A party may depose any person identified by another party as a potential witness. A party may depose a person who has not been identified as a potential witness ~~((,))~~ only if the presiding officer approves the deposition. The presiding officer may approve the deposition of a person who has not been identified as a potential witness on a finding that the person appears to possess information ~~((significant))~~ that is necessary to the party's case, the information cannot reasonably be obtained from another source, and the probative value of the information outweighs the burden on the person proposed to be deposed.

(2) **Required notice; ~~((deposition—conference))~~ motion.** A party ~~((who))~~ that intends to depose ~~((one or more persons))~~ another party's designated potential witness must give notice to the commission and all parties. ~~((The presiding~~

~~officer will consult with the parties and may schedule a deposition conference to facilitate the deposition process. The deposition conference schedule will be adjusted as needed considering any changes in the case schedule. Deposition conferences will be convened at the commission's offices in Olympia unless the parties and the presiding officer agree to another location.))~~ A party that seeks to depose a person who has not been identified as a potential witness must file a motion requesting permission to depose the person.

(3) **How conducted.** Parties should use ~~((CR 30 of the))~~ Washington superior court civil rule ~~((s))~~ 30 as a guide when conducting depositions. Parties must limit the scope of questioning in a deposition to the same standard set forth in WAC 480-07-400(4). A court reporter provided by the party requesting the deposition will record the deposition. Each party will be responsible for the attendance of any of its ~~((prospective))~~ designated potential witnesses ~~((, or any of its employees,))~~ who have been scheduled for deposition. ~~((A party may interrupt a deposition, if necessary, to present a dispute regarding the deposition process to the presiding officer. However, to avoid interruption, such disputes should be reserved to the conclusion of the deposition, if possible.))~~

(4) **Use of depositions.** Parties may use depositions for any lawful purpose, subject to the requirements of this subsection. ~~((A party may use a deposition to impeach a witness.))~~ If a party seeks to offer into evidence the deposition of a potential witness who is available to testify to the matters addressed in ~~((the witness's))~~ that person's deposition, the party must do the following:

(a) Offer only those portions of the deposition on which the party intends to rely; and

(b) Provide at least five ~~((business days'))~~ business days' written notice to other parties and to the presiding officer prior to the hearing session at which the potential witness is expected to appear. The party must attach to the notice the portion(s) of the deposition that the party proposes to offer ~~((so that the presiding officer can mark it))~~ in the form of exhibits that are marked for identification as ~~((in the case of all other proposed hearing exhibits))~~ required under WAC 480-07-460(3). If portions of a deposition are admitted into evidence, other parties may offer additional portions of the deposition when necessary to provide a balanced representation of the ~~((witness's))~~ deponent's testimony.

(5) **Correcting/supplementing deposition testimony.**

(a) **Correction.** A party may file a motion to correct a transcription error in a deposition transcript within ten days after the court reporter delivers the deposition transcript ~~((is delivered))~~.

(b) **Supplementation.** Every ~~((witness))~~ deponent must supplement any response given in a deposition immediately upon learning that the prior response was incorrect or incomplete when made, or upon learning that a response ~~((,))~~ that was correct and complete when made ~~((,))~~ is no longer correct or complete. Each party is responsible for ensuring compliance with this requirement by deponents who are the party's potential witnesses.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-415 Discovery conference. (1) General.** The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's positions or evidence and the availability of supporting information.

(2) **Purpose.** The purpose of a discovery conference is:

(a) To allow witnesses and others who have knowledge relating to the proceeding (e.g., consultants or employees) to talk directly and informally(¿);

(b) To reduce or avoid the need for written data requests and time for their preparation(¿);

(c) To allow discussions of potential stipulations regarding individual facts and settlement of individual issues to occur in an informal setting(¿);

(d) To discuss the availability of supporting information(¿); and

(e) To enhance the parties' ability to acquire or expand their knowledge about the case of one or more designated other parties. ~~((The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's position or evidence and the availability of supporting information.))~~

(3) **Statements not evidence.** Discovery conferences will not be reported and statements made by participants at discovery conferences are not admissible as evidence unless the parties agree otherwise.

(4) **Facilitator.** The commission may designate a person to facilitate a discovery conference. The designated facilitator must not be associated with any party or with ~~((a member of))~~ the commission advisory staff ~~((who is))~~ involved in the proceeding.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-420 Discovery—Protective orders. (1) Standard form.** The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when parties reasonably anticipate that discovery ((in a proceeding will call for the production of confidential)) or evidentiary submissions will require the disclosure of information designated as confidential as defined in WAC 480-07-160. Parties must strictly limit the information they designate as confidential to information that is or may be exempt from public disclosure under RCW 80.04.095, 81.77.210, or the Public Records Act, chapter 42.56 RCW, including RCW 42.56.330. Parties must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission containing information designated as confidential in a proceeding governed by a protective order.

(2) **Amendment.** The commission may, upon motion by a party, or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases.

(a) Protection for highly confidential information. A party that wishes to designate information as highly confidential must make a motion, orally at the prehearing conference or in writing, for an amendment to the standard protective order, supported by a declaration, testimony, or representations of counsel that set forth the specific factual and legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and declaration or testimony must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.

(b) Limitations. If the commission modifies the standard protective order to include protection for highly confidential information, parties must strictly limit the information they designate as highly confidential to the information identified in the amendment to the protective order and must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission as highly confidential.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may ~~((make any))~~ order(¿) appropriate limitations on discovery including, but not necessarily limited to, one or more of the following(¿, that)):

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery; or

(d) Certain matters may not be inquired into, or ~~((that))~~ the scope of the discovery will be limited to certain matters(¿);

~~((e) Discovery will be conducted with no one present except persons designated by the commission or the presiding officer;~~

~~((f) The contents of a deposition will not be disclosed or will be disclosed only in a designated way;~~

~~((g) A trade secret or other confidential research, development, or commercial information will not be disclosed or will be disclosed only in a designated way; or~~

~~((h) The parties must file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission or the presiding officer)).~~

(4) **Denial of motion for protective order.** The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just(¿) if the commission denies a motion for a protective order in whole or in part.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-425 Discovery disputes. (1) Procedure for resolving disputes.**

(a) Informal resolution. Parties must make good faith efforts to resolve informally all discovery disputes. The commission may designate a person to assist the parties to resolve

discovery issues, at the request or with the consent of the ~~((disputants))~~ parties.

**(b) Motion to compel.** A party may file a written motion, or move orally at a prehearing conference, to compel discovery if the parties cannot resolve a dispute ~~((cannot be))~~ informally ~~((resolved))~~. The presiding officer will hear a motion to compel discovery ~~((disputes, on shortened notice,))~~ at the earliest reasonable time. The presiding officer may conduct telephone hearings or conferences for the argument of discovery disputes. The presiding officer may make discovery rulings orally on the record or by written order. The presiding officer's discovery rulings are subject to review under WAC 480-07-810.

**(2) Sanctions for failure to comply.** Any party may by motion, or the commission may on its own motion, propose that sanctions be imposed if a party fails or refuses to comply with the commission's discovery rules or an oral or written order resolving a dispute under this section. The commission may impose sanctions for such violations including, but not limited to, default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-430 Prehearing conferences.** (1) **General.** The commission may require ~~((, by written notice or by oral notice on the record of the hearing,))~~ that all parties to, and all persons who seek to intervene in, a proceeding attend a prehearing conference. The following topics are proper subjects for discussion at a prehearing conference:

- (a) Identification and simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) ~~((The possibility of obtaining stipulations of fact and to documents that might avoid unnecessary proof;~~
- ~~((d) Limitations on the number of witnesses;~~
- ~~((e) Coordinated examination of witnesses;~~
- ~~((f) Procedure at the hearing;~~
- ~~((g))~~ Establishment of a procedural schedule including, but not limited to, the need for, and timing of, ((distribution of written)) prefiled testimony and exhibits ((to the parties and the bench prior to the hearing));
- ~~((h))~~ (d) Disposition of petitions for leave to intervene;
- ~~((i))~~ (e) Availability of the commission's discovery rules or resolution of discovery disputes;
- ~~((j))~~ (f) Resolution of pending motions; ((and
- ~~((k))~~
- (g) Entry of a standard or amended protective order to protect confidential or highly confidential information;
- (h) Service requirements, including creation of a master service list and disposition of any objections to commission service of orders and notices solely in electronic form; and
- (i) Any other matters that may aid in the disposition of the proceeding, whether by commission decision or by settlement.

**(2) Notice.** The commission will provide reasonable notice of the time and place established for a prehearing conference and the matters to be addressed. ~~((The notice may~~

~~provide that failure to attend may result in a party being dismissed, being found in default, or the commission's refusal to consider a later petition for intervention except upon a showing of good cause for the failure to attend.))~~ A party's failure to attend a prehearing conference constitutes the party's waiver of all objections to any order or ruling arising out of the conference or any agreement reached at conference, unless the party shows good cause for its failure to attend.

**(3) Oral statement or written order.** The presiding officer may make an oral statement on the record or may enter an order describing the actions taken at the prehearing conference and agreements among the parties concerning all of the matters considered.

**(a) Objections.** Parties may object to the oral statement on the record at the time the oral statement is made, or may object to any written prehearing conference order within ten days after the date the order is served. The commission will consider any objections pursuant to the procedures in WAC 480-07-810.

**(b) Results.** In the absence of a timely objection that the commission sustains, the results of the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

**(4) Prehearing conferences to facilitate evidentiary hearing.** The presiding officer may require parties to attend a prehearing conference prior to an evidentiary or other hearing session, or may recess an evidentiary or other hearing session to conduct a prehearing conference.

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-440 Hearing notice.** (1) **Initial hearing notice.**

**(a) Timing.** The commission will set the time and place of the first hearing session or prehearing conference in any adjudication in a notice served to all parties at least twenty days before the hearing or conference. The commission may shorten the notice period to seven days, as provided by RCW 34.05.434. The commission will set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare, considering the procedural schedule, other pending matters, and the need to minimize continuances.

**(b) Provisions for appointment of interpreter.** The initial notice of hearing ~~((must))~~ will state that if a limited-English-speaking or hearing-impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice will include a form for a party to indicate whether the party needs an interpreter ~~((is needed))~~ and to identify the party's primary language or hearing-impaired status ~~((of the party)).~~

**(2) Notice of continued hearing sessions.** ~~((a) Permitted forms of notice.))~~ When a hearing is not concluded as scheduled, the time and place for continued hearing sessions may be set:

~~((i))~~ (a) On the record without further written notice to the parties; or

~~((i))~~ (b) By letter or formal notice from the presiding officer or the commission secretary ~~((of the commission; or~~

(iii) By letter or formal notice from the presiding officer.

(b) Timing. There are no specific timing requirements for giving prior notice of continued hearing sessions).

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-450 Hearing—Failure to appear.** (1) **Dismissal or default.** The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The ~~((presiding officer may recess a hearing for a brief period to provide an additional opportunity for the party to appear. If the party is not present or represented when the hearing resumes, the commission may dismiss the party or find the party in default. When the commission dismisses a party or finds a party in default, it))~~ commission will implement ((the)) any dismissal or default by a written order. When a party is found in default, the commission's order stating that finding also may ((also)) dispose of the issues in the proceeding, as provided by RCW 34.05.440.

(2) **Review of order of dismissal or default.** A party ~~((who is dismissed))~~ that a presiding officer dismisses from a proceeding or ((found)) finds in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-460 Hearing—~~((Predistribution of)) Exhibits ((and prefiled testimony)), exhibit list, and cross-examination estimates.~~** (1) ~~((Predistribution of evidence. The commission may require parties to distribute their proposed evidence to other parties before the start of the evidentiary hearing. In general))~~ Filing exhibits in advance. Parties must file and serve exhibits that they intend to submit or use in the evidentiary hearing, including proposed cross-examination exhibits, in advance of the hearing. The commission or the presiding officer will establish by notice or in a prehearing conference order the number of paper copies, if any, and deadlines for filing. In rate increase proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with ((WAC 480-07-510. The commission may convene a prehearing conference shortly before a scheduled hearing and require all parties to predistribute their proposed cross-examination exhibits.

(a) ~~Number of copies to be filed or submitted; service.~~ When predistribution of evidence other than proposed exhibits for use in cross-examination is required, each party must file the original plus twelve copies of its evidence with the commission unless the commission specifies a different number. When the commission requires parties to predistribute their proposed exhibits for use in cross-examination, each party must submit six copies to the bench if the commissioners are sitting as presiding officers and three copies if the commissioners are not sitting. The presiding officer may

change the number of copies required. All proposed evidence must be served on all other parties to a proceeding whenever predistribution of evidence is required.

~~((b))~~ commission rules.

(a) Changes or corrections.

(i) ~~((Substantive corrections. Prefiled testimony may be revised to correct mistakes of fact asserted by a witness. Such mistakes may arise from a variety of causes such as scrivener's error, error in calculation, or error of misreported fact. Each party must advise all other parties of substantive corrections to any prefiled evidence as soon as the need for correction is discovered.~~

(ii) Substantive changes. Parties must seek leave from the presiding officer by written motion if they wish to ~~((submit))~~ file revised prefiled testimony or exhibits that include((s)) substantive changes ((other than to simply correct errors of fact asserted by a witness)). A party proposing such changes ~~((may))~~ should submit the proposed revisions with its motion.

~~((iii))~~ (ii) Minor corrections. A party may make minor revisions to prefiled testimony and exhibits ~~((may be made))~~ to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment) without leave from the presiding officer. Counsel should not ask a witness on the stand to ~~((correct obvious typographical errors in the prefiled testimony or to make more than three minor substantive corrections. If more than three minor revisions are required, parties must prepare an errata sheet or a revised exhibit for submission at least one business day prior to the hearing to show such corrections to the prefiled evidence.~~

~~((iv))~~ make these corrections, but must submit an errata sheet as provided in subsection (6) of this section.

(iii) Format requirements for revisions. Parties ~~((who))~~ that submit ((revisions to predistributed)) a revised version of any prefiled or previously admitted testimony or exhibits must prominently label ((them)) the documents as "REVISED" and indicate the date of the revision. The document's exhibit number also must include a lower case "r" at the end of the number using the format described in subsection (2) of this section (e.g., Exh. JQW-5HCTr). The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. ~~((This practice must be followed even with minor changes that involve only one page of an exhibit. If one or more pages of))~~ The header or footer of each revised page in multiple page testimony or exhibit((s are revised, the header or footer of the affected pages)) must be labeled "REVISED" and indicate the date of the revision. Parties may indicate changes to spreadsheets by providing a description of the change and how the change affects other related spreadsheets. For revisions to spreadsheets, counsel must identify partial revisions by page and date when an exhibit is presented ((for identification, sponsored,)) or offered into evidence, as appropriate.

(b) Timing. A party must file with the commission and serve all other parties with a motion to make substantive changes to any prefiled exhibits as soon as practicable after discovering the need to make that change. A party must file revised exhibits or an errata sheet reflecting minor correc-

tions no later than the deadline for filing errata sheets established in the prehearing conference order.

(c) Distribution at hearing. ~~((When a party offers))~~ Upon a showing of good cause for not filing and serving new exhibits, revised exhibits, or errata sheets prior to the hearing, the presiding officer may allow a party to distribute such documents at ~~((a))~~ the hearing~~((s))~~. The party must provide sufficient copies of the documents for all parties and for the commission's distribution requirements~~((When the commission requires parties to predistribute their exhibits, a party may be required to establish good cause for any failure to predistribute a proposed exhibit, other than an exhibit offered solely for impeachment of the witness's testimony on the stand, or the exhibit may be excluded))~~ and must file the document as required in WAC 480-07-145. The presiding officer may refuse to admit into evidence any new or revised exhibits if the failure to provide them prior to the hearing impairs the ability of other parties or the commission to review and examine those exhibits during the hearing.

**(2) Prefiled testimony and exhibits.**

(a) ~~Exhibit numbers~~~~((Official record.~~ The presiding officer will assign exhibit numbers to all prefiled testimony and exhibits at the final prehearing conference prior to hearing, or at hearing. These assigned numbers will be the exhibit numbers for purposes of the official record in the proceeding.

~~(b) Parties are required to mark prefiled testimony and exhibits for identification~~). Parties must mark all written testimony and exhibits ~~((for identification))~~ in the upper right-hand corner of the first page prior to submission as follows:

(i) State ~~((Exhibit No.,))~~ Exh. followed by ~~((a blank underline. Then, on the same line, identify))~~ the sponsoring ~~((witness by including the))~~ witness's initials.

(ii) Place a hyphen after the witness's initials and insert a number, beginning with Arabic numeral 1 for the witness's first prefiled testimony, and sequentially number each subsequent exhibit (including any ~~((subsequent))~~ additional written testimony) throughout the proceeding.

(iii) Place the capital letter "C" immediately after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding (or "HC" if the document includes information asserted to be highly confidential under the protective order).

(iv) Place the capital letter "T" after the number and "C" or "HC," if applicable, if the exhibit is a witness's prefiled testimony.

For example, John Q. Witness's prefiled testimony and accompanying exhibits must be marked as follows:

Testimony or Exhibit	Marked <del>((for identification))</del>
John Q. Witness's prefiled direct testimony	<del>((Exhibit No. ___ (JQW-1T)))</del> <u>Exh. JQW-1T</u>
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	<del>((Exhibit No. ___ (JQW-2)))</del> <u>Exh. JQW-2</u>

Testimony or Exhibit	Marked <del>((for identification))</del>
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	<del>((Exhibit No. ___ (JQW-3C)))</del> <u>Exh. JQW-3C</u>
Third exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	<del>((Exhibit No. ___ (JQW-4)))</del> <u>Exh. JQW-4</u>
John Q. Witness's prefiled rebuttal testimony (with portions marked highly confidential)	<del>((Exhibit No. ___ (JQW-5CT)))</del> <u>Exh. JQW-5HCT</u>
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	<del>((Exhibit No. ___ (JQW-6)))</del> <u>Exh. JQW-6</u>

~~((Counsel and other party representatives who are unfamiliar with this method of identification may ask the presiding officer for further guidance.~~

~~(e))~~ (b) List of exhibits, table of contents, and summary of testimony. ~~((Each witness must present a short summary of his or her prefiled testimony on the opening page or two of the testimony. Counsel or other party representative will be expected to ask as a foundation question when the witness takes the stand the subjects that will be covered by the witness. This foundation question should request, and the witness's response should include, only a statement of the subject(s) to be covered by the witness (e.g., rate of return on equity, cost of debt, prudence) and not a summary of the witness's positions on the subject(s) identified))~~ The prefiled testimony of each witness must include a list of exhibits that accompany that testimony. Testimony that exceeds ten pages in length must include a table of contents and a short summary at the beginning of the testimony.

~~((d))~~ (c) Form of testimony and exhibits. All prefiled testimony and exhibits must be paginated~~((In addition, line numbers)), and the lines on each page must be ((set out on all prefiled testimony))~~ numbered to facilitate transcript or exhibit references. All ~~((copies of))~~ prefiled testimony and exhibits must be ~~((provided on 8 1/2 x 11 inch, three-hole punched paper (oversize holes are preferred),))~~ double-spaced~~((s))~~ and use 12-point type~~((, using))~~ in palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type, with margins of at least one inch on all sides. ~~((Preprinted))~~ Documents ~~((and spreadsheets))~~ the party did not create need not conform to these typeface and type size requirements~~((s))~~ but must be legible. All paper copies of prefiled testimony and exhibits, if required, must be provided on 8 1/2 x 11 inch, three-hole punched paper (oversize holes are preferred). Oversized documents may be used at the hearing for illustrative purposes but paper copies, if required, must be provided on 8 1/2 x 11 inch paper if offered into evidence and reduction to that format is feasible.

~~((e))~~ Submission requirements. All prefiled exhibits, both direct examination and cross-examination exhibits, must

be individually separated by blank sheets with tabs-)) (3) **Cross-examination exhibits.** Each party must file with the commission and serve on the other parties all exhibits the party proposes to use in its cross-examination of witnesses. The presiding officer will establish in a prehearing conference order or notice the number of paper copies, if any, and deadlines for filing.

(a) **Exhibit numbers.** Parties must mark all cross-examination exhibits in the upper right hand corner of the first page prior to submission as follows:

(i) State "Exh." followed by the initials of the witness the party intends to use the exhibit to cross-examine.

(ii) Place a hyphen after the witness's initials and insert the next number in sequence after the number of the last exhibit sponsored by, or associated with, that witness. If more than two parties are actively participating in a docket, each party should insert an underscored blank space after the initials of a witness who is likely to be cross-examined by more than one party to avoid overlapping numbers with other parties' cross-examination exhibits. The presiding officer will subsequently assign numbers to all cross-examination exhibits for that witness when compiling the exhibit list.

(iii) Place the capital letter "C" immediately after the number (or underscored blank space) if the exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding (or "HC" if the document includes information asserted to be highly confidential under the protective order).

(iv) Place the capital letter "X" after the number (or underscored blank space), "C," or "HC" whichever is last. For example, if the last exhibit attached to a witness's prefiled testimony is Exh. JQW-7, the first cross-examination exhibit for that witness should be marked "Exh. JQW-8X" (or "Exh. JQW-8CX" if the exhibit includes information designated as confidential).

(b) **Format.** All cross-examination exhibits must be filed and served electronically in .pdf (adobe acrobat or comparable software) format. The commission may also require the parties to file and serve paper copies of the exhibits.

(c) **Organization.** Cross-examination exhibits must be segregated, labeled, and grouped according to the witness the party intends to cross-examine with the exhibits. Any paper copies of the exhibits must be organized into sets that are tabbed, labeled, and grouped by witness.

(4) **Exhibit lists.** Each party must file with the commission and serve on all parties a list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits of that party's witnesses and cross-examination exhibits that party has designated for other witnesses. The presiding officer will establish in a prehearing conference order or notice the deadline for this filing.

(5) **Cross-examination time estimates.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file these witness lists or cross-examination time estimates but must provide them in electronic format directly to the presiding administrative law judge and the other parties by the deadline established in a prehearing conference order or notice.

(6) **Errata.** Each party must file with the commission and serve on all parties a list of any corrections or revisions to its witnesses' prefiled testimony and exhibits. Each correction or revision must be identified separately by exhibit number, page, and line (or row, column, cell, etc., as applicable) and must specify the text to be revised, added, or deleted. The presiding officer will establish in a prehearing conference order or notice the deadlines for this filing.

**AMENDATORY SECTION** (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-470 Hearing guidelines.** These guidelines are of a general nature and are provided to assist the presiding officer in regulating the course of the proceeding. The presiding officer may suspend or modify the guidelines or use measures not specified in this rule.

(1) **Starting times.** The presiding officer will strictly observe starting times (~~(will be strictly observed)~~). The proceeding may go forward in the absence of counsel, parties, or witnesses who are late. Counsel may advise the bench by message to the records center when an emergency prevents timely arrival.

(2) **Appearances.** (~~All persons who will be representing a party in a formal proceeding must give their names and addresses in writing to the court reporter immediately before the first hearing session in which they appear.~~) The presiding officer conducting the hearing or prehearing conference will require appearances to be stated orally at the initial prehearing or hearing session, and may also ask for oral appearances at subsequent sessions in the same proceeding, so that all persons attending the hearing will know the identity and interest of all parties present. ~~If the representative has previously filed a notice of appearance or otherwise provided full contact information in a pleading filed in the docket, oral appearances shall consist of the representative's name, law firm, organization, or government entity if any, and the party the person represents.~~ Oral appearance at hearing does not substitute for the requirement for written notice of appearance in WAC 480-07-345(2).

(3) **Matters to be handled at beginning of session.** Parties must notify the presiding officer no later than the start of the hearing session of any motion that a party anticipates may be presented during the hearing, such as one that may require foundation regarding the admissibility of evidence. The presiding officer will give the parties an appropriate opportunity to state and argue any motions related to evidence or to the procedural course of the hearing.

(4) (~~Summary by public counsel.~~ At the beginning of a hearing session during which the commission will hear testimony from members of the public, the commission may provide public counsel an opportunity to inform the public of the major contested issues and to state public counsel's positions on those issues. The commission will give other parties an opportunity to respond.

(5) **Evidence; exhibits; stipulations of fact.** The presiding officer may receive evidence as provided by RCW 34.05.452.

~~((6))~~ **(5) Order of presentation.** Evidence will ordinarily be received in the following order:

- (a) Party having the burden of proof;
- (b) Parties supporting the party having the burden of proof; and
- (c) Parties opposing the party having the burden of proof;
- ~~(d) Rebuttal by the party having the burden of proof;~~

The presiding officer may direct a modified order of presentation considering the needs of the parties, the commission, ~~(and)~~ the proceeding, and the parties' preferences.

~~((7))~~ **(6) Testimony under oath.** The presiding officer will administer an oath or affirmation to each witness before the witness testifies in an adjudicative proceeding. When members of the public testify, they will be sworn in the same fashion as other witnesses.

~~((8))~~ **(7) Addressing the presiding officer or witnesses.** All counsel and other party representatives, including parties that are not represented, must address all comments, objections, and statements on the record to the presiding officer and not to other counsel or parties. Questions on the record that concern the substance of testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other ~~(party representatives)~~ parties.

~~((9))~~ **(8) Resolving matters off the record.** Counsel or other party representatives who request ~~(off the record)~~ to have discussions with the presiding officer off the record must ask leave to go off the record and state the purpose for the request. Extended colloquies regarding procedural issues may be conducted off the record, but will be summarized for the record by the presiding officer subject to comments from party representatives.

~~((10))~~ **(9) Witness panels.** The commission may direct or allow two or more witnesses to take the stand simultaneously when doing so allows a benefit, such as the integrated response to a line of questions, minimizing referral of questions from one witness to another, or comparing witnesses' positions. The presiding officer will also allow cross-examination of each witness upon matters within the witness's direct evidence.

~~((11))~~ **(10) Cross-examination.** ~~(Counsel and other party representatives should be prepared to provide time estimates for cross-examination of witnesses.)~~ The presiding officer will limit cross-examination to one round unless good cause exists for allowing additional questions. Witnesses must not be asked to perform detailed calculations or extract detailed data while on the stand. Any such questions must be provided to the witness at least two business days prior to the date the witness is expected to testify, must ask the witness to provide the answer for the record later in the hearing session, or must provide an answer and ask the witness to accept it "subject to check." Witnesses must not be asked to accept information ~~(subject to check)~~ if the information is included in a prefiled exhibit or testimony, or is already in evidence. When a witness accepts information ~~(subject to check)~~, the witness must perform the ~~(check)~~ as soon as ~~(possible)~~ practicable. A response given ~~(subject to check)~~ will be considered accurate unless:

~~(a) The witness (disputes it on the witness stand or by filing an affidavit, stating reasons, within five business days following the date of receipt of the hearing transcript.~~

~~(12)) subsequently testifies during the hearing that the witness does not accept the information subject to check and explains the reasons for that position; or~~

~~(b) Within five business days following the date of receipt of the hearing transcript, the party sponsoring the witness files and serves a declaration from the witness stating that the witness does not accept the information subject to check and explaining the reasons for that position. Any such declaration must be limited to the information subject to check and may not expand, revise, or otherwise modify the witness's testimony.~~

**(11) Redirect examination.** A party whose witness has been cross-examined may conduct redirect examination of the witness on issues raised during cross-examination or examination by the presiding officer, if applicable.

~~((13))~~ **Post-hearing planning.** The presiding officer will confer with the parties concerning post-hearing process. The presiding officer will determine whether oral argument, briefs, or both will be required, taking into consideration the needs of the commission and the parties' preferences. The presiding officer may determine a common format or outline to be used by all parties if briefs are required. Briefs must comply with the requirements of WAC 480-07-395.

~~(14))~~ **(12) Transcript.** Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it. To protect valuable commercial information unique to the court reporter's work product or services and for which the court reporter charges a fee for copies, the commission will not post on its web site or provide to any parties a copy of the transcript of an evidentiary hearing until after post-hearing briefing has concluded.

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-490 Hearing—Exhibits and documentary evidence.** (1) **Designation of part of document as evidence.** A party ~~(who)~~ that offers ~~(evidence that consists of)~~ only a portion of a document for admission into the evidentiary record must designate ~~(the)~~ that portion ~~(that is offered)~~ as a separate exhibit. If irrelevant matter included in the original document would unnecessarily encumber the record, the ~~(document will not be received in evidence, but the relevant or material matter may be read into the record, or the presiding officer may receive a copy of the excerpt as an exhibit. If only a portion is offered or received, other parties may examine the document and)~~ presiding officer may admit only the offered portion into evidence but will allow other parties to offer other portions (into evidence).

(2) ~~(Official)~~ **Government records.** A party may offer into evidence an official document prepared and issued by any governmental authority (may be introduced) that is not publicly available or readily accessible by all parties in the form of a certified copy. (Official records contained in official publications or nationally recognized reporting service publications that are in general circulation and readily acces-



sible to all parties may be introduced by reference, provided that the party offering the document clearly identifies the record and its source. The presiding officer may require the party offering such evidence to provide a copy for the record and to each party.

~~(3) **Commission's files.** The presiding officer may receive documents on file with the commission by reference to number, date, or by any other method of identification satisfactory to the presiding officer. If only a portion of a document is offered in evidence, the part offered must be clearly designated. The presiding officer may require the party offering the evidence to provide a copy to the record and to each party.~~

~~(4) **Records in other proceedings.** A portion of the record of any other commission proceeding that is otherwise admissible may be received as an exhibit in the form of a copy; by citation to the transcript or exhibit number; or by incorporation into the transcript of the current proceeding, as determined by the presiding officer.~~

~~(5) **Documents from the public.** When a member of the public presents a document in conjunction with his or her testimony, the commission may receive the document as an illustrative exhibit. The commission may receive as illustrative exhibits any letters that have been received by the secretary of the commission and by public counsel from members of the public regarding a proceeding. Documents a public witness presents that are exceptional in their detail or probative value may be separately received into evidence as proof of the matters asserted after an opportunity for cross-examination.~~

~~(6) **Resolutions.** The presiding officer may receive in evidence authenticated resolutions of the governing bodies of municipal corporations and of chambers of commerce, boards of trade, commercial, mercantile, agricultural, or manufacturing societies and other civic organizations. Any recital of facts contained in a resolution may not be considered as proof of those facts.~~

~~(7)) (3) **Objections.** Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each ((representative)) party whether that party objects to an offer of evidence or other motion or proposed action. Parties that have objections must state them. Failure to object constitutes a waiver of the right to object.~~

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-495 Hearing—Rules of evidence; official notice.** (1) **Admissibility; exclusion; offer of proof.** All relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness. The presiding officer will consider, but is not required to follow, the rules of evidence governing general civil proceedings in non-jury trials before Washington superior courts when ruling on the admissibility of evidence.

The presiding officer may exclude evidence that is irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. Parties objecting to the introduction of evidence must state the grounds for the objection at the

time the evidence is offered. If the presiding officer excludes the evidence from the record, the presiding officer may ((permit)) provide the party offering ((rejected)) that evidence ((to describe briefly for the record its nature and purpose as an offer of proof. A written offer of proof may be required)) with the opportunity to make an oral or written offer of proof briefly describing the nature and purpose of the evidence for subsequent review of the presiding officer's ruling.

**(2) Official notice.**

(a) The commission may take official notice of:

(i) Any judicially cognizable fact((-)), examples of ((such facts)) which include, but are not limited to, the following:

(A) Rules, regulations, interpretive and policy statements, administrative rulings, and orders, exclusive of findings of fact, of the commission and other governmental agencies;

(B) Contents of certificates, permits, and licenses issued by the commission; and

(C) Tariffs, classifications, and schedules regularly established by, or filed with, the commission as required or authorized by law((-));

(ii) Technical or scientific facts within the commission's specialized knowledge; ~~((and))~~

(iii) Codes or standards that have been adopted by an agency of the United States((- or this state or of another)) or a state, or by a nationally recognized organization or association; and

(iv) Records contained in government web sites or publications or in nationally recognized reporting service publications that are in general circulation and readily accessible to all parties.

(b) The commission may, in its discretion upon notice to all parties, inspect physical conditions that are at issue and take official notice of the results of its inspection.

(c) The presiding officer will notify parties of ~~((material officially noticed and its source)) documents or information of which the commission takes official notice and the source of that information.~~ The presiding officer will afford parties an opportunity to contest facts and material ~~((so noticed)) of which the commission takes official notice.~~ The presiding officer may require a party proposing that the commission take official notice ((be taken)) of a document or information to provide copies of ((officially noted matter to)) that document or information for the record and to all other parties.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-498 Hearing—Public comment.** (1) **General.** The commission will receive as a bench exhibit any public comment ~~((filed, or otherwise)) submitted by nonparties((-)) in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may receive into evidence documents a member of the public presents that are exceptional in their probative value after the commission provides the parties an opportunity to respond to those documents.~~

(2) **Public comment hearing.** The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, ~~((the))~~ a presiding officer will make an opening statement explaining the purpose of the hearing and will briefly summarize the principal issues in the matter. The presiding officer will administer an oath to those members of the public ~~((that))~~ who indicate a desire to testify concerning their views on the issues. The presiding officer will call each member of the public who wishes to testify, will inquire briefly into the identity and interests of the witness, and will provide an opportunity for a brief statement ~~((by the party))~~. Typically, public witnesses may expect to have three to five minutes to make an oral statement. A public witness may supplement his or her oral statements ~~((may be supplemented by))~~ with written comments signed by the witness.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-07-423 Discovery—Protective orders—Submission requirements for documents.

**WSR 17-07-001**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed March 1, 2017, 12:29 p.m., effective April 1, 2017]

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

Purpose: The agency is revising this chapter to align with the Centers for Medicare and Medicaid Services (CMS) new covered outpatient drug rule, CMS-2345-FC. The agency is also amending these rules to increase the number of drug classes eligible for supplemental rebates. Changes include but are not limited to definition updates; new language about drugs, devices, and drug-related supplies; authorization updates; new language about point-of-sale and actual acquisition costs; updates to therapeutic interchange program; clarified processes for mail order and specialty pharmacy services; added information on 340B providers; added information on Medicare Part A, B, and C; and revised section on drugs purchased under the Public Health Services Act.

Citation of Existing Rules Affected by this Order: Amending WAC 182-530-1050, 182-530-3000, 182-530-3100, 182-530-3200, 182-530-4100, 182-530-4125, 182-530-4150, 182-530-6000, 182-530-7000, 182-530-7050, 182-530-7150, 182-530-7250, 182-530-7300, 182-530-7700, 182-530-7900, 182-530-8000, 182-530-8100, and 182-530-8150.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-02-083 on January 4, 2017.

Changes Other than Editing from Proposed to Adopted Version: **Note: Strikeouts and underlines indicate language deleted or added since the proposal.**

WAC 182-530-1050

**Dispensing fee - "Means professional dispensing fee."**  
See professional dispensing fee.

**"Evidence-based drug reviews" and ~~evidence-based medicine (EBM)~~ The application of a set of principles and methods for comprehensive independent and objective evaluation of clinical evidence provided in for the review of well-designed and well-conducted studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective and beneficial when making population-based coverage policies or individual medical necessity decisions. Classifying evidence by its epistemologic strength and requiring that only the strongest types (coming from meta-analyses, systematic reviews, and randomized controlled trials) can yield strong recommendations; weaker types (such as from case-control studies) can yield weak recommendations.**

**"Evidence-based practice center" or "EPC" - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) to develop evidence reports and technology assessments on topics relevant to clinical and other health care organization and delivery issues, specifically those that are common, expensive, or significant for the medicare and medicaid populations.**

**"Medicaid preferred drug list (medicaid PDL)" - The list of all drugs in drug classes approved for inclusion by the Washington medicaid drug use review (DUR) board and each drug's preferred or nonpreferred status as determined approved by the agency director or designee. The list includes at minimum all drugs and drug classes on the Washington PDL and may include additional drugs and drug classes at the discretion of recommended by the DUR board and approved by the agency director or designee.**

WAC 182-530-3100 (1)(b)

In performing this evaluation the clinical team may consult with other agency clinical staff, financial experts, and program managers. The agency clinical team may also consult with an evidence-based practice center (EPC), evidence-based drug reviews, other purchasers, the drug use review (DUR) board, and medical experts in this evaluation.

WAC 182-530-4100(2)

The pharmacy and therapeutics (P&T) committee or the drug use review (DUR) board reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based drug reviews information provided by the vendor.

WAC 182-530-4100(5)

Drugs in a drug class on the medicaid PDL ~~only but~~ which are not on the Washington PDL are not subject to therapeutic interchange program (TIP) and dispense as written (DAW) rules under WAC 182-530-4150.

WAC 182-530-7900(4)

Exceptions to the 340B AAC billing requirement are only made for:

(a) Outpatient hospital claims paid under the enhanced ambulatory payment group (EAPG) methodology (see WAC 182-550-7000); and

(b) Ambulatory surgery claims paid under payment groups methodology; and

~~(c) Family planning clinics billing contraceptives designated by the agency to be paid at 340B ceiling price plus a professional dispensing fee.~~

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 18, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 18, Repealed 0.

Date Adopted: March 1, 2017.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-035, filed 8/28/13, effective 9/28/13)

**WAC 182-530-1050 Definitions.** In addition to the definitions and abbreviations found in chapter 182-500 WAC, Medical definitions, the following definitions apply to this chapter.

**"Active ingredient"** - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The medicaid agency or its designee limits coverage of active ingredients to those with an eleven-digit national drug code (NDC) and those specifically authorized by the agency or its designee.

**"Actual acquisition cost (AAC)"** - ~~((The net cost a provider paid for a drug, device, or drug-related supply marketed in the package size purchased. The AAC includes discounts, rebates, charge backs and other adjustments to the price of the drug, device or drug-related supply, but excludes dispensing fees.))~~ Refers to one of the following:

(1) Provider AAC - The true cost a provider paid for a specific drug or product in the package size purchased, including discounts, rebates, charge backs that affect the provider's invoice price, and other adjustments to the price of the drug, device or drug-related supply, excluding dispensing fees;

(2) 340B AAC - The true cost paid by a public health service (PHS)-qualifying entity for a specific drug, excluding dispensing fees; or

(3) POS AAC - The agency-determined rate paid to pharmacies through the point-of-sale (POS) system, and intended to reflect pharmacy providers' actual acquisition cost.

**"Administer"** - Includes the direct application of a prescription drug or device by injection, insertion, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

**"Appointing authority"** - ~~((For the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: The director of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).))~~ Means the following people acting jointly: The director of the Washington state health care authority and the director of the Washington state department of labor and industries.

**"Authorized generic drug"** - Any drug sold, licensed, or marketed under a new drug application (NDA) approved by the Food and Drug Administration (FDA) under section 505(c) of the Federal Food, Drug and Cosmetic Act (FFDCA) that is marketed, sold or distributed under a different labeler code, product code, trade name, trademark, or packaging (other than repackaging the listed drug for use in institutions) than the brand name drug.

**"Automated authorization"** - Adjudication of claims using submitted NCPDP data elements or claims history to verify that the medicaid agency's or its designee's authorization requirements have been satisfied without the need for the medicaid agency or its designee to request additional clinical information.

**"Automated maximum allowable cost (AMAC)"** - The rate established by the medicaid agency or its designee for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

**"Average manufacturer price (AMP)"** - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

**"Average sales price (ASP)"** - The weighted average of all nonfederal sales to wholesalers net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

**"Average wholesale price (AWP)"** - ~~((The average))~~ A reference price of a drug product that is ((calculated from wholesale list prices nationwide)) published at a point in time and reported to the medicaid agency or its designee by the agency's drug file contractor.

~~((**"Combination drug"** - A commercially available drug including two or more active ingredients.))~~ **"Brand name drug"** - A single-source or innovator multiple-source drug.

**"Compendia of drug information"** includes the following:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopeia Drug Information; and

(3) DRUGDEX Information System.

**"Compounding"** - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

**"Deliver or delivery"** - The transfer of a drug or device from one person to another.

**"Dispense as written (DAW)"** - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

**"Dispensing fee"** - ~~((The fee the medicaid agency or its designee sets to pay pharmacy providers for dispensing agency-covered prescriptions. The fee is the agency's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to the agency's reimbursement for the costs of covered ingredients.~~

**"Drug evaluation matrix"** - The criteria-based scoring sheet used to objectively and consistently evaluate the food and drug administration (FDA) approved drugs to determine drug coverage status. Means professional dispensing fee. See professional dispensing fee.

**"Drug file"** - A list of drug products, pricing and other information provided to the medicaid agency or its designee and maintained by a drug file contractor.

**"Drug file contractor"** - An entity which has been contracted to provide regularly updated information on drugs, devices, and drug-related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

~~((**"Drug rebates"** - Reimbursements provided by pharmaceutical manufacturers to state medicaid programs under the terms of the manufacturers' agreements with the Department of Health and Human Services (DHHS).))~~

**"Drug-related supplies"** - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

**"Drug use review (DUR)"** - A review of covered outpatient drug use that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

**"Effectiveness"** - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

**"Efficacy"** - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

**"Emergency kit"** - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

**"Endorsing practitioner"** - A practitioner who has reviewed the Washington preferred drug list (Washington PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

**"Estimated acquisition cost (EAC)"** - The medicaid agency's estimate of the price providers generally and cur-

rently pay for a drug marketed or sold by a particular manufacturer or labeler.

~~((**"Evidence-based (EBM) and evidenced based medicine (EBM)) drug reviews"** - The application of a set of principles and ((a method for the review of)) methods for comprehensive independent and objective evaluation of clinical evidence provided in well-designed and well-conducted studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective and beneficial when making population-based coverage policies or individual medical necessity decisions. Classifying evidence by its epistemologic strength and requiring that only the strongest types (coming from meta-analyses, systematic reviews, and randomized controlled trials) can yield strong recommendations; weaker types (such as from case-control studies) can yield weak recommendations.~~

**"Evidence-based practice center" or "EPC"** - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) ~~((of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions))~~ to develop evidence reports and technology assessments on topics relevant to clinical and other health care organization and delivery issues, specifically those that are common, expensive, or significant for the medicare and medicaid populations.

**"Federal drug rebates"** - Dollars returned to medicaid from pharmaceutical manufacturers under the terms of the manufacturers' national rebate agreement with the federal Department of Health and Human Services (DHHS).

**"Federal upper limit (FUL)"** - The maximum allowable reimbursement set by the Centers for Medicare and Medicaid Services (CMS) for a multiple-source drug.

~~((**"Four brand name prescriptions per calendar month limit"** - The maximum number of paid prescription claims for brand name drugs that the medicaid agency or its designee allows for each client in a calendar month without a complete review of the client's drug profile.))~~

**"Generic drug"** - A ~~((nonproprietary))~~ drug that is ~~((required to meet the same bioequivalency tests as the original brand name drug))~~ approved by the Food and Drug Administration (FDA) under an abbreviated new drug application.

**"Inactive ingredient"** - A drug component that remains chemically unchanged during compounding but serves as the:

(1) Necessary vehicle for the delivery of the therapeutic effect; or

(2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

**"Ingredient cost"** - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

~~((**"Innovator multiple-source drug"** - ((As set forth in Section 1927 (k)(7)(A)(ii) of the Social Security Act, includes all covered outpatient drugs approved under a new drug application (NDA), product license approval (PLA), establishment license approval (ELA), or antibiotic drug approval (ADA). A covered outpatient drug marketed by a cross-licensed producer or distributor under the approved~~

new drug application will be included as an innovator multiple source drug when the drug product meets this definition.) A multiple-source drug that was originally marketed under a new drug application (NDA) approved by the Food and Drug Administration (FDA), including an authorized generic drug. This includes:

(1) A drug product marketed by any cross-licensed producers, labelers, or distributors operating under the NDA; or

(2) A covered outpatient drug approved under a biologics license application (BLA), product license application (PLA), establishment license application (ELA), or antibiotic drug application (ADA).

**"Less than effective drug" or "DESI"** - A drug for which:

(1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(2) The secretary of the federal Department of Health and Human Services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

~~("Long-term therapy" - A drug regimen a client receives or will receive continuously through and beyond ninety days.)~~

**"Maximum allowable cost (MAC)"** - The maximum amount ~~((that))~~ the medicaid agency or its designee reimburses for a drug, device, or drug-related supply.

**"Medicaid preferred drug list (medicaid PDL)"** - The list of all drugs in drug classes approved for inclusion by the Washington medicaid drug use review (DUR) board and each drug's preferred or nonpreferred status as approved by the agency director or designee. The list includes at minimum all drugs and drug classes on the Washington PDL and may include additional drugs and drug classes recommended by the DUR board and approved by the agency director or designee.

**"Medically accepted indication"** - Any use for a covered outpatient drug:

(1) Which is approved under the federal Food, Drug, and Cosmetic Act; or

(2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

**"Modified unit dose delivery system"** (also known as blister packs or "bingo/punch cards") - A method in which each patient's medication is delivered to a nursing facility:

(1) In individually sealed, single dose packages or "blisters"; and

(2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

**"Multiple-source drug"** - A drug ~~((marketed or sold by:~~

~~(1) Two or more manufacturers or labelers; or~~

~~(2) The same manufacturer or labeler;~~

~~(a) Under two or more different proprietary names; or~~

~~(b) Under a proprietary name and a generic name)) for which there is at least one other drug product sold in the United States that is pharmaceutically equivalent and bio-equivalent, as determined by the Food and Drug Administration (FDA).~~

**"National drug code (NDC)"** - The eleven-digit ~~((number the FDA and manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.~~

~~**"Noncontract drugs"** - Are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services)) numerical code that includes the labeler code, product code, and package code.~~

**"National rebate agreement"** - The agreement developed by the Centers for Medicare and Medicaid Services (CMS) to implement section 1927 of the Social Security Act, and entered into by a manufacturer and the federal Department of Health and Human Services (DHHS).

**"Noninnovator multiple-source drug"** - A drug that is: (1) A multiple-source drug that is not an innovator multiple-source drug or a single-source drug;

(2) A multiple-source drug marketed under an abbreviated new drug application (ANDA) or an abbreviated antibiotic drug application;

(3) A covered outpatient drug that entered the market before 1962 and was originally marketed under a new drug application (NDA); or

(4) Any drug that has not gone through a Food and Drug Administration (FDA) approval process but otherwise meets the definition of a covered outpatient drug.

If any of the drug products listed in this definition of a noninnovator multiple-source drug subsequently receive an NDA or ANDA approval from the FDA, the product's drug category changes to correlate with the new product application type.

**"Nonpreferred drug"** - A drug ~~((that has not been selected as a preferred drug))~~ within ~~((the))~~ a therapeutic ~~((class(es)))~~ class of drugs on the medicaid preferred drug list (medicaid PDL) that has not been selected as a preferred drug.

**"Obsolete NDC"** - A national drug code replaced or discontinued by the manufacturer or labeler.

**"Over-the-counter (OTC) drugs"** - Drugs that do not require a prescription before they can be sold or dispensed.

**"Peer reviewed medical literature"** - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

**"Pharmacist"** - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

**"Pharmacy"** - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

**"Pharmacy and therapeutic (P&T) committee"** - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the medicaid agency or its designee, the committee may serve as the drug use review board provided for in WAC 182-530-4000.

**"Point-of-sale (POS)"** - A pharmacy claims processing system capable of receiving and adjudicating claims online.

**"Practice of pharmacy"** - The practice of and responsibility for:

- (1) Accurately interpreting prescription orders;
- (2) Compounding drugs;
- (3) Dispensing, labeling, administering, and distributing of drugs and devices;
- (4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;
- (5) Monitoring of drug therapy and use;
- (6) Proper and safe storage of drugs and devices;
- (7) Documenting and maintaining records;
- (8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and
- (9) Participating in drug use reviews and drug product selection.

**"Practitioner"** - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

**"Preferred drug"** - ~~((Drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.~~

**"Preferred drug list (PDL)"** ~~The medicaid agency's list of drugs of choice within selected therapeutic drug classes.)~~ A drug within a therapeutic class of drugs on the medicaid preferred drug list (medicaid PDL) that has been selected as a preferred drug.

**"Prescriber"** - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

**"Prescription"** - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

**"Prescription drugs"** - Drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

**"Professional dispensing fee":**

(1) The fee the medicaid agency or its designee pays pharmacists and dispensing providers for covered prescriptions. The fee pays for costs in excess of the ingredient cost

of a covered outpatient drug when a covered outpatient drug is dispensed; and

(2) Includes only costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a medicaid beneficiary. Pharmacy and dispensing provider costs include, but are not limited to, reasonable costs associated with a prescriber's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, measurement or mixing of the covered outpatient drug, filling the container, beneficiary counseling, physically providing the completed prescription to the medicaid beneficiary, delivery, special packaging, and overhead associated with maintaining the facility and equipment necessary to operate the dispensing entity.

**"Prospective drug use review (Pro-DUR)"** - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

**"Reconstitution"** - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

**"Retrospective drug use review (Retro-DUR)"** - The process in which drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross over-use, or inappropriate or not medically necessary care.

~~(("Risk/benefit ratio" - The result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.))~~

**"Single-source drug"** - A drug produced or distributed under an original new drug application (NDA) approved by the Food and Drug Administration (FDA)((-

~~**"Substitute"** - To replace a prescribed drug, with the prescriber's authorization, with:~~

~~(1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or~~

~~(2) A therapeutically equivalent drug other than the identical base or salt)) with an approved new drug application (NDA) number issued by the FDA. This includes:~~

(1) A drug product marketed by any cross-licensed producers, labelers, or distributors operating under the NDA; or

(2) A drug approved under a biologics license application (BLA), product license application (PLA), establishment license application (ELA), or antibiotic drug application (ADA).

For the purposes of this definition, an ANDA is not an NDA.

**"Systematic review"** - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

**"Terminated NDC"** - An eleven-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

**"Therapeutic alternative"** - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

**"Therapeutic class"** - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

**"Therapeutic interchange"** - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

**"Therapeutic interchange program (TIP)"** - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

**"Therapeutically equivalent"** - Drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

(1) Information from the Food and Drug Administration (FDA);

(2) Published and peer-reviewed scientific data;

(3) Randomized controlled clinical trials; or

(4) Other scientific evidence.

**"Tiered dispensing fee system"** - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

**"True unit dose delivery"** - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

**"Unit dose drug delivery"** - True unit dose or modified unit dose delivery systems.

**"Usual and customary charge"** - The fee that the provider typically charges the general public for the product or service.

**"Washington preferred drug list (Washington PDL)"** - The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

**"Wholesale acquisition cost"** - ~~((The price))~~ Refers to either the actual wholesale cost paid by a wholesaler for drugs purchased from a manufacturer or a list price published as wholesale acquisition cost.

**AMENDATORY SECTION** (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-3000 When the medicaid agency requires authorization.** ~~((Pharmacies must obtain authorization for covered drugs, devices, or drug-related supplies in order to receive reimbursement as described in this section.))~~ Covered drugs, devices, or drug-related supplies require authorization for reimbursement when:

(1) The medicaid agency's pharmacists ~~((and))~~ or medical consultants:

(a) Have determined that authorization for the drug, device, or drug-related supply is required, as described in WAC 182-530-3100; or

(b) Have not yet reviewed the ~~((manufacturer's dossier of drug information submitted in the Academy of Managed Care Pharmacy (AMCP) format))~~ drug, device, or drug-related supply as described in WAC 182-530-3100.

(2) The drug, device, or drug-related supply is in ~~((the))~~ a therapeutic drug class on the Washington preferred drug list and the product is one of the following:

(a) Nonpreferred as described in WAC 182-530-4100; and

(i) The prescriber is a nonendorsing practitioner; or

(ii) The drug is designated as exempt from the therapeutic interchange program per WAC 182-530-4100(6) or 182-530-4150 (2)(a);

(b) Preferred for a special population or specific indication and has been prescribed by a nonendorsing practitioner under conditions for which the drug, device, or drug-related supply is not preferred; or

(c) Determined to require authorization for safety.

(3) ~~((For the purpose of))~~ The agency is promoting safety, efficacy, and effectiveness of drug therapy, or the agency identifies clients or groups of clients who would benefit from further clinical review.

(4) The agency designates the prescriber(s) as requiring authorization because the prescriber(s) is under agency review or is sanctioned for substandard quality of care.

(5) Utilization data indicate there are health and safety concerns or the potential for misuse and abuse. Examples of utilization concerns include:

(a) Multiple prescriptions filled ~~((of))~~ for the same drug in the same calendar month;

(b) Prescriptions filled earlier than necessary for optimal therapeutic response;

(c) Therapeutic duplication;

(d) Therapeutic contraindication;

(e) Excessive dosing, excessive duration of therapy, or subtherapeutic dosing as determined by FDA labeling or the compendia of drug information; and

(f) Number of prescriptions filled per month in total or by therapeutic drug class.

(6) The pharmacy requests reimbursement in excess of the maximum allowable cost and the drug has been prescribed with instructions to dispense as written.

**AMENDATORY SECTION** (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-3100 How the medicaid agency determines when a drug requires authorization.** (1) The medicaid agency's pharmacists ~~((and))~~ or medical consultants periodically evaluate ((new)) covered drugs, ((new)) covered indications, or new dosages approved by the Food and Drug Administration (FDA) to determine the drug authorization requirement.

(a) The clinical team ~~((uses a drug evaluation matrix to evaluate and score the benefit/risk assessment and cost comparisons of drugs to similar existing drugs))~~ evaluates and grades available information for each drug or drug class

based on quality evidence contained in compendia of drug information and peer-reviewed medical literature. The information evaluated includes, but is not limited to:

- (i) Evidence for efficacy and safety;
- (ii) Cost comparisons of drugs with similar existing drugs;
- (iii) Potential for clinical misuse;
- (iv) Potential for client misuse or abuse;
- (v) Drugs with a narrow therapeutic index;
- (vi) Other safety concerns; or
- (vii) Product cost and outcome data demonstrating the cost effectiveness of the drug, device, or drug-related supply.

(b) In performing this evaluation the clinical team may consult with other agency clinical staff, financial experts, and program managers. The agency clinical team may also consult with an evidence-based practice center (EPC), evidence-based drug reviews, other purchasers, the drug use review (DUR) board, and medical experts in this evaluation.

(c) ~~(Information reviewed in the drug evaluation matrix includes, but is not limited to, the following:~~

- ~~(i) The drug, device, or drug-related supply's benefit/risk ratio;~~
- ~~(ii) Potential for clinical misuse;~~
- ~~(iii) Potential for client misuse/abuse;~~
- ~~(iv) Narrow therapeutic indication;~~
- ~~(v) Safety concerns;~~
- ~~(vi) Availability of less costly therapeutic alternatives;~~

~~and~~

~~(vii) Product cost and outcome data demonstrating the drug, device, or drug-related supply's cost effectiveness.~~

~~(d)) Based on the clinical team's evaluation ((and the drug evaluation matrix score)), the agency may determine that the drug, device, or drug-related supply:~~

- ~~(i) Requires authorization;~~
- ~~(ii) Requires authorization to exceed agency-established limitations; or~~
- ~~(iii) Does not require authorization.~~

~~(2) ((Drugs in therapeutic classes on the Washington preferred drug list are not subject to determination of authorization requirements through the drug evaluation matrix. Authorization requirements are determined by their preferred status according to WAC 182-530-4100.~~

~~(3)) The agency periodically reviews existing drugs, devices, or drug-related supplies and reassigns authorization requirements as necessary according to the same provisions as outlined above for new drugs, devices, or pharmaceutical supplies.~~

~~((4)) (3) For any drug, device, or drug-related supply with limitations or requiring authorization, the agency may elect to apply automated authorization criteria according to WAC 182-530-3200.~~

AMENDATORY SECTION (Amending WSR 16-17-071, filed 8/16/16, effective 9/16/16)

**WAC 182-530-3200 The medicaid agency's authorization process.** (1) The agency may establish automated ways for pharmacies to meet authorization requirements for specified drugs, devices, and drug-related supplies, or cir-

cumstances as listed in WAC 182-530-3000 (~~((3) and (4))~~) including, but not limited to:

(a) Use of expedited authorization codes as published in the agency's prescription drug program billing instructions (~~(and numbered memoranda)~~);

(b) Use of specified values in national council of prescription drug programs (NCPDP) claim fields;

(c) Use of diagnosis codes; and

(d) Evidence of previous therapy within the agency's claim history.

(2) When the automated requirements in subsection (1) of this section do not apply or cannot be satisfied, the pharmacy provider must request authorization from the agency before dispensing. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug, device, drug-related supply, or circumstance as listed in WAC 182-530-3000 (~~((3) and (4))~~); and

(b) Keep documentation on file of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC 182-502-0020(5).

(3) When the agency receives the request for authorization:

(a) The agency acknowledges receipt:

(i) Within twenty-four hours if the request is received during normal state business hours; or

(ii) Within twenty-four hours of opening for business on the next business day if received outside of normal state business hours.

(b) The agency reviews all evidence submitted and takes one of the following actions within fifteen business days:

(i) Approves the request;

(ii) Denies the request if the requested service is not medically necessary; or

(iii) Requests the prescriber submit additional justifying information.

(A) The prescriber must submit the additional information within ten days of the agency's request.

(B) The agency approves or denies the request within five business days of the receipt of the additional information.

(C) If the prescriber fails to provide the additional information within ten days, the agency will deny the requested service. The agency sends a copy of the request to the client at the time of denial.

(4) The agency's authorization determination may be based on, but not limited to:

(a) Requirements under this chapter and WAC 182-501-0165;

(b) Client safety;

(c) Appropriateness of drug therapy;

(d) Quantity and duration of therapy;

(e) Client age, gender, pregnancy status, or other demographics; and

(f) The least costly therapeutically equivalent alternative.

(5) The agency evaluates request for authorization of covered drugs, devices, and drug-related supplies that exceed



limitations in this chapter on a case-by-case basis in conjunction with subsection (4) of this section and WAC 182-501-0169.

(6) If a provider needs authorization to dispense a covered drug outside of normal state business hours, the provider may dispense the drug without authorization only in an emergency. The agency must receive justification from the provider within seven days of the fill date to be reimbursed for the emergency fill.

(7) The agency may remove authorization requirements under WAC 182-530-3000 for, but not limited to, the following:

(a) Prescriptions written by specific practitioners based on consistent high quality of care; or

(b) Prescriptions filled at specific pharmacies and billed to the agency at the pharmacies' lower acquisition cost.

(8) Authorization requirements in WAC 182-530-3000 are not a denial of service.

(9) Rejection of a claim due to the authorization requirements listed in WAC 182-530-3000 is not a denial of service.

(10) When a claim requires authorization, the pharmacy provider must request authorization from the agency. If the pharmacist fails to request authorization as required, the agency does not consider this a denial of service.

(11) Denials that result as part of the authorization process will be issued by the agency in writing.

(12) The agency's authorization:

(a) Is a decision of medical appropriateness; and

(b) Does not guarantee payment.

**AMENDATORY SECTION** (Amending WSR 15-12-093, filed 6/2/15, effective 7/3/15)

**WAC 182-530-4100** ~~((Washington))~~ **Medicaid preferred drug list (medicaid PDL)**. ~~((Under RCW 69.41.190 and 70.14.050, the medicaid agency and other state agencies cooperate in developing and maintaining the Washington preferred drug list (PDL).~~

~~(1) Washington state)~~ (1) The medicaid agency contracts with ((evidence-based practice centers for)) a vendor to perform systematic evidence-based drug reviews.

(2) The pharmacy and therapeutics (P&T) committee or the drug use review (DUR) board reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based ((information provided by the evidence-based practice centers)) drug reviews.

(3) The P&T committee makes recommendations to state agencies as to which drugs to include on the Washington PDL under chapter 182-50 WAC. The DUR board makes recommendations to the medicaid agency about which additional drug classes to include in the medicaid PDL.

(4) The ((appointing authority)) agency director or designee makes the final selection of drugs or drug classes included on the ((Washington)) medicaid PDL.

(5) Drugs in a drug class on the ((Washington PDL that have been studied by an evidence-based practice center and reviewed by the P&T committee and which have not been selected as preferred are considered nonpreferred drugs and are subject to the)) medicaid PDL which are not on the Washington PDL are not subject to therapeutic interchange pro-

gram (TIP) and dispense as written (DAW) rules under WAC 182-530-4150.

(6) Drugs in a drug class on the ((Washington)) medicaid PDL that ((have not been studied by an evidence-based practice center and)) have not been reviewed by the P&T committee ((with)) or the DUR board may be treated as nonpreferred drugs and are not subject to ((the dispense as written (DAW) or the therapeutic interchange program (TIP))) DAW or TIP.

(7) A nonpreferred drug ((which the agency determines as covered)) is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met agency-established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the ((Washington)) medicaid PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the ((Washington)) medicaid PDL may require authorization ((for safety)) regardless of preferred or nonpreferred status.

~~(10) ((Combination drugs that have been studied by an evidence-based practice center and have been reviewed by the P&T committee may be included in the Washington PDL.~~

~~((H))~~ When a ((brand name)) preferred innovator drug ((has been reviewed by the P&T committee)) or biological product on the medicaid PDL loses its patent, the agency may ((immediately));

(a) Designate an available, ((less expensive,)) equally effective, generic equivalent, or biosimilar biological product as a preferred drug((-For the purpose of this chapter, generic equivalent drugs are those identified in the Food and Drug Administration's approved drug products with therapeutic equivalence evaluations (orange book).

~~(12) The dispensing of a brand name or nonpreferred generic drug in a drug class on the Washington PDL as a client's first course of treatment within that therapeutic class may be subject to restrictions under WAC 182-530-4125 and 182-530-4150(10)); and~~

(b) Make the innovator drug or biological product non-preferred.

**AMENDATORY SECTION** (Amending WSR 15-12-093, filed 6/2/15, effective 7/3/15)

**WAC 182-530-4125** **Generics first for a client's first course of treatment.** ~~((The medicaid agency uses point-of-sale (POS) claim messaging to tell pharmacies to use a preferred generic drug for the client's first course of treatment in specific drug classes.))~~ (1) The medicaid agency may require preferred generic drugs on the Washington preferred drug list (Washington PDL) be used before any brand name or nonpreferred generic drugs for a client's first course of treatment within that therapeutic class of drugs, ((when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC 182-530-4000 has reviewed the drug class and recommended to the agency that the drug class is appropriate to

require generic drugs as a client's first course of treatment) according to RCW 69.41.190.

(2) For drug classes selected by the agency that meet the criteria of subsection (1) of this section, only preferred generic drugs are covered for a client's first course of treatment, except as identified in subsection (3) of this section.

(3) Endorsing practitioners' prescriptions written "dispense as written (DAW)" for preferred and nonpreferred brand name drugs and nonpreferred generics in the specific drug classes on the Washington PDL reviewed by the drug use review (DUR) board will be subject to authorization to establish medical necessity as defined in WAC 182-500-0070.

(4) The agency uses point-of-sale (POS) claim messaging to tell pharmacies to use a preferred generic drug for the client's first course of treatment in specific drug classes.

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-4150 Therapeutic interchange program (TIP).** This section contains the medicaid agency's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and 70.14.050(~~(-The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list).~~)).

(1) ~~((The therapeutic interchange program (TIP)))~~ TIP applies only to drugs:

(a) Within therapeutic classes on the Washington preferred drug list (Washington PDL);

(b) ~~((Studied by the evidence-based practice center or centers;~~

~~(e) Reviewed))~~ Included in a motion passed by the pharmacy and therapeutics (P&T) committee; and

~~((d))~~ (c) Prescribed by an endorsing practitioner.

(2) TIP does not apply to a drug when:

(a) ~~((When))~~ The P&T committee determines that TIP does not apply to the drug or its therapeutic class on the Washington PDL; ~~((or))~~

(b) ~~((To a drug))~~ Prescribed by a nonendorsing practitioner;

~~(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner under the provisions of chapter 182-50 WAC and RCW 69.41.190(2).~~

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) With the exception of subsection (7) and (10) of this section, when an endorsing practitioner determines that a

nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

~~(e) The agency does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.~~

~~(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage):~~

~~(a) Antipsychotic;~~

~~(b) Antidepressant;~~

~~(c) Antiepileptic;~~

~~(d) Chemotherapy;~~

~~(e) Antiretroviral;~~

~~(f) Immunosuppressive; or~~

~~(g) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.~~

~~(7));~~

(c) The endorsing practitioner signs the prescription "dispense as written (DAW)"; or

(d) Otherwise prohibited under RCW 69.41.190.

(3) The agency may impose nonendorsing status on an endorsing practitioner only under the ~~((following))~~ circumstances(~~(:~~

~~(a) The agency runs three quarterly reports demonstrating that, within any therapeutic class of drugs on the Washington PDL, the endorsing practitioner's frequency of prescribing DAW varies from the prescribing patterns of the endorsing practitioner's agency-designated peer grouping with a ninety-five percent confidence interval; and~~

~~(b) The medical director has:~~

~~(i) Delivered by mail to the endorsing practitioner the quarterly reports described in (a) of this subsection, which demonstrate the endorsing practitioner's variance in prescribing patterns; and~~

~~(ii) Provided the endorsing practitioner an opportunity to explain the variation in prescribing patterns as medically necessary as defined under WAC 182-500-0070; or~~

~~(iii) Provided the endorsing practitioner two calendar quarters to change their prescribing patterns to align with those of the agency-designated peer groupings.~~

~~(8) While the endorsing practitioner is engaged in the activities described in subsection (7)(b)(ii) or (iii) of this section, their endorsing practitioner status is maintained.~~

~~(9) The nonendorsing status restrictions imposed under this section will remain in effect until the quarterly reports demonstrate that the endorsing practitioner's prescribing patterns no longer vary in comparison to the endorsing practitioner's agency-designated peer grouping over a period of four calendar quarters, with a ninety-five percent confidence interval.~~

~~(10))~~ outlined in RCW 69.41.190.

~~(4) Except as otherwise provided in subsection ((H))~~  
~~(5) of this section, ((F)) the agency may restrict a client's~~  
~~first course of treatment within a therapeutic class ((of drugs,~~  
~~the endorsing practitioner's option to write DAW does not~~  
~~apply when:~~

~~(a) There is a less expensive, equally effective therapeutic~~  
~~alternative generic product available to treat the condition;~~  
~~and~~

~~(b) The drug use review (DUR) board established under~~  
~~WAC 182-530-4000 has reviewed the drug class and recom-~~  
~~ended to the agency that the drug class is appropriate to~~  
~~require generic drugs as a client's first course of treatment.~~

~~((H)), according to the provisions in RCW 69.41.190.~~

~~(5) In accordance with WAC 182-530-4125(3) and 182-~~  
~~501-0165, the agency will request and review the endorsing~~  
~~practitioner's medical justification for preferred and nonpre-~~  
~~ferred brand name drugs and nonpreferred generic drugs for~~  
~~the client's first course of treatment.~~

AMENDATORY SECTION (Amending WSR 16-01-046,  
 filed 12/9/15, effective 1/9/16)

**WAC 182-530-6000 Mail-order and specialty pharmacy services.** ~~((The medicaid agency provides a contracted~~  
~~mail-order pharmacy service for client use. The mail-order~~  
~~contractor is selected as a result of a competitive procurement~~  
~~process.~~

~~(1) The contracted mail-order pharmacy service is avail-~~  
~~able as an option to all Washington apple health clients, sub-~~  
~~ject to the:~~

~~(a) Scope of the client's medical care program;~~

~~(b) Availability of services from the contracted mail-~~  
~~order provider; and~~

~~(c) Special terms and conditions described in subsection~~  
~~(2) and (3) of this section.~~

~~(2) The mail-order prescription service may not dispense~~  
~~medication in a quantity greater than authorized by the pre-~~  
~~scriber. (See RCW 18.64.360(5), Nonresident pharmacies.)~~

~~(3) Prescribed medications may be filled by the mail-~~  
~~order pharmacy service within the following restrictions:~~

~~(a) Drugs available from mail-order in no more than a~~  
~~ninety-day supply include:~~

~~(i) Preferred drugs (see WAC 182-530-4100);~~

~~(ii) Generic drugs; and~~

~~(iii) Drugs that do not have authorization requirements~~  
~~(see WAC 182-530-3000 through 182-530-3200).~~

~~(b) Drugs available in no more than a thirty-four-day~~  
~~supply:~~

~~(i) Controlled substances (schedules II through V); and~~

~~(ii) Drugs having authorization requirements (see WAC~~  
~~182-530-3000).~~

~~(c) Other pharmacy restrictions (chapter 182-530 WAC~~  
~~Prescription drugs (outpatient)) continue to apply.~~

~~(4) The contracted mail-order pharmacy services are~~  
~~reimbursed at levels lower than those established for the reg-~~  
~~ular outpatient pharmacy services.) Clients may elect to~~  
~~receive pharmacy services through any mail-order or spe-~~  
~~cialty pharmacy enrolled with the agency.~~

~~(1) Mail-order pharmacies or specialty pharmacies~~  
~~licensed to do business in Washington state under RCW~~

18.64.360 may enroll with the agency in the same manner as  
other pharmacies according to chapter 182-502 WAC,  
including out-of-state mail-order or specialty pharmacies.

(2) The agency considers mail-order and specialty  
classes of trade the same as retail class of trade for the pur-  
pose of enrollment with the agency. When enrolling with the  
agency, a mail-order or specialty pharmacy must enroll as a  
retail pharmacy unless participating with the agency under a  
mail-order or specialty pharmacy contract. Mail-order and  
specialty pharmacies cannot enroll under a mail-order desig-  
nation by taxonomy or other indicator except when providing  
services under a mail-order contract with the agency separate  
from and in addition to the pharmacy's core provider agree-  
ment.

(3) Out-of-state pharmacies must comply with all appli-  
cable Revised Code of Washington and Washington Admin-  
istrative Code when serving agency clients.

(4) The provisions of this chapter apply equally to all  
pharmacies and services provided by pharmacies regardless  
of the pharmacy's class of trade, except when those services  
are provided under a contract with the agency separate from  
and in addition to the pharmacy's core provider agreement.

(5) The agency may contract with one or more mail-  
order or specialty pharmacies separate from and in addition  
to the pharmacy's core provider agreement.

(a) Provisions of the contract may differ from require-  
ments detailed in this chapter including, but not limited to,  
reimbursement rates, dispensing limitations, and authoriza-  
tion requirements.

(b) Mail-order or specialty pharmacy contract provisions  
supersede individual sections or subsections of this chapter  
when specifically cited in contract, leaving in effect all other  
provisions of this chapter.

(c) Mail-order contract provisions for a dispensing phar-  
macy must not allow for a higher reimbursement than is  
allowed under this chapter for a retail pharmacy.

(d) When opening enrollment under a mail-order or spe-  
cialty contract, the agency will make publicly available the  
contract provisions and minimum requirements to participate  
under the contract including, but not limited to, the reim-  
bursment rate and methodology the provider must accept.  
Any pharmacy enrolled with Washington medicaid as a bill-  
ing provider may choose to accept and participate with the  
agency under the terms of the mail-order or specialty phar-  
macy contract.

(e) The agency may use the same contract for both mail-  
order and specialty pharmacies, or may have separate stan-  
dard contracts for each class of trade.

(f) The agency may base contract provisions on informa-  
tion supplied through a request for information to interested  
parties before making the finalized contract publicly avail-  
able.

(6) The agency may implement programs or contract  
provisions that provide favorable conditions to contracted  
mail-order pharmacies, specialty pharmacies, or clients to  
encourage participation by pharmacies or the use of mail-  
order and specialty services by clients.

(7) The agency may designate specific products or  
classes of products to be made available to clients through  
mail-order or specialty pharmacies only.

AMENDATORY SECTION (Amending WSR 12-16-061, filed 7/30/12, effective 11/1/12)

**WAC 182-530-7000 Reimbursement.** (1) The agency's ~~((total))~~ reimbursement for a prescription drug dispensed through point-of-sale (POS) must not exceed the ~~((lowest of: (a) Estimated acquisition cost (EAC) plus a dispensing fee;))~~ lesser of actual acquisition cost (AAC) plus a professional dispensing fee or the provider's usual and customary charge.

(2) The agency selects the sources for pricing information used to set POS AAC.

(3) The POS AAC is calculated as the lowest of:

(a) National average drug acquisition cost (NADAC);  
(b) Maximum allowable cost (MAC) ~~((plus a dispensing fee))~~;

(c) Federal upper limit (FUL) ~~((plus a dispensing fee))~~;

(d) ~~340B~~ Actual acquisition cost (~~340B~~ AAC) ~~((plus a dispensing fee))~~ for drugs purchased under section 340B of the Public Health Service (PHS) Act (see WAC 182-530-7900 for exceptions); or

(e) Automated maximum allowable cost (AMAC) ~~((plus a dispensing fee; or~~

~~(f) The provider's usual and customary charge to the non-medicaid population.~~

(2) The agency selects the sources for pricing information used to set EAC and MAC.

(3) The agency may solicit assistance from pharmacy providers, pharmacy benefit managers (PBM), other government agencies, actuaries, and/or other consultants when establishing EAC and/or MAC).

(4) Where NADAC does not exist, other available reference prices from national sources such as wholesale acquisition cost, or average manufacturer price will be used as the basis of the reimbursement.

(5) Where NADAC does not accurately reflect the actual acquisition costs in Washington state, a percentage adjustment to NADAC will be made to the reimbursement.

(6) The agency may set POS AAC for specified drugs or drug categories at a maximum allowable cost other than that determined in subsection (2) of this section based on specific product acquisition costs. The agency considers product acquisition costs in setting a rate for a drug or a class of drugs.

(7) The agency bases POS AAC drug reimbursement on the actual package size dispensed.

(8) The agency reimburses a pharmacy for the least costly dosage form of a drug within the same route of administration, unless the prescriber has designated a medically necessary specific dosage form or the agency has selected the more expensive dosage form as a preferred drug.

~~((5))~~ (9) If the pharmacy provider offers a discount, rebate, promotion or other incentive which directly relates to the reduction of the price of a prescription to the individual nonmedicaid customer, the provider must similarly reduce its charge to the agency for the prescription.

~~((6))~~ (10) If the pharmacy provider gives an otherwise covered product for free to the general public, the pharmacy must not submit a claim to the agency.

~~((7))~~ (11) The agency does not reimburse for:

(a) Prescriptions written on presigned prescription blanks filled out by nursing facility operators or pharmacists;

(b) Prescriptions without the date of the original order;  
(c) Drugs used to replace those taken from a nursing facility emergency kit;

(d) Drugs used to replace a physician's stock supply;

(e) Outpatient drugs, biological products, insulin, supplies, appliances, and equipment included in other reimbursement methods including, but not limited to:

(i) Diagnosis-related group (DRG);

(ii) Ratio of costs-to-charges (RCC);

(iii) Nursing facility daily rates;

(iv) Managed care capitation rates;

(v) Block grants; or

(vi) Drugs prescribed for clients who are on the agency's hospice program when the drugs are related to the client's terminal illness and related condition.

(f) Hemophilia and von Willebrand related products shipped to clients for administration in the home unless the products are provided through a qualified hemophilia treatment center of excellence (COE) as defined in WAC 182-531-1625.

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-7050 Reimbursement—Dispensing fee determination.** (1) Subject to the provisions of WAC 182-530-7000 and the exceptions permitted in WAC 182-530-2000, the medicaid agency pays a dispensing fee for each covered, prescribed drug.

(2) The agency does not pay a dispensing fee for:

(a) Nondrug items, devices, or drug-related supplies; or

(b) Drugs administered by a health care professional.

(3) The agency periodically examines the sufficiency of pharmacy dispensing fees and may adjust((s)) the dispensing fee by considering factors including, but not limited to:

(a) Legislative appropriations for vendor rates;

(b) Input from provider and advocacy groups;

(c) Input from state-employed or contracted actuaries; and

(d) Dispensing fees paid by other third-party payers including, but not limited to, health care plans and other states' medicaid agencies.

(4) The agency uses a tiered dispensing fee system which pays higher volume pharmacies at a lower fee and lower volume pharmacies at a higher fee.

(5) The agency uses total annual prescription volume (both medicaid and nonmedicaid) reported to the agency to determine each pharmacy's dispensing fee tier.

(a) A pharmacy which fills more than thirty-five thousand prescriptions annually is a high-volume pharmacy. The agency considers hospital-based pharmacies that serve both inpatient and outpatient clients as high-volume pharmacies.

(b) A pharmacy which fills between fifteen thousand one and thirty-five thousand prescriptions annually is a mid-volume pharmacy.

(c) A pharmacy which fills fifteen thousand or fewer prescriptions annually is a low-volume pharmacy.

(6) The agency determines a pharmacy's annual total prescription volume as follows:

(a) The agency sends out a prescription volume survey form to pharmacy providers during the first quarter of the calendar year;

(b) Pharmacies return completed prescription volume surveys to the agency each year. Pharmacy providers not responding to the survey by the specified date are assigned to the high volume category;

(c) Pharmacies must include all prescriptions dispensed from the same physical location in the pharmacy's total prescription count;

(d) The agency considers prescriptions dispensed to nursing facility clients as outpatient prescriptions; and

(e) Assignment to a new dispensing fee tier is effective on the first of the month, following the date specified by the agency.

(7) A pharmacy may request a change in dispensing fee tier during the interval between the annual prescription volume surveys. The pharmacy must substantiate such a request with documentation showing that the pharmacy's most recent six-month dispensing data, annualized, would qualify the pharmacy for the new tier. If the agency receives the documentation by the twentieth of the month, assignment to a new dispensing fee tier is effective on the first of the following month.

(8) The agency grants general dispensing fee rate increases only when authorized by the legislature. Amounts authorized for dispensing fee increases may be distributed nonuniformly (e.g., tiered dispensing fee based upon volume).

(9) The agency may pay true unit dose pharmacies at a different rate for unit dose dispensing.

**AMENDATORY SECTION** (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-7150 Reimbursement—Compounded prescriptions.** (1) The medicaid agency does not consider reconstitution to be compounding.

(2) The agency covers a drug ingredient used for a compounded prescription only when the manufacturer has a signed rebate agreement with the federal Department of Health and Human Services (DHHS).

(3) The agency considers bulk chemical supplies used in compounded prescriptions as nondrug items, which do not require a drug rebate agreement. The agency covers such bulk chemical supplies only as specifically approved by the agency.

(4) The agency reimburses pharmacists for compounding drugs only if the client's drug therapy needs are unable to be met by commercially available dosage strengths or forms of the medically necessary drug.

(a) The pharmacist must ensure the need for the adjustment of the drug's therapeutic strength or form is well-documented in the client's file.

(b) The pharmacist must ensure that the ingredients used in a compounded prescription are for an approved use as defined in "medically accepted indication" in WAC 182-530-1050.

(5) The agency requires that each drug ingredient used for a compounded prescription be billed to the agency using its eleven-digit national drug code (NDC) number.

(6) Compounded prescriptions are reimbursed as follows:

(a) The agency allows only the lowest cost for each covered ingredient, whether that cost is determined by actual acquisition cost (AAC), (~~estimated acquisition cost (EAC);~~) federal upper limit (FUL), maximum allowable cost (MAC), automated maximum allowable cost (AMAC), or amount billed.

(b) The agency applies current prior authorization requirements to drugs used as ingredients in compounded prescriptions, except as provided under (c) of this subsection. The agency denies payment for a drug requiring authorization when authorization is not obtained.

(c) The agency may designate selected drugs as not requiring authorization when used for compounded prescriptions. For the list of selected drugs, refer to the agency's prescription drug program billing instructions.

(d) The agency pays a professional dispensing fee as described under WAC 182-530-7050 for each drug ingredient used in compounding when the conditions of this section are met and each ingredient is billed separately by the eleven-digit NDC.

(e) The agency does not pay a separate fee for compounding time.

(7) The agency requires pharmacists to document the need for each inactive ingredient added to the compounded prescription. The agency limits reimbursement to the inactive ingredients that meet the following criteria. To be reimbursed by the agency, each inactive ingredient must be:

- (a) A necessary component of a compounded drug; and
- (b) Billed by an eleven-digit national drug code (NDC).

**AMENDATORY SECTION** (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-7250 Reimbursement—Miscellaneous.** (1) The medicaid agency reimburses for covered drugs, devices, and drug-related supplies provided or administered by nonpharmacy providers under specified conditions, as follows:

~~((+))~~ (a) The agency reimburses for drugs administered or prepared and delivered for individual use by an authorized prescriber during an office visit according to specific program rules found in:

~~((+))~~ (i) Chapter 182-531 WAC, Physician-related services;

~~((+))~~ (ii) Chapter 182-532 WAC, Reproductive health/family planning only/TAKE CHARGE; and

~~((+))~~ (iii) Chapter 182-540 WAC, Kidney disease program and kidney center services.

~~((+))~~ (b) Providers who are purchasers of Public Health Services (PHS) discounted drugs must comply with PHS 340B program requirements and Washington medicaid requirements for 340B providers participating with medicaid. (See WAC 182-530-7900.)

~~((+))~~ (2) The agency may request providers to submit a current invoice for the actual cost of the drug, device, or

drug-related supply billed. If an invoice is requested, the invoice must show the:

- (a) Name of the drug, device, or drug-related supply;
- (b) Drug or product manufacturer;
- (c) NDC of the product or products;
- (d) Drug strength;
- (e) Product description;
- (f) Quantity; and
- (g) Cost, including any discounts or free goods associated with the invoice.

~~((4))~~ (3) The agency does not reimburse providers for the cost of vaccines obtained through the state department of health (DOH). The agency does pay physicians, advanced registered nurse practitioners (ARNP), and pharmacists a fee for administering the vaccine.

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-7300 Reimbursement—Requesting a change.** Upon request from a pharmacy provider, the medicare agency may reimburse at the provider's actual acquisition cost (provider AAC) for a drug that would otherwise be reimbursed at maximum allowable cost (MAC) when:

(1) The availability of lower cost equivalents in the marketplace is severely curtailed and the price disparity between AAC for the drug and the MAC reimbursement affects clients' access; and

(2) An invoice documenting actual acquisition cost relevant to the date the drug was dispensed is provided to the agency.

AMENDATORY SECTION (Amending WSR 13-14-052, filed 6/27/13, effective 7/28/13)

**WAC 182-530-7700 Reimbursement—Dual eligible clients/medicare.** For clients who are dually eligible for medical assistance and medicare benefits, the following applies:

(1) ~~((Medicare Part B, the agency pays providers for: (a) An amount up to the agency's maximum allowable fee for drugs medicare does not cover, but the agency covers; or~~

~~(b) Deductible and/or coinsurance amounts up to medicare's or the agency's maximum allowable fee, whichever is less, for drugs medicare and the agency cover.))~~ The agency pays medicare coinsurance, copayments, and deductibles for Part A, Part B, and medicare advantage Part C, subject to the limitations in WAC 182-502-0110.

(2) Medicare Part D:

(a) Medicare is the payer for drugs ~~((covered under))~~ included in the medicare Part D benefit.

(b) The agency does not pay for Part D drugs or Part D copayments.

(c) For drugs excluded from the ~~((basic))~~ medicare Part D benefit:

(i) The agency offers the same drug benefit as a nondual eligible client has within those same classes;

(ii) If the client has another third party insurer, that insurer is the primary payer; and

(iii) The agency is the payer of last resort.

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-7900 Drugs purchased under the Public Health Service (PHS) Act.** (1) ~~((Drugs purchased under section 340B of the Public Health Service (PHS) Act can be dispensed to Washington apple health clients only by PHS-qualified health facilities and must be billed to the medicare agency at actual acquisition cost (AAC) as required by laws governing the PHS 340B program.~~

~~((2))~~ Providers dispensing ((drugs under this section)) or administering 340B drugs to Washington apple health clients are required to submit their valid medicare provider number(s) or national provider identification (NPI) number to the PHS health resources and services administration, office of pharmacy affairs. ((This requirement is to ensure that claims for drugs dispensed under this section and paid by the agency are excluded from the drug rebate claims that are submitted to the manufacturers of the drugs.)) See WAC 182-530-7500 for information on the drug rebate program.

~~((3) The agency reimburses drugs under this section at actual acquisition cost plus a dispensing fee set by the agency.))~~ (2) Drugs purchased under section 340B of the Public Health Service (PHS) Act can be billed to Washington apple health only by PHS-qualified entities. The Washington medicare rebate process excludes 340B claims from invoicing only when the drug is billed by a medicare provider number or national provider identification (NPI) number listed on the PHS office of pharmacy affairs national medicare exclusion file. See WAC 182-530-7500 for information on the drug rebate program.

(3) With the exception of claim types identified in subsection (4) of this section, all 340B purchased drugs must be billed to the medicare agency at the 340B actual acquisition cost (340B AAC).

(4) Exceptions to the 340B AAC billing requirement are only made for:

(a) Outpatient hospital claims paid under the enhanced ambulatory payment group (EAPG) methodology (see WAC 182-550-7000); and

(b) Ambulatory surgery claims paid under payment groups methodology.

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-8000 Reimbursement method—** ~~((Estimated))~~ Actual acquisition cost ((EAC)) (AAC). ~~((+))~~ The medicare agency ((determines estimated)) uses the following sources to determine point-of-sale actual acquisition cost ((EAC) using:

~~((a))~~ (POS AAC) including, but not limited to:

(1) National average drug acquisition cost (NADAC) published by the Centers for Medicare and Medicaid Services (CMS);

(2) Acquisition cost data made available to the agency((;

~~or~~ (b) Information provided by any of the following)) by:

~~((+))~~ (a) Audit ((agencies;)) results from federal or state agencies;

~~((i)) (b) Other state health care purchasing ((agencies)) organizations;~~

~~((ii)) (c) Pharmacy benefit managers;~~

~~((iii)) (d) Individual pharmacy providers participating in the agency's programs;~~

~~((v) Centers for Medicare and Medicaid Services (CMS);~~

~~((vi)) (e) Other third-party payers;~~

~~((vii)) (f) Drug file data bases; and~~

~~((viii)) (g) Actuaries or other consultants.~~

~~((2) The agency implements EAC by applying a percentage adjustment to available reference pricing from national sources such as wholesale acquisition cost, average wholesale price (AWP), average sale price (ASP), and average manufacturer price (AMP).~~

~~(3) The agency may set EAC for specified drugs or drug categories at a maximum allowable cost other than that determined in subsection (1)(a) of this section when the agency considers it necessary. The factors the agency considers in setting a rate for a class of drugs under this subsection include, but are not limited to:~~

~~(a) Product acquisition cost;~~

~~(b) The agency's documented clinical concerns; and~~

~~(c) The agency's budget limits.~~

~~(4) The agency bases EAC drug reimbursement on the actual package size dispensed.~~

~~(5) The agency uses EAC as the agency's reimbursement for a drug when EAC is the lowest of the rates calculated under the methods listed in WAC 182-530-7000, or when the conditions of WAC 182-530-7300 are met.)~~

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-8100 Reimbursement—Maximum allowable cost (MAC).** (1) The medicaid agency establishes a maximum allowable cost (MAC) for a multiple-source drug which is available from at least two manufacturers/labelers.

(2) The agency determines the MAC for a multiple-source drug:

(a) When specific regional and local drug acquisition cost data is available, the agency:

(i) Identifies what products are available from wholesalers for each drug being considered for MAC pricing;

(ii) Determines pharmacy providers' approximate acquisition costs for these products; and

(iii) Establishes the MAC at a level which gives pharmacists access to at least one product from a manufacturer with a qualified rebate agreement (see WAC 182-530-7500(4)).

(b) When specific regional and local drug acquisition cost data is not available, the agency may estimate acquisition cost based on national pricing sources.

(3) The MAC established for a multiple-source drug does not apply if the written prescription identifies that a specific brand is medically necessary for a particular client. In such cases, the ~~((estimated))~~ actual acquisition cost ~~((EAC))~~ (AAC) for the particular brand applies, provided authorization is obtained from the agency as specified under WAC 182-530-3000.

(4) Except as provided in subsection (3) of this section, the agency reimburses providers for a multiple-source drug at the lowest of the rates calculated under the methods listed in WAC 182-530-7000.

(5) The MAC established for a multiple-source drug may vary by package size, including those identified as unit dose national drug codes (NDCs) by the manufacturer or manufacturers of the drug.

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-8150 Reimbursement—Automated maximum allowable cost (AMAC).** (1) The medicaid agency uses the automated maximum allowable cost (AMAC) pricing methodology for multiple-source drugs that are:

(a) Not on the published maximum allowable cost (MAC); and

(b) Produced by two or more manufacturers/labelers, at least one of which must have a current, signed federal drug rebate agreement.

(2) The agency establishes AMAC as a specified percentage of the published ~~((average wholesale price (AWP)))~~ national average drug acquisition cost (NADAC) or other nationally accepted pricing source in order to estimate acquisition cost.

(3) The agency sets the percentage discount from ~~((AWP))~~ NADAC for AMAC reimbursement using any of the information sources identified in WAC 182-530-8000.

(4) The agency may set AMAC reimbursement at different percentage discounts from ~~((AWP))~~ NADAC for different multiple source drugs. The agency considers the same factors as those in WAC 182-530-8000.

(5) AMAC reimbursement for all products with the same ingredient, form and strength is at the AMAC determined for the second lowest priced product, or the AMAC of the lowest priced drug from a manufacturer with a current, signed federal rebate agreement.

(6) The agency recalculates the AMAC each time the drug file contractor provides a pricing update.

(7) Except as provided in WAC 182-530-7300, the agency reimburses at the lowest of the rates calculated under the methods listed in WAC 182-530-7000.

#### WSR 17-07-012

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 6, 2017, 12:42 a.m., effective April 6, 2017]

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

Purpose: The department is amending WAC 388-493-0010 Working family support, to extend the effective end date of the working family support program from September 30, 2016, to June 30, 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 388-493-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Adopted under notice filed as WSR 17-03-051 on January 9, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 6, 2017.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 16-08-034, filed 3/30/16, effective 5/1/16)

**WAC 388-493-0010 Working family support.** (1) What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (Department) and provides an additional monthly food benefit from May 2016 through (~~September 2016~~) June 30, 2017 to low income families who meet specific criteria. Continuance of the program beyond (~~September 30, 2016~~) June 30, 2017 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home that is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You are eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent, work a minimum of thirty five hours a week, and if you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state per WAC 388-468-0005.

(4) How can I apply for working family support?

(a) The department will review your eligibility for the working family support program:

(i) When you apply for food assistance, or

(ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(5) How long can I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed above and provide current proof that you, your spouse, or co-parent works a minimum of thirty five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or WAC 388-418-0011, and you do not provide proof of the number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent, no longer work a minimum of thirty five hours a week; or

(vi) You are no longer a resident of Washington state.

(6) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month.

(b) Working family support benefits are not prorated.

## WSR 17-07-017

### PERMANENT RULES

### BELLEVUE COLLEGE

[Filed March 6, 2017, 5:13 p.m., effective April 6, 2017]

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

Purpose: Bellevue College currently has policies and procedures governing student educational records pursuant to the Family Education Rights and Privacy Act (FERPA) memorialized in chapter 132H-410 WAC. Publication of the FERPA policies in the administrative code is no longer required and the college administration needs the ability to revise these policies without undergoing time consuming rule-making processes and procedures. The college is repealing current chapter 132H-410 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 132H-410-010 through 132H-410-110.



Statutory Authority for Adoption: RCW 28B.50.140, 20 U.S.C. sec. 1232g.

Adopted under notice filed as WSR 16-17-151 on August 24, 2016.

Changes Other than Editing from Proposed to Adopted Version: The chapter is being repealed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 11; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 11.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 11.

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

Date Adopted: March 6, 2017.

Lisa Corcoran  
Rules Coordinator

### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132H-410-010	Family Education Rights and Privacy Act—General policy.
WAC 132H-410-020	Definitions.
WAC 132H-410-030	Annual notification of rights.
WAC 132H-410-040	Primary rights of students.
WAC 132H-410-050	Inspection of education records.
WAC 132H-410-060	Limitation on right of access.
WAC 132H-410-070	Refusal to provide copies.
WAC 132H-410-080	Types, locations, and custodians of education records.
WAC 132H-410-090	Disclosure of education records.
WAC 132H-410-100	Directory information.
WAC 132H-410-110	Correction of education records.

**WSR 17-07-018**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed March 7, 2017, 10:06 a.m., effective April 7, 2017]

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

Purpose: Amends WAC 181-77-003 and 181-77-014 to clarify requirements for certain career and technical education certifications.

Citation of Existing Rules Affected by this Order: Amending WAC 181-77-003 and 181-77-014.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 16-23-033 on November 8, 2016.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, phone (360) 725-6238, fax (360) 586-4548, email david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 12, 2017.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-77-003 Definitions.** The following definitions shall apply to terms used in this chapter:

(1) "Approved program for training career and technical education teachers and career and technical education counselors" shall be defined as any program approved by the professional educator standards board which complies with chapter 181-77A WAC.

(2) "Career and technical education educator training" shall mean those career and technical education programs, courses, seminars and workshops offered for the purpose of career and technical education certification in compliance with chapter 181-85 WAC.

(3) "General safety" shall mean course work approved by the professional educator standards board and/or its designee that is designed to provide skill and knowledge common to all career and technical education instructors in safety.

(4) "Specific safety requirements" shall mean completion of course work approved by the professional educator standards board and/or its designee which is designed to provide the career and technical education instructor with the specific skill and knowledge of safety for the occupation he or she is to teach.

(5) "Learning period" shall mean the amount of time required prior to becoming gainfully employed at the jour-

neyman or equivalent level in the occupation being taught. In any case, this shall be no less than one year.

(6) "Management experience" shall mean work as a supervisor, foreman or manager in the occupational area in which the person will instruct.

(7) "Occupational experience" shall mean paid or unpaid volunteer work experience in the career field to be taught.

(8) "One year of occupational experience" shall equal two thousand hours of employment.

(9) "Professional education" shall mean those programs, courses, seminars and workshops that are designed to improve teaching ability.

(10) "Professional experience" shall mean employment in career and technical education in the discipline and/or specialty for which the application has been submitted.

(11) "Quarter hours or the equivalent" shall mean one quarter credit, two-thirds semester credit, ten clock hours or one hundred hours of occupational experience.

(12) "Technical education/upgrading" shall mean those career and technical education programs, courses, seminars and workshops which are designed to improve the skills and/or knowledge in the discipline in which the application is being made.

**AMENDATORY SECTION** (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

**WAC 181-77-014 Requirements for limited certification.** (1) Probationary certificate. The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district and verification of CTE program enrollment or completion if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial career and technical education certificate.

The candidate for a probationary certificate must have substantially completed requirements for the initial career and technical education certificate as set forth in WAC 181-77-031 or 181-77-041.

(a) Such a certificate may be issued upon recommendation by the employing school district.

(b) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by the local school district career and technical education program advisory committee, to which the candidate is assigned. The plan shall provide for orientation, prior to the commencement of the teaching assignment, in the following:

- (i) Issues related to legal liability;
- (ii) The responsibilities of professional career and technical education educators; and
- (iii) The lines of authority in the employing school district and/or building.

Within the first sixty working days, the plan shall establish procedures for the career and technical education instructor to develop competencies in the following:

- (iv) Career and technical education methods; and
- (v) General and specific safety.

If the candidate does not have access to the required course work within the first ninety working days, the local school district career and technical education advisory committee responsible may authorize the completion of the course work at a later date. The required course work shall be completed prior to the second year of employment.

(vi) The plan shall develop procedures and timelines for the career and technical education instructor to meet the requirements for the initial career and technical education certificate.

(vii) Provided, That candidates for probationary certificates as a coordinator of worksite learning shall successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program and hold a valid probationary career and technical education teacher certificate.

(2) Conditional career and technical education certificate. Notwithstanding other requirements prescribed in this chapter for eligibility for career and technical education certification in the state of Washington, the one-year conditional career and technical education certificate may be issued under specific circumstances set forth below for limited service:

(a) The issuance of the conditional career and technical education certificate may be issued only under unique and special circumstances where no regularly certificated career and technical education instructor is available and is limited to:

(i) Persons highly qualified and experienced in the knowledge and occupational skills of the career and technical education program to be certified; or

(ii) Persons who meet the occupational experience requirements for career and technical education certification; or

(iii) Persons who will be employed in new and emerging occupations as identified by the professional educator standards board and/or its designee.

(b) The certificate is issued to individuals who are screened by the local career and technical education administrator and school district superintendent or designee. The local career and technical education administrator or superintendent will verify that the following criteria have been met when requesting the conditional career and technical education certificate:

(i) No person with career and technical education certification in the field is available as verified by the local career and technical education administrator or superintendent;

(ii) The individual is being certified for a limited assignment and responsibility in a specified career and technical education program area;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment and will be apprised of any legal liability, the lines of authority and the duration of the assignment;

(iv) The career and technical education administrator and local program advisory committee will indicate the basis on which he/she has determined that the individual is competent for the assignment;

(v) A written work and/or educational experience training plan as specified in WAC 181-77-014 (1)(b) is on file with the employing district.

(c) The certificate is valid for one school year or less and only for the teaching area specified on the certificate. The certificate may be reissued on application and evidence that requirements continue to be met.

~~((3) Substitute career and technical education certificates. Substitute career and technical education certificates may be issued to candidates who meet the requirements in WAC 181-79A-231(2) or (4).))~~

**WSR 17-07-021**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed March 7, 2017, 1:59 p.m., effective April 7, 2017]

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

Purpose: Chapter 222, Laws of 2016 (SB [SSB] 6264) provides the opportunity for members of the law enforcement officers' and firefighters' (LEOFF) Plan 1 retirement system to purchase an annuity. This amendment incorporates the new provisions into the existing rule concerning annuity purchases.

Citation of Existing Rules Affected by this Order: Amending WAC 415-02-178 May I purchase an annuity?

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 17-04-044 on January 25, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: March 7, 2017.

Tracy Guerin  
Director

AMENDATORY SECTION (Amending WSR 16-04-048, filed 1/27/16, effective 2/27/16)

**WAC 415-02-178 May I purchase an annuity? (1) Am I eligible to purchase an annuity?** You are eligible to purchase an annuity at the time of retirement from your defined benefit ~~((for either service or disability))~~ plan if you are a member of TRS (RCW 41.32.067), WSPRS (RCW

43.43.315), LEOFF Plan 1 (RCW 41.26.105), or LEOFF Plan 2 (RCW 41.26.463). This annuity provides a lifetime increase to your monthly benefit. (For purchasing an annuity from your Plan 3 defined contribution account, refer to WAC 415-111-320.)

**(2) Can I purchase an annuity if I take a lump sum payment?** ~~((No.))~~ You may not purchase an annuity if you elect a lump sum payment instead of a monthly benefit.

**(3) Are there limits to the annuity amount I may purchase?** There is no maximum limit on the purchase amount. If you are a LEOFF ~~((Plan 2 member))~~ or WSPRS member the minimum purchase amount ~~((you may purchase))~~ is \$25,000. There is no minimum required for TRS members.

**(4) When can I apply to purchase an annuity?** You must submit your request to purchase an annuity to the department at the time you apply for retirement.

**(5) How much will my monthly benefit increase if I purchase an annuity?** The increase in your monthly benefit will be calculated using the following formula:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

The annuity factor is determined by your age on the later of your retirement date or the date your retirement application is submitted to the department.

**Example:** John is a member of LEOFF Plan 2. He applies for retirement and requests to purchase an annuity for \$45,000. For illustration purposes in this example only, we will use .0051025 as the corresponding annuity factor (factors change periodically). John's monthly benefit will increase by \$229.61 per month, calculated as follows:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

$$\$45,000 \times .0051025 = \$229.61$$

**(6) How and when do I pay for the annuity?** The department will generate a bill to you for the cost of the annuity after we receive your request to purchase.

(a) For all TRS members, payment may be made by making a one-time ~~((cash, check, or electronic fund transfer))~~ personal payment; or you may roll over funds from another tax-deferred retirement account.

(b) For LEOFF ~~((Plan 2))~~ and WSPRS members, the annuity must be purchased by rolling over funds from an "eligible retirement plan" which is a tax qualified plan offered by a governmental employer (like the state of Washington's deferred compensation program).

(c) Payment must be made in full by ninety days after the later of your retirement date or bill issue date. Your annuity will begin once your payment is received and your retirement is processed. The effective date for the start of this benefit is the later of your retirement date or the payment in full date plus one day.

**(7) ~~((Are there benefit options that allow me to choose a survivor to receive a continuing payment after my death? Yes.))~~ What are the survivor options for my annuity?** The survivor option you designate for your ~~((monthly benefit must))~~ retirement benefit will also be used for your

~~((purchase of)) annuity purchase, with the exception of WSPRS Plan 1 Option A and LEOFF Plan 1.~~

~~((Depending upon the rules for your retirement system and plan and the benefit option you choose at retirement, your survivor's monthly benefit will be a percentage of the gross monthly benefit you were receiving.)) If you are a WSPRS Plan 1 member who chose Option A or you are a LEOFF Plan 1 member, your annuity will be paid for your lifetime only. Under these two survivor options, even though the retirement benefit may be paid over two lifetimes, there is no actuarial reduction. No actuarial reduction can be applied to the annuity, therefore the annuity can only be treated as if a single life option was chosen.~~

If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly ~~((benefit)) annuity payment~~ will increase to the amount it would have been had you not selected a survivor option.

**(8) Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the purchased annuity?**

(a) If you are eligible for an annual COLA adjustment on your monthly benefit, you will receive the same COLA percentage on this annuity.

(b) If you retire from TRS Plan 1 you must elect the optional auto COLA in order to receive a COLA on the annuity amount.

**(9) If I purchase an annuity and then return to work, how will the annuity portion of my benefit be affected?** You will continue to receive the annuity portion of your monthly benefit payment even if you return to work, or return to membership.

**(10) If I retire then return to membership and re-retire, may I purchase another annuity?** Yes. You may purchase another annuity when you re-retire provided you are re-retiring from an eligible plan that allows an annuity purchase.

chase another annuity when you re-retire provided you are re-retiring from an eligible plan that allows an annuity purchase.

**(11) May I purchase an annuity from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase an annuity from each dual member plan that allows an annuity purchase.

(b) If you are not a dual member and retire separately from more than one plan you may purchase an annuity from each eligible plan that allows an annuity purchase.

**(12) ~~((How are the funds I paid to purchase the annuity treated upon my death (and the death of my survivor beneficiary, if applicable)?~~**

~~((a) Plans 1 and 2. The amount paid to purchase the annuity is credited to your individual account as part of your accumulated contributions. Distribution of accumulated contributions after your death (and the death of your survivor beneficiary, if any) is governed by the statutes and rules applicable to your plan. See:~~

- ~~((i) WAC 415-112-504(9) for TRS Plan 1;~~
- ~~((ii) WAC 415-112-505(7) for TRS Plan 2;~~
- ~~((iii) WAC 415-104-215(7) for LEOFF Plan 2;~~
- ~~((iv) WAC 415-103-215 for WSPRS Plan 1;~~
- ~~((v) WAC 415-103-225(7) for WSPRS Plan 2.~~

~~((b) TRS Plan 3. If you and your survivor (if you selected a survivor option) die before the amount of your purchased annuity has been paid back to you in your monthly benefit, the difference will be refunded to your designated beneficiary.)) **What happens to my annuity upon my death (and the death of my survivor, if applicable)?**~~

<u>System Plan</u>	<u>Benefit Option</u>	<u>Annuity Payment upon Death</u>
<u>TRS 1</u>	<u>Maximum Option</u>	<u>At the time of your death the annuity payment stops.</u>
<u>TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2</u>	<u>Option 1 (single life)</u>	<u>At the time of your death the annuity payments stop. The original amount you paid for your annuity, less any payments you have received, will be paid to your designated beneficiary.</u>
<u>WSPRS 1</u>	<u>Option A</u>	
<u>LEOFF 1</u>	<u>Automatic Survivor</u>	
<u>TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2</u>	<u>Option 2, 3, 4 (joint life)</u>	<u>At the time of your death, payments will continue to your survivor. At the time of your survivor's death, the original amount you paid for your annuity, less any payments you and your survivor have received, will be paid to your designated beneficiary.</u>
<u>WSPRS 1</u>	<u>Option B (joint life)</u>	

**WSR 17-07-025**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed March 7, 2017, 3:35 p.m., effective April 7, 2017]

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

Purpose: WAC 246-810-0298 Suicide assessment training standards, the department has adopted rules to be consistent with 2015 amendments to RCW 43.70.442 requiring certified counselors and certified advisers, by July 1, 2017, to

take continuing education of suicide assessment, screening, and referral from the department's model list.

Citation of Existing Rules Affected by this Order: Amending WAC 246-810-0298.

Statutory Authority for Adoption: RCW 18.19.050 and 43.70.442.

Adopted under notice filed as WSR 16-20-068 on October 3, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 17, 2017.

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

**WAC 246-810-0298 Suicide assessment training standards.** (1) Approved qualifying training in suicide assessment, including screening and referral must:

~~((4)) (a) Until July 1, 2017, be approved by the American Foundation for Suicide Prevention, the Suicide Prevention Resource Center, entities listed in WAC 246-810-0293, or an equivalent organization, educational institution or association which approves training based on observation and experiment or best available practices. ((2) Cover training in suicide assessment, including screening and referral.~~

~~((3)) The training must be empirically supported training and meet other requirements in RCW 43.70.442.~~

~~(b) Beginning July 1, 2017, must be on the department's model list developed in accordance with RCW 43.70.442. Nothing in this section invalidates trainings completed according to this chapter before July 1, 2017; and~~

~~(c) Be provided by a single provider and be at least three hours in length, which may be provided in one or more sessions.~~

~~((4)) (2) A certified counselor or certified adviser who is an employee of a state or local government employer is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.~~

~~((5)) (3) A certified counselor or certified adviser who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.~~

~~((6)) (4) A certified counselor or certified adviser that obtained training under the exemptions listed in subsections ((4)) (2) and ((5)) (3) of this section may obtain CE credit subject to documentation as defined in WAC 246-810-0297.~~

**WSR 17-07-027**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

(Pharmacy Quality Assurance Commission)

[Filed March 7, 2017, 3:59 p.m., effective April 7, 2017]

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

Purpose: Repealing chapter 246-872 WAC, Automated drug distribution devices; and WAC 246-869-120 Mechanical devices in hospitals; and creating new chapter 246-874 WAC, Pharmacy and technology, to establish requirements for the use of various technologies in the practice of pharmacy. The adopted rule establishes Part 1 of the new chapter by setting the requirements for the installation and use of automated drug dispensing devices (ADDD).

Citation of Existing Rules Affected by this Order: Repealing WAC 246-872-010, 246-872-020, 246-872-030, 246-872-040, 246-872-050, and 246-869-120.

Statutory Authority for Adoption: RCW 18.64.005, chapter 18.64 RCW.

Adopted under notice filed as WSR 16-23-096 on November 16, 2016.

Changes Other than Editing from Proposed to Adopted Version: Technical changes were made to provide consistent language throughout the rule, and correct minor grammatical mistakes.

Citation	Edit/Change	Reason
246-874-010(2)	Added "Washington state" before "credentialed health care professional."	Edited for consistency.
246-874-010(6)	Added "of this chapter" after "part 1."	Edited for clarity.
246-874-010(7)	Added "by" after "dispense" and a comma after "labeled by."	Edited for consistency and clarity.
246-874-010(14)	Moved "by a pharmacist" to follow "medication orders."	Edited to clarify what the pharmacist action is.
246-874-010(18)	Added a comma following "pharmacist."	Edited for grammatical correctness.
246-874-025	Moved "who is" to before "a pharmacist" rather than after.	Edited for grammatical correctness.
246-874-030	Added "the annual review" before "available upon request."	Edited for clarity.
246-874-030(2)	Added "make" before "available upon request."	Edited for grammatical correctness.
246-874-030(4)	Moved "and make available upon request."	Edited for clarity and consistency.

Citation	Edit/Change	Reason
246-874-030 (5)(a)	Removed a comma after "original," adding a comma after "containers," and deleting the word "are."	Edited for grammatical correctness.
246-874-030 (5)(b)	Removed a comma after "identified" and deleted unnecessary verbiage "have been."	Edited for grammatical correctness.
246-874-040(2)	Deleted "to the" and replaced with "for accessing an."	Edited for clarity.
246-874-040 (2)(a)	Separated two categories of individuals allowed to restock an ADDD into subsections.	Edited for clarity.
246-874-040(6)	Added "s" at the end of medication.	Edited for grammatical correctness.
246-874-040 (6)(a)	Added a comma after "bottles."	Edited for grammatical correctness.
246-874-040(8)	Deleted "with both the," created a new sentence with "The area where...", and added the term "shall."	Edited for clarity.
246-874-050 (2)(a)(i)	Deleted "by a pharmacist or other Washington state credentialed health care professional acting within their scope of practice, as determined by the responsible manager."	Edited for clarity and to remove redundancy.
246-874-050 (2)(a)(d)(iii)	Fixed spelling error, "Drud" to "Drug."	Edited for grammatical correctness.
246-874-050(3)	Added "acting within their scope of practice."	Edited for consistency.
246-874-060(2)	Replaced "for" with "of."	Edited for grammatical correctness.

A final cost-benefit analysis is available by contacting Tracy West, Department of Health, Office of the Assistant Secretary, HSQA, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4988, fax (360) 236-4626, email [tracy.west@doh.wa.gov](mailto:tracy.west@doh.wa.gov).

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 6.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 6.

Date Adopted: March 7, 2017.

Tim Lynch, PharmD, MS, Chair  
Pharmacy Quality Assurance Commission

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 246-869-120 Mechanical devices in hospitals.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 246-872-010 Purpose.

WAC 246-872-020 What definitions do I need to know to understand these rules?

WAC 246-872-030 What are the pharmacy's responsibilities?

WAC 246-872-040 What are the responsibilities of the facility in the use of automated drug distribution devices?

WAC 246-872-050 What are quality assurance and performance improvement requirements for the use of automated drug distribution devices?

**Chapter 246-874 WAC**

**PHARMACY AND TECHNOLOGY**

**NEW SECTION**

**WAC 246-874-010 Definitions.** The following definitions apply to this chapter, unless the context clearly indicates otherwise:

(1) "ADDD" or "automated drug dispensing device" includes, but is not limited to, a mechanical system controlled remotely by a pharmacist that performs operations or activities, related to the storage, counting, and dispensing of drugs to a credentialed health care professional consistent with their scope of practice. "ADDD" does not include technology that solely counts or stores, kiosks, robots, emergency kits, supplemental dose kits, or automation for compounding, administration, or packaging.

(2) "Blind count" means a physical inventory on the ADDD taken by a pharmacist or other Washington state credentialed health care professional acting within their scope of practice, as determined by the responsible manager, who performs a physical inventory without knowledge of or access to the quantities currently shown on electronic or other inventory systems.

(3) "Commission" means the Washington state pharmacy quality assurance commission.

(4) "Controlled substances" has the same meaning as defined in RCW 69.50.101.

(5) "Department" means the Washington state department of health.

(6) "Dispense" or "dispensing" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, labeling, or packaging necessary to prepare that prescription or order for delivery. For purposes of part 1 of this chapter, dispensing by an ADDD does not include compounding.

(7) "Electronic verification system" means an electronic verification, bar code verification, radio frequency identification (RFID), weight verification, or similar electronic process that accurately verifies that medications have been properly dispensed by, labeled by, or loaded into an ADDD.

(8) "Legend drugs" has the same meaning as defined in RCW 69.41.010.

(9) "Override" means the process by which credentialed health care professionals, acting within their scopes of practice, are permitted to access and remove from an ADDD certain legend drugs, including controlled substances, prior to prospective drug utilization review and approval by a pharmacist.

(10) "Override list" means a list of medications, tailored to the health care facility based on the nature of care delivered, which are subject to retrieval without prospective drug utilization review.

(11) "Part 1" means WAC 246-874-020 through 246-874-070.

(12) "Pharmacist" has the same meaning as defined in RCW 18.64.011.

(13) "Pharmacy technician" has the same meaning as defined in RCW 18.64A.010.

(14) "Prospective drug utilization review" means the evaluation and approval of medication orders by a pharmacist prior to administration of the first dose.

(15) "Replenishment" includes checking stock, loading, unloading, filling and refilling of medications in the ADDD.

(16) "Responsible manager" has the same meaning as WAC 246-869-070, and is synonymous with WAC 246-865-060, 246-873-040, and 246-904-030.

(17) "Secure area" means that drugs are stored in a manner to prevent unmonitored access by unauthorized individuals.

(18) "Supervision" means overseen directly by a pharmacist, who is on the premises or indirectly by an electronic verification system for managing of ADDD inventory.

## PART 1

### AUTOMATED DRUG DISPENSING DEVICES

#### NEW SECTION

**WAC 246-874-020 General applicability.** (1) Part 1 sets the requirements for an ADDD managed by licensed pharmacies under chapter 18.64 RCW, health care entities as defined in RCW 18.64.011, health care facilities as defined in RCW 70.38.025, assisted living facilities as defined in RCW 18.20.020, nursing homes as defined in RCW 18.51.010, health maintenance organizations as defined in RCW 70.38.-025, and public health centers as defined in RCW 70.40.020,

and any other entity authorized by the commission, that choose to use them.

(2) Use of an ADDD that conforms to the requirements in part 1 does not require approval by the commission. Pharmacies, including nonresident pharmacies shall provide written notice on a form provided by the department of the physical address of the facilities where ADDDs they manage or serve are located.

(3) Previously approved facilities using ADDDs shall have one year from the effective date of (date will be added by the code reviser office) to comply with part 1.

(4) Nothing in part 1 is applicable to technology that solely counts or stores, kiosks, robots, emergency kits, supplemental dose kits, or automation for compounding, administration, or packaging.

#### NEW SECTION

**WAC 246-874-025 Responsible manager designation requirement for an ADDD.** Each pharmacy and facility using an ADDD shall designate a responsible manager, who is a pharmacist licensed in Washington state. The responsible manager is responsible for oversight of the ADDDs, and to assure that drugs are procured, stored, delivered, and dispensed in compliance with all applicable state and federal statutes and regulations.

#### NEW SECTION

**WAC 246-874-030 General requirements for an ADDD.** (1) The pharmacy and any facility using an ADDD shall have written policies and procedures in place prior to any use of an ADDD. The responsible manager shall review the written policies and procedures at least annually and make the necessary revisions. The pharmacy or facility must document the required annual review and make the annual review available upon request by the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(2) The pharmacy or facility must maintain a current copy of all policies and procedures related to the use of the ADDD and make them available within the pharmacy or facility where the ADDD is located and make available upon request to the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(3) The policies and procedures must include, but are not limited to:

- (a) All sections of part 1;
- (b) User privileges based upon user type;
- (c) Criteria for selection of medications subject to override and an override list approved by the pharmacy or facility's pharmacy and therapeutics committee or equivalent committee;

(d) Diversion prevention procedures; and

(e) Record retention and retrieval requirements that adhere to all state and federal laws and regulations. Records must be retained for a minimum of two years.

(4) An ADDD shall collect and maintain all transaction information including, but not limited to, the identity of the individuals accessing the system and identity of all personnel

loading the ADDD, to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability. The pharmacy or facility must maintain all records of transactions and make available upon request to the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(5) Inventory control.

(a) Authorized personnel must place drugs into the ADDD in the manufacturer's original sealed unit dose or unit-of-use packaging, in repackaged unit-dose containers, or in other suitable containers to support patient care and safety, and in accordance with federal and state laws and regulations;

(b) When applicable, patient owned medications that have been properly identified and approved for use per the facility's policies, may be stored in accordance with policies for safe and secure handling of medication practices.

(6) The responsible manager may designate a Washington state credentialed health care professional acting within their scope of practices as a designee to perform tasks in part 1. The responsible manager shall retain all professional and personal responsibility for any assisted tasks performed by personnel under his or her responsibility, as shall the pharmacy employing such personnel.

#### NEW SECTION

**WAC 246-874-040 Security and safety requirements for ADDD.** (1) The responsible manager shall ensure adequate security systems and procedures for the ADDD, addressing access, including:

(a) A system by which secure access of users is obtained by such methods as biometrics or some other secure technology; and

(b) Prevention of unauthorized access or use, including:

(i) System access for former employees, or individuals whose access or privileges have been changed or terminated, must be removed immediately or inactivated upon notification; and

(ii) Discharged patients shall have patient profiles removed from the ADDD as soon as possible but no later than twelve hours from notification of the discharge.

(2) The responsible manager or designee shall assign, discontinue, or change user access and types of drug privileges for accessing an ADDD. Access to the ADDD must be limited to those Washington state credentialed health care professionals acting within their scope of practice. Access to the ADDD by facility information technology employees or employees of similar title must be properly restricted and addressed in policies and procedures.

(a) Replenishment of medications in an ADDD is reserved to:

(i) A pharmacist, pharmacy intern, or a pharmacy technician under the supervision of a pharmacist; or

(ii) A Washington state licensed registered nurse or licensed practical nurse may replenish an ADDD using an electronic verification system, that ensures exact placement of secured compartments into the ADDD;

(b) Pharmacists must provide an independent double check of all medications to be distributed to an ADDD in the

absence of an approved specialized function or electronic verification system used in stocking an ADDD. A pharmacy technician that meets the criteria for specialized functions in WAC 246-901-035(1) may also provide the independent double check in place of a pharmacist. Electronic verification system checking or other approved technology may be used in place of an independent manual double check.

(3) A pharmacist shall perform prospective drug utilization review and approve each medication order, except if:

(a) The drug is a subsequent dose from a previously reviewed drug order;

(b) The prescriber is in the immediate vicinity and controls the drug dispensing process;

(c) The system is being used to provide access to medications on override and only a quantity sufficient to meet the immediate need of the patient is removed; or

(d) When twenty-four hour pharmacy services are not available.

(4) When twenty-four hour pharmacy services are not available, a pharmacist shall perform retrospective drug utilization review within six hours of the pharmacy being open, except when a dispensed override medication is a one-time dose or order for discharged patients.

(5) The pharmacist shall reconcile and review all medication orders added to a patient's profile outside of the facility's normal admission discharge transfer process and procedures, no later than the next business day.

(6) Medications or devices may only be returned directly to the ADDD for reissue or reuse consistent with policy and procedures for safe and secure medication processes, which include, but are not limited to:

(a) Medications or devices stored in unsecured patient specific bins, matrices, or open pockets, such as home medications or multiple use patient specific bottles may be returned to an ADDD so long as adequate controls are in place to ensure proper return. Controlled substances cannot be returned to unsecured patient specific bins, matrices, or open pockets.

(b) Medications stored in patient specific containers may not be returned to general stock for reuse.

(7) The responsible manager shall ensure a method is in place to address breach of security of the ADDD including, but not limited to:

(a) Tracking of malfunction and failure of the ADDD to operate correctly; and

(b) Downtime procedures in the event of a disaster or power outage that interrupts the ability of the pharmacy to provide services.

(8) An ADDD used in an assisted living facility must be located in a secure area. The area where the ADDD is located and the ADDD shall be locked when not in use.

#### NEW SECTION

**WAC 246-874-050 Accountability requirements for an ADDD.** (1) The facility shall have a mechanism for securing and accounting for wasted, discarded, expired, or unused medication removal from the ADDD according to policies and procedures and existing state and federal laws and regulations.



(2) The responsible manager shall implement procedures and maintain adequate records regarding use and accountability of legend drugs, including controlled substances, in compliance with state and federal laws and regulations including, but not limited to:

(a) A system to verify the accuracy of controlled substance counts shall include:

(i) Controlled substances must be perpetually inventoried with a blind count each time they are accessed in an ADDD; except for controlled substances dispensed in dose specific amounts by an ADDD to a Washington state credentialed health care professional acting within their scope of practice without access to the remaining controlled substance inventory; or

(ii) All controlled substances that are accessed for replenishment in an ADDD shall have an inventory count performed at that time. When replenishment or removal has not occurred, an inventory count shall occur at a minimum, once every seven days by two authorized persons licensed to handle drugs.

(b) Controlled substances must be stored in individually secured pockets or compartments within the ADDD. Storage in "matrix" drawers or open pocket drawers is prohibited.

(c) Facilities using a closed canister system must have a system to verify the accuracy of controlled substance counts by perpetual inventory that is regularly reviewed and reconciled by pharmacy staff.

(d) Controlled substance discrepancy monitoring and resolution, which includes:

(i) The responsible manager shall work with the facility or nursing administration to maintain an ongoing medication discrepancy resolution and medication monitoring process; and

(ii) A discrepancy report must be generated for each transaction where the count of a drug on hand in the device, does not reflect actual inventory. All resolved and open discrepancies must be reviewed by the responsible manager or designee within seven calendar days; and

(iii) Comply with all state and federal Drug Enforcement Administration reporting requirements.

(3) Wasted controlled substances. All controlled substances wasted shall have a witness, who is a Washington state credentialed health care professional, acting within their scope of practice; the record of waste shall be authenticated by both persons. A waste record must be readily retrievable in the ADDD, electronic health record, or as a hard copy report in accordance with the facility's policies and procedures. The report of waste shall include patient name, drug name, drug strength, date and time of waste, the amount wasted, and the identity of the person wasting and the witness. Waste records must be maintained for a minimum of two years.

#### NEW SECTION

**WAC 246-874-060 Quality assurance process requirements for ADDD.** Each pharmacy and facility shall establish and maintain a quality assurance and performance program that monitors performance of the ADDD, which is evidenced by written policies and procedures that are made

readily available on request to the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible. The responsible manager shall perform annual audits of compliance with all ADDD policies and procedures. The quality assurance program shall include, but is not limited to:

(1) Method for ensuring accurate replenishment of the ADDD;

(2) Procedures for conducting quality control checks of drug removal for accuracy;

(3) Method for reviewing override data and medication error data associated with ADDD and identifying opportunities for improvement.

#### NEW SECTION

**WAC 246-874-070 Nursing students ADDD access.** If a facility provides a clinical opportunity for nursing students enrolled in a Washington state nursing commission approved nursing program, a nursing student may access the ADDD only under the following conditions:

(1) Nursing programs shall provide students with orientation and practice experiences that include demonstration of competency of skills prior to using an ADDD;

(2) Nursing programs, health care facilities, and pharmacies shall provide adequate training for students accessing ADDD; and

(3) The nursing commission approved nursing programs, health care facilities, and pharmacies shall have policies and procedures for nursing students to provide medication administration safely, including:

(a) Access and administration of medications by nursing students based on student competencies;

(b) Orientation of students and faculty to policies and procedures related to medication administration and distribution systems; and

(c) Reporting of student medication errors, near misses and alleged diversion.

#### **WSR 17-07-037**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

(Dental Quality Assurance Commission)

[Filed March 8, 2017, 12:05 p.m., effective April 8, 2017]

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

Purpose: WAC 246-817-760 Moderate sedation with parenteral agents, the dental quality assurance commission (commission) adopted amendments to include specific requirements and exceptions for dentists when sedating pediatric patients.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-760.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.640.

Adopted under notice filed as WSR 16-24-076 on December 6, 2016.

Changes Other than Editing from Proposed to Adopted Version: The commission amended WAC 246-817-760

(4)(c), (e)(v), and (5)(e) adding "for" to the end of each of these subsections to correct sentence structure; and (6), deleting "electrocardiographic monitor" from the list of required monitoring equipment. Subsection (4) does not require monitoring of electrocardiography.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, email [jennifer.santiago@doh.wa.gov](mailto:jennifer.santiago@doh.wa.gov).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 8, 2017.

C. Madden, Chairperson  
Dental Quality Assurance Commission

**AMENDATORY SECTION** (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

**WAC 246-817-760 Moderate sedation with parenteral agents.** (1) Training requirements: To administer moderate sedation with parenteral agents, the dentist must have successfully completed a postdoctoral course(s) of sixty clock hours or more which includes training in basic moderate sedation, physical evaluation, venipuncture, technical administration, recognition and management of complications and emergencies, monitoring, and supervised experience in providing moderate sedation to fifteen or more patients. If treating an adult, the dentist must have training in adult sedation. If treating a minor, the dentist must have training in pediatric sedation.

(2) In addition to meeting the criteria in subsection (1) of this section, the dentist must also have a current ~~((and documented proficiency in))~~ certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS). ~~((One way to demonstrate such proficiency is to hold a valid and current ACLS, PALS certificate or equivalent.))~~ If treating an adult, the dentist must have ACLS certification. If treating a minor, the dentist must have PALS certification.

(3) The drugs, drug amounts, and techniques used must carry a margin of safety wide enough to render unintended loss of consciousness highly unlikely.

(4) Procedures for administration of moderate sedation with parenteral agents by a dentist and an individual trained in monitoring sedated patients:

(a) In the treatment setting, a patient receiving moderate sedation with parenteral ~~((sedation))~~ agents must have that

sedation administered by a person qualified under this chapter.

(b) A patient may not be left alone in a room and must be continually monitored by a dentist with a valid moderate sedation with parenteral agent permit or trained anesthesia monitor.

(c) An intravenous infusion must be maintained during the administration of a parenteral agent. Two exceptions for intravenous infusion may occur, but reasons why intravenous infusion was not used must be documented for:

(i) Pediatric sedation cases using agents for brief procedures; and

(ii) When the pediatric patient is uncooperative or the emotional condition is such that intravenous access is not possible.

(d) When the operative dentist is also the person administering the moderate sedation with parenteral agents, the operative dentist must be continuously assisted by at least one individual experienced in monitoring sedated patients. If treating an adult, the additional individual must have experience or training in adult sedation. If treating a minor, the additional individual must have experience or training in pediatric sedation.

(e) In the treatment setting, a patient experiencing moderate sedation with parenteral agents must be visually and tactilely monitored by the dentist or an individual trained in monitoring sedated patients. Patient monitoring must include:

(i) Heart rate;

(ii) Blood pressure;

(iii) Respiration; ~~((and))~~

(iv) Pulse oximetry; and

(v) Expired carbon dioxide (CO<sub>2</sub>). Two exceptions for expired CO<sub>2</sub> monitoring may occur, but reasons why expired CO<sub>2</sub> monitoring was not used must be documented for:

(A) Pediatric sedation cases using agents for brief procedures; and

(B) When the pediatric patient is uncooperative or the emotional condition is such that CO<sub>2</sub> monitoring is not possible.

(f) Requirements of immobilization devices for pediatric patients:

(i) Immobilization devices, such as, papoose boards, must be applied in such a way as to avoid airway obstruction or chest restriction.

(ii) The pediatric patient head position and respiratory excursions must be checked frequently to ensure airway patency.

(iii) If an immobilization device is used, a hand or foot must be kept exposed.

(g) The patient's blood pressure and heart rate must be recorded every five minutes, pulse oximetry recorded every five minutes, and respiration rate must be recorded at least every fifteen minutes. ~~((In all cases these vital sign parameters must be noted and recorded at the conclusion of the procedure.~~

~~((g))~~ (h) The patient's level of consciousness must be recorded prior to the dismissal of the patient.

~~((h))~~ (i) Patients receiving moderate sedation with parenteral agents must be accompanied by a responsible adult upon departure from the treatment facility.

~~((i))~~ (j) If a patient unintentionally enters a deeper level of sedation, the patient must be returned to a level of moderate sedation as quickly as possible. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, blood pressure and continuous monitoring of oxygen saturation must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

~~((4))~~ (5) Dental records must contain appropriate medical history and patient evaluation. Sedation records must be recorded during the procedure in a timely manner and must include:

- (a) Blood pressure;
- (b) Heart rate;
- (c) Respiration;
- (d) Pulse oximetry;

(e) End-tidal CO<sub>2</sub>. Two exceptions for end-tidal CO<sub>2</sub> monitoring may occur, but reasons why end-tidal CO<sub>2</sub> monitoring was not used must be documented for:

(i) Pediatric sedation cases using agents for brief procedures; and

(ii) When the pediatric patient is uncooperative or the emotional condition is such that end-tidal CO<sub>2</sub> monitoring is not possible.

(f) Drugs administered including amounts and time administered;

~~((f))~~ (g) Length of procedure; and

~~((g))~~ (h) Any complications of sedation.

~~((5))~~ (6) Equipment and emergency medications: All offices in which moderate sedation with parenteral ~~((sedation))~~ agents is administered or prescribed must comply with the following equipment standards:

Office facilities and equipment shall include:

(a) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(b) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen-enriched patient ventilation and oral and nasal pharyngeal airways ~~((of appropriate size))~~. If treating an adult, the equipment must be appropriate for adult sedation. If treating a minor, the equipment must be appropriate for pediatric sedation;

(c) A blood pressure cuff (sphygmomanometer) of appropriate size and stethoscope; or equivalent monitoring devices;

(d) End-tidal CO<sub>2</sub> monitor;

(e) Pulse oximetry; and

(f) An emergency drug kit with minimum contents of:

- (i) Sterile needles, syringes, and tourniquet;
- (ii) Narcotic antagonist;
- (iii) Alpha and beta adrenergic stimulant;
- (iv) Vasopressor;

(v) Coronary vasodilator;

(vi) Antihistamine;

(vii) Parasympatholytic;

(viii) Intravenous fluids, tubing, and infusion set; and

(ix) Sedative antagonists for drugs used, if available.

~~((6))~~ (7) Continuing education: A dentist who administers moderate sedation with parenteral ~~((sedation))~~ agents must participate in eighteen hours of continuing education or equivalent every three years.

(a) The education must include instruction in one or more of the following areas:

(i) Venipuncture;

(ii) Intravenous sedation;

(iii) Physiology;

(iv) Pharmacology;

(v) Nitrous oxide analgesia;

(vi) Patient evaluation;

(vii) Patient monitoring; and

(viii) Medical emergencies.

(b) In addition to the education requirements in (a) of this subsection, the dentist must ~~((obtain health care provider basic life support (BLS);))~~ have a current certification in advanced cardiac life support (ACLS) ~~((;))~~ or pediatric advanced life support (PALS) ~~((certification))~~ to renew the moderate sedation with parenteral agents permit. Hourly credits earned from certification in BLS, ACLS, or PALS courses may not be used to meet the education requirements in (a) of this subsection to renew a moderate sedation with parenteral agents permit. However, the hourly credits earned in ~~((BLS;))~~ ACLS ~~((;))~~ or PALS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.

~~((7))~~ (8) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.

## WSR 17-07-038

### PERMANENT RULES

### DEPARTMENT OF HEALTH

[Filed March 8, 2017, 12:21 p.m., effective July 1, 2017]

Effective Date of Rule: July 1, 2017.

Purpose: WAC 246-840-990 Fees and renewal cycle, it has been determined that current licensing fees will not generate sufficient revenue to cover the costs of administering and regulating nursing professions. The goal of the adopted fee adjustment is to align licensing fee revenues with the actual costs of regulating these professions, while bringing year-end fund balances to the level needed to cover unanticipated expenses over a ten-year period.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Adopted under notice filed as WSR 16-21-042 on October 12, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 8, 2017.

John Wiesman, DrPH, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 13-24-097, filed 12/3/13, effective 2/1/14)

**WAC 246-840-990 Fees and renewal cycle.** (1) ~~((Applicants for a practical nurse license must pay the application fee, the LPN UW online access fee (HEAL-WA)\*, and the nursing center surcharge fee when applying for a license. Licenses for practical nurse must be renewed))~~ A licensed practical nurse (LPN) or a registered nurse (RN) must renew his or her license every year on the ((practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses must pay the renewal fee, the HEAL-WA fee, and the nursing center surcharge fee when renewing licenses)) licensee's birthday.

(2) ~~When applying for a license an applicant((s)) for ((a registered nurse)) an initial or renewal LPN license or RN license must pay, in addition to the application fee, the ((RN UW online access fee (HEAL-WA), and the nursing center surcharge fee when applying for a license. Licenses for registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Registered nurses must pay the renewal fee, the HEAL-WA fee, and the nursing center surcharge fee when renewing licenses.~~

~~(3) Licenses for))~~ University of Washington (UW) health sciences online library access (HEAL-WA) surcharge and the central nursing resource center (nursing center) surcharge, as required in RCW 43.70.110.

~~(3) An advanced registered nurse ((must be renewed)) practitioner (ARNP) must renew his or her license every two years on the ((practitioner's)) licensee's birthday ((as provided in chapter 246-12 WAC, Part 2)). An ARNP must also hold a valid RN license and pay all associated fees every year on the licensee's birthday.~~

~~(4) ((Registrations for))~~ A nursing technician((s)) must ((be renewed)) renew his or her registration every year on the practitioner's birthday ((as provided in chapter 246-12 WAC, Part 2)). The renewal must be accompanied by an attestation as ((described)) required in RCW 18.79.370((- This attestation will)) that includes the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing techni-

cian can show good cause as defined in WAC 246-840-010(15).

~~(5) ((The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:~~

**RN/LPN fees:**

<b>Title of Fee</b>	<b>Fee</b>
RN application (initial or endorsement)	\$67.00
LPN application (initial or endorsement)	67.00
RN license renewal	76.00
RN renewal retired active	45.00
RN late renewal retired active	23.00
LPN license renewal	75.00
LPN renewal retired active	45.00
LPN late renewal retired active	23.00
LPN HEAL-WA* surcharge—Initial license and renewal	16.00
Late renewal penalty	50.00
Expired license reissuance	70.00
Inactive renewal	40.00
Expired inactive license reissuance	40.00
Inactive late renewal penalty	30.00
Duplicate license	20.00
Verification of licensure/education (written)	25.00
Nursing center surcharge	5.00
RN HEAL-WA* surcharge—Initial license and renewal	16.00

**Advanced registered nurse fees:**

<b>Title of Fee</b>	<b>Fee</b>
ARNP application with or without prescriptive authority (per specialty)	\$92.00
ARNP renewal with or without prescriptive authority (per specialty)	96.00
ARNP late renewal penalty (per specialty)	50.00
ARNP duplicate license (per specialty)	20.00
ARNP written verification of license (per specialty)	25.00

**Nurse technologist fees:**

<b>Title of Fee</b>	<b>Fee</b>
Application fee registration	\$92.00
Renewal of registration	91.00
Duplicate registration	15.00
Registration late renewal penalty	50.00

\* HEAL-WA is the University of Washington health sciences online library.  
(See RCW 43.70.110.))

A practitioner who holds more than one credential will be charged separate fees for each credential, in compliance with chapter 246-12 WAC, Part 2 and RCW 43.70.110.

(6) The following nonrefundable fees will be charged:

#### **Application Fees**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner<sup>1</sup></u>	<u>Nursing Technician</u>
<u>Application Fee</u>	<u>99</u>	<u>64</u>	<u>125</u>	<u>25</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>	<u>0</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>	<u>0</u>
<b><u>Total</u></b>	<b><u>120</u></b>	<b><u>85</u></b>	<b><u>125</u></b>	<b><u>25</u></b>

<sup>1</sup>Pays a \$125 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.

#### **On Time Renewal**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner<sup>2</sup></u>	<u>Nursing Technician</u>
<u>Renewal Fee</u>	<u>99</u>	<u>64</u>	<u>125</u>	<u>25</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>	<u>0</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>	<u>0</u>
<b><u>Total</u></b>	<b><u>120</u></b>	<b><u>85</u></b>	<b><u>125</u></b>	<b><u>25</u></b>

<sup>2</sup>Pays a \$125 renewal fee per specialty license once every 2 years. Must also renew RN license every year.

#### **Late Renewal - Up to One Year Past the Expiration**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner<sup>3</sup></u>	<u>Nursing Technician</u>
<u>Renewal Fee</u>	<u>99</u>	<u>64</u>	<u>125</u>	<u>25</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>	<u>0</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>	<u>0</u>
<u>Late Renewal Penalty</u>	<u>50</u>	<u>50</u>	<u>50</u>	<u>25</u>
<b><u>Total</u></b>	<b><u>170</u></b>	<b><u>135</u></b>	<b><u>175</u></b>	<b><u>50</u></b>

<sup>3</sup>Pays \$50 per specialty license in late fees.

#### **Late Renewal - One Year or More Expired**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Renewal Fee</u>	<u>99</u>	<u>64</u>	<u>125</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>
<u>Late Renewal Penalty</u>	<u>50</u>	<u>50</u>	<u>50</u>
<u>Expired Licenses Reissuance</u>	<u>70</u>	<u>70</u>	<u>0</u>
<b><u>Total</u></b>	<b><u>240</u></b>	<b><u>205</u></b>	<b><u>175</u></b>

**Retired Active Renewal**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>
<b><u>Total</u></b>	<b><u>65</u></b>	<b><u>65</u></b>

**Retired Active Renewal—Late Renewal - Up to One Year Past the Expiration**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>
<b><u>Total</u></b>	<b><u>110</u></b>	<b><u>110</u></b>

**Retired Active Renewal—Late Renewal - One Year or More Expired**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>
<u>Expired License Reissuance</u>	<u>70</u>	<u>70</u>
<b><u>Total</u></b>	<b><u>180</u></b>	<b><u>180</u></b>

**Inactive License Renewal**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>	<u>40</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>
<b><u>Total</u></b>	<b><u>65</u></b>	<b><u>65</u></b>	<b><u>40</u></b>

**Inactive License Renewal—Late Renewal - Up to One Year Past the Expiration**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>	<u>40</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>	<u>40</u>
<b><u>Total</u></b>	<b><u>110</u></b>	<b><u>110</u></b>	<b><u>80</u></b>

**Inactive License Renewal—Late Renewal - One Year or More Expired**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>	<u>40</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>
<u>Nursing Center Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>	<u>40</u>
<u>Expired License Reissuance</u>	<u>40</u>	<u>40</u>	<u>40</u>
<b><u>Total</u></b>	<b><u>150</u></b>	<b><u>150</u></b>	<b><u>120</u></b>

**Other fees**

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>	<u>Nursing Technician</u>
<u>Duplicate licensee or registration</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>15</u>
<u>Verification of licensure</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>

**WSR 17-07-040  
PERMANENT RULES  
PROFESSIONAL EDUCATOR  
STANDARDS BOARD**

[Filed March 8, 2017, 2:28 p.m., effective April 8, 2017]

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

Purpose: Amends WAC 181-79A-128 to clarify length of a permit.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-128.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 16-23-091 on November 16, 2016.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, email david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 24, 2017.

David Brenna  
Senior Policy Analyst

**AMENDATORY SECTION** (Amending WSR 15-14-065, filed 6/26/15, effective 7/27/15)

**WAC 181-79A-128 Temporary permits.** Temporary permits may be issued by the superintendent of public instruction and designated agents under the following conditions:

(1) Temporary permits may be issued under this section to those persons who have filed an application for a certificate; who, based on available documentation, including affidavits or other evidence that appears reliable which substantiates the existence of missing documentation, appear to have completed all requirements for certification; and who do not disclose any information which indicates that such applicant fails to meet the character requirement of WAC 181-79A-150(2).

(2) An individual may apply for a permit directly to the superintendent of public instruction or designated agents—i.e., educational service districts or Washington state institutions of higher education.

(3) A permit entitles the holder to serve as a teacher, educational staff associate or administrator consistent with the endorsement(s) on his/her permit.

(4) A permit is valid for ~~((a minimum of))~~ up to one year unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement. In such cases, the temporary permit shall expire on the date notice of cancellation is received by the applicant and/or the employer.

(5) The temporary permit may be reissued only upon demonstration that the applicant has made a good faith effort to secure the missing documentation; provided, that an individual affected by WAC 181-79A-132 may obtain one additional permit to meet additional endorsement requirements.

(6) Issuing authority. The superintendent of public instruction either directly or through a designated agent shall issue all permits and shall provide institutions of higher education and educational service districts with forms and instructions relevant to application for a permit.

**WSR 17-07-042**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed March 8, 2017, 3:08 p.m., effective April 8, 2017]

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

Purpose: The department is amending WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance?, to clarify and ensure uniformity of program eligibility for applicants who have been closed for temporary assistance for needy families (TANF) in workfirst sanction or terminated from TANF for noncompliance sanction as guided by RCW 74.08A.210.

Citation of Existing Rules Affected by this Order: Amending WAC 388-432-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.210, 74.62.030.

Adopted under notice filed as WSR 17-03-050 on January 9, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 8, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-004, filed 8/22/13, effective 10/1/13)

**WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance?** ~~((DSHS))~~ The department of social and health services (DSHS) has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

(1) To get DCA, you must:

(a) Meet all the eligibility rules for temporary assistance for needy families (TANF)/state family assistance (SFA) ~~((except)), and once DSHS finds you eligible, you are not required to fulfill the following TANF-related requirements:~~

(i) ~~((You do not have to participate in WorkFirst requirements))~~ Participation in workfirst as defined in chapter 388-310 WAC; and

(ii) ~~((You do not have to assign))~~ Assignment of child support rights or ((cooperate)) cooperation with the division of child support as defined in chapter 388-422 WAC((-));

(b) Have a current bona fide or approved need for living expenses;

(c) Provide proof that your need for DCA exists; and

(d) Have or expect to get enough income or resources to support ~~((yourselves))~~ you and your family for at least twelve months.

(2) You may get DCA to help pay for one or more of the following needs:

(a) Child care;

(b) Housing;

(c) Transportation;

(d) Expenses to get or keep a job;

(e) Food costs, but not if an adult member of your family has been disqualified for food stamps; ~~((or))~~

(f) Medical costs, except when an adult member of your family is not eligible because ~~((of failure))~~ he or she failed to provide third party liability (TPL) information as defined in WAC 182-503-0540.

(3) DCA payments are limited to:

(a) One thousand two hundred fifty dollars once in a twelve-month period ~~((which))~~ that starts with the month ~~((the))~~ DCA benefits begin; and

(b) The cost of your need.

(4) We do not budget your income or make you use your resources to lower the amount of DCA payments you can receive.

(5) ~~((DCA payments can be paid))~~ DSHS may make DCA payments:

(a) All at once; or



(b) As separate payments over a thirty-day period(~~(-The thirty-day period)~~) that starts ((with)) on the date of your first DCA payment.

(6) (~~(When it is possible, we)~~) We will pay your DCA benefit directly to the service provider when possible.

(7) You are not eligible for DCA if one or more of the following applies:

(a) Any adult member of your assistance unit got DCA within the last twelve months;

(b) Any adult member of your assistance unit gets TANF/SFA currently;

(c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit (~~(is receiving)~~) currently receives SSI; ((~~or~~))

(d) Your assistance unit does not have a needy adult (~~((such as when you do not receive TANF/SFA payment for yourself but receive it for the children only))~~), such as when you do not receive TANF/SFA for yourself but for your children only:

(e) Any adult member of your assistance unit is not eligible for cash assistance for any one of the following sanctions:

(i) TANF/SFA closure because of a noncompliance sanction (NCS) termination;

(ii) TANF/SFA closure while in workfirst sanction on or after July 1, 2010; or

(iii) Noncooperation with division of child support.

(8) If you apply for DCA after your TANF/SFA grant (~~(has been)~~) is terminated, we consider you an applicant for DCA.

(9) If you apply for TANF/SFA and you received DCA less than twelve months ago, we set up a DCA loan:

(a) (~~(We set up a DCA loan.~~

~~(+))~~) The amount of the DCA loan is one-twelfth of the total DCA benefit times the number of months that are left in the twelve-month period(~~(-)~~);

~~((+))~~) (b) The first month begins with the month your DCA benefits began(~~(-)~~); and

~~((+))~~) (c) We will collect the loan only by reducing your TANF/SFA grant(~~(-We take)~~) by five percent ((~~of your TANF/SFA grant~~)) each month.

(10) If you stop getting TANF/SFA before you have repaid (~~(the)~~) your DCA loan, we will stop collecting the loan unless you get back on TANF/SFA.

43.70.442 for the commission to define licensed allopathic physicians who are exempt from the training.

Statutory Authority for Adoption: RCW 18.71.017 and 43.70.442.

Adopted under notice filed as WSR 16-21-089 on October 18, 2016.

A final cost-benefit analysis is available by contacting Daidria Underwood, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2727, fax (360) 236-2795, email daidria.underwood@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: January 13, 2017.

Melanie de Leon  
Executive Director

#### NEW SECTION

**WAC 246-919-435 Training in suicide assessment, treatment, and management.** (1) A licensed physician, other than a resident holding a limited license issued under RCW 18.71.095(3), must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

(3) Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.

(4) Beginning July 1, 2017, the training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

(5) The hours spent completing training in suicide assessment, treatment, and management count toward meet-

#### **WSR 17-07-043**

##### **PERMANENT RULES**

##### **DEPARTMENT OF HEALTH**

(Medical Quality Assurance Commission)

[Filed March 8, 2017, 3:13 p.m., effective April 8, 2017]

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

Purpose: WAC 246-919-435 Training in suicide assessment, treatment, and management, the adopted new rule implements provisions of RCW 43.70.442 that require allopathic physicians (among other professions) to complete training in suicide assessment, treatment, and management. The adopted rule also incorporates an allowance in RCW

ing applicable continuing education requirements in the same category specified in WAC 246-919-460.

(6) The commission exempts any licensed physician from the training requirements of this section if the physician has only brief or limited patient contact, or no patient contact.

### WSR 17-07-044

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed March 8, 2017, 3:15 p.m., effective April 8, 2017]

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

Purpose: WAC 246-918-185 Training in suicide assessment, treatment, and management, the adopted new rule implements provisions of RCW 43.70.442 that require allopathic physician assistants (among other professions) to complete training in suicide assessment, treatment, and management. The adopted rule also incorporates an allowance in RCW 43.70.442 for the commission to define licensed allopathic physician assistants who are exempt from the training.

Statutory Authority for Adoption: RCW 18.71.017 and 43.70.442.

Adopted under notice filed as WSR 16-21-055 on October 13, 2016.

A final cost-benefit analysis is available by contacting Daidria Underwood, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2727, fax (360) 236-2795, email daidria.underwood@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: March 8, 2017.

Melanie de Leon  
Executive Director

#### NEW SECTION

**WAC 246-918-185 Training in suicide assessment, treatment, and management.** (1) A licensed physician assistant must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

(3) Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.

(4) Beginning July 1, 2017, the training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

(5) The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-918-180.

(6) The commission exempts any licensed physician assistant from the training requirements of this section if the physician assistant has only brief or limited patient contact, or no patient contact.

### WSR 17-07-053

#### PERMANENT RULES

#### HORSE RACING COMMISSION

[Filed March 10, 2017, 3:21 p.m., effective April 10, 2017]

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

Purpose: Amends several threshold levels to reflect current recommendations within the industry. Adds new thresholds on medications where studies are available and reduces others to ensure the safety of the equine athlete.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-630.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 17-04-065 on January 30, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 10, 2017.

Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 15-13-079, filed 6/12/15, effective 7/13/15)

**WAC 260-70-630 Threshold levels.** (1) Permitted medications.

(a) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in urine:

Acepromazine - (~~(25)~~) 10 ng/ml  
Albuterol - 1 ng/ml  
Bupivacaine - 5 ng/ml  
(~~Detomidine - 1 ng/ml~~)  
Butorphanol - 300 ng/ml  
Carboxydetomidine - 1 ng/ml  
Mepivacaine - 10 ng/ml  
(~~Omeprazole - 1 ng/ml~~)  
Promazine - 25 ng/ml  
Pyrilamine - 25 ng/ml

(b) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in serum or plasma:

Betamethasone - 10 pg/ml  
Butorphanol - 2 ng/ml  
Clenbuterol - 25 pg/ml (in quarter horse and mixed breed races the presence of clenbuterol is prohibited)  
Cetirizine - 6 ng/ml  
Cimetidine - 400 ng/ml  
Dantrolene - 100 pg/ml  
Detomidine - 1 ng/ml  
Dexamethasone - (~~(+)~~) .5 ng/ml  
Diclofenac - 5 ng/ml  
DMSO - 10 (~~(me/ml)~~) mcg/ml  
Firocoxib - (~~(40)~~) 20 ng/ml  
Glycopyrrrolate - 3 pg/ml  
Guaifenesin - 12 ng/ml  
Isoflupredone - 100 pg/ml  
Lidocaine - 20 pg/ml  
Methocarbamol - 1 ng/ml  
Methylprednisolone - (~~(1.3 ng/ml)~~) 400 pg/ml  
Omeprazole - 10 ng/ml  
Prednisolone - 1 ng/ml  
\*Procaine penicillin - 25 ng/ml  
Ranitidine - 40 ng/ml  
Triamcinolone acetanide - 100 pg/ml  
Xylazine - (~~(0.2 ng/ml)~~) 200 pg/ml

\* Administration of procaine penicillin to those horses entered must be reported to the commission and may require surveillance up to six hours prior to post time.

(c) (~~The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.~~) Where a permitted medication has thresholds in both urine and serum or plasma, as set forth

in this section, it is not a defense to a violation that the permitted medication does not exceed both thresholds.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:

Arsenic - 0.3 (~~(me/ml)~~) mcg/ml urine  
Caffeine - 100 ng/ml serum or plasma  
Cobalt - 50 ppb serum or plasma\*

\* A level of 25 ppb in serum or plasma will result in the horse being placed on the official veterinarians list until such time as the level drops below the 25 ppb.

Benzoylcegonine - 50 ng/ml urine  
Estranediol - 0.045 (~~(me/ml)~~) mcg/ml free + conjugated (5a-oestrane-3 $\beta$ ,17a-diol), in the urine of male horses, other than geldings

Gamma Aminobutyric Acid (GABA) - 110 ng/ml in serum or plasma

Hydrocortisone - 1 (~~(me/ml)~~) mcg/ml urine  
Methamphetamine - 10 ng/ml  
Methoxytyramine - 4 (~~(me/ml)~~) mcg/ml, free + conjugated urine  
Morphine Glucuronides - 50 ng/ml urine  
Salicylate (~~(salicic)~~) salicylic acid - 750 (~~(me/ml)~~) mcg/ml serum or plasma  
Theobromine - 2 (~~(me/ml)~~) mcg/ml urine  
Tramadol - 50 ng/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

Boldenone (Equipoise) - 15 ng/ml urine in intact males (~~(No level is permitted)~~) - 1 ng/ml in urine for geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5a-oestrane-3 $\beta$ ,17a-diol) - 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

**WSR 17-07-054**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**

[Filed March 10, 2017, 3:22 p.m., effective April 10, 2017]

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

Purpose: Repeals the section that addresses administration times for anti-ulcer medications. Thresholds have been adopted removing the need for the administration guidelines.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-70-645.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 17-04-067 on January 30, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 1.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 10, 2017.

Douglas L. Moore  
Executive Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-70-645 Anti-ulcer medications.

**WSR 17-07-055**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**

[Filed March 10, 2017, 3:22 p.m., effective April 10, 2017]

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

Purpose: Updates the classifications of drugs and medication to reflect current standards within the industry.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-685.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 17-04-066 on January 30, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 10, 2017.

Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 15-07-058, filed 3/16/15, effective 4/16/15)

**WAC 260-70-685 Alphabetical listing of all drugs, medications, and foreign substances.** This section contains an alphabetical listing of all drugs, medications and foreign substances classified in WAC 260-70-680.

Drug	Trade Name	Class	Penalty Class
<u>2-Aminoheptane</u>	<u>Tuamine</u>	<u>4</u>	<u>B</u>
<u>3,4-methylenedioxypropylprovalerone</u>	<u>MDPV, "bath salts"</u>	<u>1</u>	<u>A</u>
<u>3-Methoxytyramine</u>	<u>3-MT</u>	<u>2</u>	<u>A</u>
Acebutolol	Sectral	3	A
Acecarbromal		2	A
Acenocoumarol		5	((€)) <u>B</u>
*Acepromazine	Atrovet, Notensil, PromAce©	3	B
Acetaminophen (Phenacetin)	Tylenol, Tempra, etc.	4	C
Acetanilid		4	B
Acetazolamide	Diamox, Vetamos	4	((B)) <u>C</u>

Drug	Trade Name	Class	Penalty Class
Acetophenazine	Tindal	2	A
Acetophenetidin (Phenacetin)		4	B
Acetylsalicylic acid (Aspirin)		4	C
Aclomethasone	Aclovate	4	C
Adinazolam		2	A
Adrenochrome monoremicarbazone salicylate		4	B
*Albuterol (Salbutamol)	Proventil Ventolin	3	B
Alclofenac		2	((A)) <u>B</u>
Alcuronium	Alloferin	2	A
Aldosterone	Aldocortin, Electro cortin	4	B
Alfentanil	Alfenta	1	A
Almotriptan	Axert	3	A
Alphaprodine	Nisentil	2	A
Alpidem	Anaxyl	2	A
Alprazolam	Xanax	2	A
Alprenolol		((3)) <u>2</u>	A
Althesin	Saffan	2	A
Ambenonium	Mytelase, Myeuran	3	B
Ambroxol	Ambril, etc.	4	((E)) <u>B</u>
Amcinonide	Cyclocort	4	C
Amiloride	Moduretic; Midamor	4	B
Aminocaproic acid	Amicar, Caprocid	4	C
Aminodarone		4	B
((2-Aminoheptaine	Tuamine	4	B))
Aminophylline	Aminophyllin, etc.	3	B
Aminopyrine		4	B
Aminorex	Aminoxafen, Aminoxaphen, Apique, McN-742, Menocil	1	A
Amisometradine	Rolictron	4	B
Amisulpride	Solian	2	A
Amitraz	Mitaban	3	((A)) <u>B</u>
Amitriptyline	Elavil, Amitril, Endep	2	A
Amlopidine	Norvasc, Ammivin	((4)) <u>3</u>	B
Amobarbital	Amytal	2	A
Amoxapine	Asendin	2	A
Amperozide		2	A
Amphetamine		1	A
Amrinone		4	B
Amyl nitrite		((3)) <u>2</u>	A
Anileridine	Leritine	1	A
Anilopam	Anisine	2	A
Anisindione		5	((E)) <u>D</u>
Anisotropine	Valpin	4	B

Drug	Trade Name	Class	Penalty Class
Antipyrine		4	B
Apazone (Azapropazone)	Rheumox	4	B
Apomorphine		1	A
Aprindine		4	B
Aprobarbital	Alurate	2	A
Arecoline		3	A
Arformoterol		3	<del>((A))</del> B
Articaine	Septocaine; Ultracaine, etc.	2	A
Atenolol	Tenormin	3	B
<u>Atipamazole</u>		<u>2</u>	<u>B</u>
Atomoxetine	Strattera	2	A
Atracurium	Tracrium	2	A
Atropine		3	B
Azacylonol	Frenque	2	A
Azaperone	Stresnil, Suicalm, Fentaz (with Fentanyl)	2	A
Baclofen	Lioresal	4	B
Barbital	Veronal	2	A
Barbiturates		2	A
Beclomethasone	Propaderm	4	C
Bemegride	Megimide, Mikedimide	2	A
<del>((Benazeprilat,))</del> Benazepril <del>((and MC-tab))</del>	Lotrel, Lotensin	3	<del>((A))</del> B
Bendroflumethiazide	Naturetin	4	B
Benoxaprofen		2	<del>((A))</del> B
Benoxinate	Dorascaine	4	C
Benperidol	Anquil	2	A
Bentazepam	Tiadipona	2	A
Benzactizine	Deprol, Bronchodiletten	2	A
Benzocaine		4	B
Benzoctamine		2	A
Benzodiazepines		2	A
Benzonatate	Tessalon, Tessalon Perles, Zonatuss	2	A
Benzphetamine	Didrex	2	A
Benzthiazide		4	B
Benztropine	Cogentin	2	A
Benzylpiperazine (BZP)		1	A
Bepriidil	Bepadin	4	B
*Betamethasone	Betasone, etc.	4	C
Betaxolol	Kerlone	3	B
Bethanechol	Uriecholone, Duvioid	4	C
Bethanidine	Esbatal	3	A
Biperiden	Akineton	3	A

Drug	Trade Name	Class	Penalty Class
Biriperone		2	A
Bisoprolol	Zebeta, Bisobloc, etc.	3	B
Bitolterol	Effectin	3	A
Bolasterone		3	A
*Boldenone	Equipose	3	B
Boldione		3	A
Bretylium	Bretylol	3	B
Brimonidine	Alphagan	2	A
Bromazepam	Lexotan, Lectopam	2	A
Bromfenac	Duract	3	A
Bromhexine	Oletor, etc.	4	B
Bromisovalum	Diffucord, etc.	2	A
Bromocriptine	Parlodel	2	A
Bromodiphenhydramine		3	B
Bromperidol	Bromidol	2	A
Brompheniramine	Diemtane, Disomer	((4)) <u>3</u>	B
Brotizolam	Brotocol	2	A
Budesonide	Pulmacort, Rhinocort	4	C
Bufexamac		3	A
Bumetanide	Bumex	3	B
*Bupivacaine	Marcaine	2	A
Buprenorphine	Temgesic	2	A
Bupropion	Wellbutrin	2	A
Buspirone	Buspar	2	A
Butabarbital (Secbutobarbitone)	Butacaps, Butasol, etc.	2	A
Butacaine	Butyn	((4)) <u>2</u>	((B)) <u>A</u>
Butalbital (Talbutal)	Fiorinal	2	A
Butamben (butylaminobenzoate)	Butesin	4	C
Butanilcaine	Hostacain	2	A
Butaperazine	Repoise	2	A
Butoctamide	Listomin	2	A
*Butorphanol	Stadol, Torbugesic	3	B
Butoxycaine	Stadacain	4	B
N-Butylscopolamine		((3)) <u>4</u>	((B)) <u>C</u>
*Caffeine		2	B
Calusterone		3	((B)) <u>A</u>
Camazepam	Paxor	2	A
Camphor		4	C
Candesartan	Atacand	3	B
Captodiamine	Covatine	2	A
Captopril	Capolen	3	B
Carazolol	Carbacel, Conducton	3	A
Carbachol	Lentin, Doryl	3	B

Drug	Trade Name	Class	Penalty Class
Carbamezapine	Tegretol	3	B
Carbazochrome		4	((€)) <u>B</u>
Carbidopa + levodopa	Sinemet	2	A
Carbinoxamine	Clistin	3	B
Carbromol	Mifudorm	2	A
Carfentanil		1	A
Carisoprodol	Soma, Rela	2	B
Carphenazine	Proketazine	2	A
Carpipramine	Prazinil	2	A
Carprofen	Rimadyl	4	B
Carteolol	Cartrol	3	B
Carticaine (see Articaine)	Septocaine; Ultracaine, etc.	2	A
Carvedilol	Coreg	3	B
Cathinone	khat, kat, qat, quat, chat, atha, Abyssinian tea, African tea	1	A
Celecoxib	Celebrex	3	B
Cetirizine	Zyrtec	4	((B)) <u>C</u>
Chloral betaine	Beta-Chlor	2	A
Chloral hydrate	Nactec, Oridrate, etc.	2	A
Chloraldehyde (chloral)		2	A
Chloralose (Alpha-Chloralose)		2	A
Chlordiazepoxide	Librium	2	A
((Chlorhexadol)) Chlorhexidol		2	A
Chlormerodrin	Neohydrin	4	B
Chlormezanone	Trancopal	2	A
Chloroform		2	A
Chlorophenesin	Maolate	4	C
Chloroprocaine	Nesacaine	2	A
Chloroquine	Avloclor	4	C
Chlorothiazide	Diuril	4	B
Chlorproethazine	Newiplege	2	A
Chlorpheniramine	Chlortrimeton, etc.	4	B
Chlorpromazine	Thorazine, Largactil	((2)) <u>1</u>	A
Chlorprothixene	Taractan	2	A
Chlorthalidone	Hydroton	4	B
Chlorzoxazone	Paraflex	4	B
Ciclesonide		4	((B)) <u>C</u>
Cilostazol	Pletal	((5)) <u>4</u>	((€)) <u>B</u>
Cimeterol		3	A
*Cimetidine	Tagamet	5	D
Cinchocaine	Nupercaine	((4)) <u>2</u>	((€)) <u>A</u>
Citalopram	Celex	2	A
Clanobutin		4	B



Drug	Trade Name	Class	Penalty Class
Clemastine	Tavist	3	B
*Clenbuterol	Ventipulmin	3	B
Clibucaine	Batrax	((4)) <u>2</u>	((€)) <u>A</u>
Clidinium	Quarezan, Clindex, etc.	3	B
Clobazam	Urbanyl	2	A
Clobetasol	Temovate	4	C
Clocapramine		2	A
Clocortolone	Cloderm	4	C
Clofenamide		4	B
Clomethiazole (Chlormethiazole)		2	A
Clomipramine	Anafranil	2	A
Clonazepam	Klonopin	2	A
Clonidine	Catapres	3	B
Clorazepate	Tranxene	2	A
Clormecaine	Placacid	((4)) <u>2</u>	((€)) <u>A</u>
Clostebol		3	((B)) <u>A</u>
Clothiapine	Entermin	2	A
Clotiazepam	Trecalmo, Rize	2	A
Cloxazolam	Enadel, Sepazon, Tolestan	2	A
Clozapine	Clozaril, Leponex	2	A
<u>Cobalt</u>		<u>3</u>	<u>B</u>
a-Cobratoxin		1	A
Cocaine		1	B <sup>1</sup>
Codeine		1	A
Colchicine		4	B
Conorphone		2	A
Corticaine	Ultracain	2	A
Cortisone	Cortone, etc.	4	C
Cromolyn	Intel	5	((€)) <u>D</u>
Crotetamide		2	A
Cyamemazine	Tercian	2	A
Cyclandelate	Cyclospasmol	3	A
Cyclizine	Merazine	((4)) <u>3</u>	B
Cyclobarbital	Phanodorm	2	A
Cyclobenzaprine	Flexeril	4	B
Cyclomethylcaine	Surfacaine	4	C
Cyclothiazide	Anyhydron, Renazide	4	B
Cycrimine	Pagitane	3	B
Cyproheptadine	Pericactin	((4)) <u>3</u>	((€)) <u>B</u>
Danazol	Danocrine	3	B
*Dantrolene	Dantrium	4	C
Darbepoetin	Aranesp	((2)) <u>1</u>	A
Decamethonium	Syncurine	2	A

Drug	Trade Name	Class	Penalty Class
Dehydrochloromethyltestosterone		3	((B)) <u>A</u>
Dembroxol (Dembrexine)	Sputolysin	4	C
Demoxepam		2	A
Deoxycorticosterone	Percortin, DOCA, Descotone, Dorcostrin	4	C
Deracoxib	Deremaxx	3	B
Dermorphin		1	A
Desipramine	Norpromine, Pertofrane	2	A
Desonite	Des Owen	4	C
Desoximetasone	Topicort	4	C
Desoxymethyltestosterone		3	((B)) <u>A</u>
*Detomidine	Dormosedan	3	B
*Dexamethasone	Axium, etc.	4	C
Dextromethorphan		4	B
Dextromoramide	Palfium, Narcolo	1	A
Dextropropoxyphene	Darvon	3	B
Dezocine	Dalgan®	2	A
Diamorphine		1	A
Diazepam	Valium	((2)) <u>3</u>	B
Diazoxide	Proglycem	3	B
Dibucaine	Nupercainal, Cinchocaine	((4)) <u>2</u>	((E)) <u>B</u>
Dichloralphenazone	Febenol, Isocom	2	A
Dichlorophenamide	Daramide	4	C
*Diclofenac	Voltaren, Voltarol	4	C
Dicumarol	Dicumarol	5	((E)) <u>D</u>
Diethylpropion	Tepanil, etc.	2	A
Diethylthiambutene	Themalon	2	A
Diflorasone	Florone, Maxiflor	4	C
Diflucortolone	Flu-Cortinest, etc.	4	C
Diflunisal		3	B
Digitoxin	Crystodigin	4	B
Digoxin	Lanoxin	4	B
Dihydrocodeine	Parcodin	2	A
Dihydroergotamine		4	B
Dilorazepam	Briantum	2	A
Diltiazem	Cardizem	4	B
Dimeflin		3	A
Dimethisoquin	Quotane	4	B
*Dimethylsulfoxide (DMSO)	Domoso	4	C
((Dimethylsulphone (MSM)		5	(E))
Diphenadione		5	((E)) <u>B</u>
Diphenhydramine	Benadryl	3	B
Diphenoxylate	Difenoxin, Lomotil	4	B

Drug	Trade Name	Class	Penalty Class
Diprenorphine	M50/50	2	A
Dipyridamole	Persantine	3	B
Dipyron	Novin, Methampyrone	4	C
Disopyramide	Norpace	4	B
Divalproex	Depakote	3	A
Dixyrazine	Esucos	2	A
Dobutamine	Dobutrex	3	B
Dopamine	Intropin	2	A
Donepezil	Aricept	1	A
Doxacurium	Nuromax	2	A
Doxapram	Dopram	2	A
Doxazosin		3	A
Doxefazepam	Doxans	2	A
Doxepin	Adapin, Sinequan	2	A
Doxylamine	Decapryn	3	B
Dromostanolone	Drolban	3	B
Droperidol	Inapsine, Droleptan, Innovar-Vet (with Fentanyl)	2	A
Duloxetine		2	A
Dyclonine	Dyclone	4	C
Dyphylline		3	B
Edrophonium	Tensilon	3	B
Elenac		4	B
Eletripan	Relpax	3	A
Eltenac		4	((€)) B
Enalapril (metabolite enalaprilat)	Vasotec	3	((B)) A
Enciprazine		2	A
Endorphins		1	A
Enkephalins		1	A
Ephedrine		2	A
Epibatidine		2	A
Epinephrine		2	A
Ergoloid mesylates ( <u>dihydroergocornine mesylate, dihydroergocristine mesylate, and dihydroergocryptine mesylate</u> )		2	A
Ergonovine	Ergotrate	4	C
Ergotamine	Gynergen, Cafegot, etc.	4	B
Erthrityl tetranitrate	Cardilate	3	A
Erythropoietin (EPO)	Epogen, Procrit, etc.	((Z)) 1	A
Esmolol	Brevibloc	3	B
Esomeprazole	Nexium	5	D
Estazolam	Domnamid, Eurodin, Nuctalon	2	A
Etamiphylline		3	B

Drug	Trade Name	Class	Penalty Class
Etanercept	Enbrel	4	B
Ethacrynic Acid	Edecrin	3	B
Ethamivan		2	A
Ethanol		2	A
Ethchlorvynol	Placidyl	2	A
Ethinamate	Valmid	2	A
Ethoheptazine	Zactane	<del>((4))</del> 2	<del>((B))</del> A
Ethopropazine	Parsidol	2	A
Ethosuximide	Zarontin	3	A
Ethotoin	Peganone	4	B
Ethoxzolamide	Cardase, Ehtamide	4	C
Ethylaminobenzoate (Benzocaine)	Semets, etc.	4	C
Ethylestrenol	Maxibolin, Organon	3	B
Ethylisobutrazine	Diquel	2	A
Ethylmorphine	Dionin	1	A
Ethylnorepinephrine	Bronkephrine	3	A
<u>Ethylphenidate</u>		<u>1</u>	<u>A</u>
Etidocaine	Duranest	2	A
Etifoxin	Stresam	2	A
Etizolam	Depas, Pasaden	2	A
Etodolac	Lodine	3	B
Etodroxizine	Indunox	2	A
Etomidate		2	A
Etorphine HCl	M99	1	A
Famotidine	Gaster, etc.	5	D
Felbamate	Felbatol	3	<del>((A))</del> B
Felodipine	Plendil	4	B
Fenabamate	Tymium	2	A
Fenbufen	Cincopal	3	B
Fenclozic Acid	Cincopal	2	<del>((A))</del> B
Fenfluramine	Pondimin	2	A
Fenoldopam	Corlopam	3	B
Fenoprofen	Nalfon	3	B
Fenoterol	Berotec	3	B
Fenspiride	Respiride, Respan, etc.	3	B
Fentanyl	Sublimaze	1	A
Fentiazac		3	B
Fexofenadine	Allegra	4	C
*Firocoxib		4	C
Flecainide	Idalon	4	B
Floctafenine	Idalon, Idarac	4	B
Fluanisone	Sedalande	2	A
Flucinolone	Synalar, etc.	4	C

Drug	Trade Name	Class	Penalty Class
Fludiazepam	Erispam	2	A
Fludrocortisone	Alforone, etc.	4	C
Flufenamic Acid		3	B
Flumethasone	Flucort, etc.	4	C
Flumethiazide	Ademol	4	B
Flunarizine	Sibelium	4	B
Flunisolide	Bronilide, etc.	4	C
Flunitrazepam	Rohypnol, Narcozep, Darkene, Hypnodorm	2	A
*Flunixin	Banamine	4	C*
Fluocinolone	Synalar	4	C
Flucinonide	Licon, Lidex	4	C
Fluopromazine	Psyquil, Siquil	2	A
Fluoresone	Caducid	2	A
Fluorometholone	FML	4	((B)) C
Fluoroprednisolone	Predef-2X	4	((C)) B
Fluoxetine	Prozac	2	A
Fluoxymesterone	Halotestin	3	B
Flupenthixol	Depixol, Fluanxol	2	A
*Fluphenazine	Prolixin, Permitil, Anatensol	2	A
Flupirtine	Katadolone	3	A
Fluprednisolone	Alphadrol	4	C
Flurandrenolide	Cordran	4	C
Flurazepam	Dalmane	2	A
Flurbiprofen	Froben	3	B
Fluspirilene	Imap, Redeptin	2	A
Fluticasone	Flixonase, Flutide	4	C
Flutoprazepam	Restas	2	A
Fluvoxamine	Dumirox, Faverin, etc.	2	A
Formebolone		3	B
Formoterol	Altram	3	A
Fosinopril	Monopril	3	A
Fosphenytoin	Cerebyx	3	B
Furazabol		3	((B)) A
*Furosemide	Lasix	N/A	
Gabapentin	Neurontin	((4)) 3	B
Galantamine	Reminyl	2	A
Gallamine	Flaxedil	2	A
<u>Gamma Aminobutyric Acid (GABA)</u>	<u>Carolina Gold</u>	<u>3</u>	<u>B</u>
Gepirone		2	A
Gestrinone		3	A
Glutethimide	Doriden	2	A
*Glycopyrrolate	Robinul	((3)) 4	((B)) C

Drug	Trade Name	Class	Penalty Class
Guaifenesin (glycerol guaiacolate)	Gecolate	4	C
Guanadrel	Hylorel	3	A
Guanethidine	Ismelin	3	A
Guanabenz	Wytensin	3	B
Halazepam	Paxipam	2	A
Halcinonide	Halog	4	C
Halobetasol	Ultravate	4	C
Haloperidol	Haldol	2	A
Haloxazolam	Somelin	2	A
Hemoglobin glutamers	Oxyglobin, Hemopure	2	A
Heptaminol	Corofundol	3	B
Heroin		1	A
Hexafluorenum	Myalexen	2	A
Hexobarbital	Evipal	2	A
Hexocyclium	Tral	4	((€)) B
Hexylcaine	Cyclaine	((4)) 2	((€)) B
Homatropine	Homapin	3	B
Homophenazine	Pelvichthol	2	A
Hydralazine	Apresoline	3	B
Hydrochlorothiazide	Hydrodiuril	4	B
Hydrocodone (dihydrocodeinone)	Hycodan	1	A
*Hydrocortisone (Cortisol)	Cortef, etc.	4	C
Hydroflumethiazide	Saluron	4	B
Hydromorphone	Dilaudid	1	A
4-Hydroxtestosterone		3	B
Hydroxyamphetamine	Paradrine	1	A
*Hydroxyzine	Atarax	2	B
Ibomal	Noctal	2	A
Ibuprofen	Motrin, Advil, Nuprin, etc.	4	C
Ibutilide	Corvert	3	B
Iloprost	Ventavis	3	A
Imipramine	Imavate, Presamine, Tofranil	2	A
Indomethacin	Indocin	3	B
Infliximab	Remicade	4	B
Ipratropium		3	B
Irbesaten	Avapro	3	A
Isapirone		2	A
Isocarboxazid	Marplan	2	A
Isoetharine	Bronkosol	3	B
*Isoflupredone	Predef	4	C
Isomethadone		2	A
Isometheptene	Octin, Octon	4	B
Isopropamide	Darbid	4	B

Drug	Trade Name	Class	Penalty Class
Isoproterenol	Isoprel	2	A
Isosorbide dinitrate	Isordil	3	B
Isoxicam	Maxicam	2	((A)) <u>B</u>
Isoxsuprine	Vasodilan	4	C
Isradipine	DynaCirc	4	B
Kebuzone		3	B
Ketamine	Ketalar, Ketaset, Vetalar	2	B
Ketazolam	Anxon, Laftram, Solatran, Loftran	2	A
*Ketoprofen	Orudis	4	C((*))
Ketorolac	Toradol	3	A
Labetalol	Normodyne	3	B
Lamotrigine	Lamictal	3	A
Lansoprazole		5	D
Lenperone	Elanone-V	2	A
Letosteine	Viscotiol, Visiotal	4	((€)) <u>B</u>
Levamisole		2	B
Levobunolol	Betagan	3	B
Levomethorphan		2	A
Levorphanol	Levo-Dremoran	1	A
*Lidocaine	Xylocaine	2	B
Lisinopril	Prinivil, Zestril	3	A
Lithium	Lithizine, Duralith, etc.	2	A
Lobeline		2	A
Lofentanil		1	A
Loflazepate, Ethyl	Victan	((2)) <u>3</u>	((A)) <u>B</u>
Loperamide	Imodium	2	A
Loprazolam	Dormonort, Havlane	2	A
Loratidine	Claritin	4	((B)) <u>C</u>
Lorazepam	Ativan	2	A
Lormetazepam	Noctamid	2	A
Losartan	Hyzaar	3	B
Loxapine	Laxitane	((3)) <u>2</u>	A
Mabuterol		3	A
Maprotiline	Ludiomil	2	A
Mazindol	Sanorex	1	A
Mebutamate	Axiten, Dormate, Capla	2	A
Mecamylamine	Inversine	3	B
Meclizine	Antivert, Bonine	((4)) <u>3</u>	B
Meclofenamic Acid	Arquel	4	C
Meclofenoxate	Lucidril, etc.	2	A
Medazepam	Nobrium, etc.	2	A
Medetomidine	Domitor	3	B

Drug	Trade Name	Class	Penalty Class
Medrysone	Medriusar, etc.	4	C
Mefenamic Acid	Ponstel	3	B
<u>Meldonium</u>		<u>1</u>	<u>A</u>
Meloxicam	Mobic	4	B
Melperone	Eunerpan	2	A
Memantine	Namenda	2	A
<u>Menpenzolate</u>		<u>3</u>	<u>B</u>
Meparfynol	Oblivon	2	A
Mepazine	Pacatal	2	A
Mepenzolate	Cantil	3	A
Meperidine	Demerol	1	A
Mephenesin	Tolserol	4	B
Mephenoqualone	Control, etc.	2	A
Mephentermine	Wyamine	1	A
Mephentoin	Mesantoin	2	A
Mephobarbital (Methylphenobarbital)	Mebaral	2	A
*Mepivacaine	Carbocaine	2	B
Meprobamate	Equanil, Miltown	2	A
Meralluride	Mercuhydrin	4	B
Merbaphen	Novasural	4	B
Mercaptomerin	Thiomerin	4	B
Mercumalilin	Cumertilin	4	B
Mersalyl	Salyrgan	4	B
Mesalamine	Asacol	5	C
Mesoridazine	Serentil	2	A
Mestanolone		3	<del>(B)</del> <u>A</u>
Mesterolone		3	<del>(B)</del> <u>A</u>
Metaclazepam	Talis	2	A
Metaproterenol	Alupent, Metaprel	3	B
Metaraminol	Aramine	1	A
Metaxalone	Skelaxin	4	B
Metazocine		2	A
Metenolone		3	B
Methacholine		3	A
Methadone	Dolophine	1	A
Methamphetamine	Desoxyn	1	A
Methandienone		3	<del>(B)</del> <u>A</u>
Methandriol	Proboloc	3	<del>(B)</del> <u>A</u>
Methandrostenolone	Dianabol	3	A
Methantheline	Banthine	3	B
Methapyrilene	Histadyl, etc.	<del>(4)</del> <u>3</u>	B
Methaqualone	Quaalude	1	A
Metharbital	Gemonil	2	A



Drug	Trade Name	Class	Penalty Class
Methasterone		3	A
Methazolamide	Naptazane	4	C
Methcathinone		1	A
Methdilazine	Tacaryl	((4)) 3	B
<u>Methenolone</u>		3	<u>A</u>
Methixene	Trest	3	A
*Methocarbamol	Robaxin	4	C
Methohexital	Brevital	2	A
Methotrexate	Folex, Nexate, etc.	4	B
Methotrimeprazine	Levoprome, Neurocil, etc.	2	A
Methoxamine	Vasoxyl	3	A
Methoxyphenamine	Orthoxide	3	A
Methscopolamine	Pamine	4	B
Methsuximide	Celontin	3	A
Methylatropine		3	B
Methylchlorthiazide	Enduron	4	B
Methyldienolone		3	((B)) <u>A</u>
Methyldopa	Aldomet	3	A
Methylhexaneamine	Geranamine	1	A
Methylergonovine	Methergine	4	C
Methylnortestosterone		3	((B)) <u>A</u>
Methylphenidate	Ritalin	1	A
*Methylprednisolone	Medrol	4	C
<u>Methylsuxamide</u>		4	<u>B</u>
Methyltestosterone	Metandren	3	A
Methyl-1-testosterone		3	A
Methyprylon	Noludar	2	A
Methysergide	Sansert	4	B
Metiamide		4	B
Metoclopramide	Reglan	4	C
Metocurine	Metubine	2	A
Metolazone		3	B
Metomidate	Hypnodil	2	A
Metopon (methyldihydromorphinone)		1	A
Metoprolol	Lopressor	3	B
Mexazolam	Melex	2	A
Mexilitine	Mexilil	4	B
Mibefradil	Posicor	3	B
Mibolerone		3	B
Midazolam	Versad	((2)) 3	((A)) <u>B</u>
Midodrine	Pro-Amiline	3	B
Milrinone		4	B
Minoxidil	Loniten	3	B

Drug	Trade Name	Class	Penalty Class
Mirtazapine	Remeron	2	A
Misoprostel	Cytotec	5	(( <del>E</del> )) <u>D</u>
Mivacurium	Mivacron	2	A
Modafinil	Provigil	2	A
Moexipril (metabolite moexiprilat)	Uniretic	3	B
Molindone	Moban	2	A
Mometasone	Elocon	4	C
Montelukast	Singulair	4	C
Moperone	Luvatren	2	A
Morphine		1	(( <del>B</del> )) <u>A</u>
Mosaprimine		2	A
Muscarine		3	A
Myo-Inositol Trispyrophosphahte (ITPP)		1	A
Nabumetone	Anthraxan, Relafen, Reqlifex	3	A
Nadolol	Corgard	3	B
Naepaine	Amylsine	((4)) <u>2</u>	(( <del>E</del> )) <u>A</u>
Nalbuphine	Nubain	2	A
Nalorphine	Nalline, Lethidrone	2	A
Naloxone	Narcan	3	(( <del>A</del> )) <u>B</u>
Naltrexone	Revia	3	(( <del>A</del> )) <u>B</u>
*Nandrolone	Nandrolin, Laurabolin, Durabolin	3	B
Naphazoline	Privine	4	B
Naproxen	Equiproxen, Naprosyn	4	C
Naratriptan	Amerge	3	B
Nebivolol		3	A
Nedocromil	Tilade	5	(( <del>E</del> )) <u>D</u>
Nefazodone	Serzone	2	A
Nefopam		3	A
Neostigmine	Prostigmine	3	B
Nicardipine	Cardine	4	B
Nifedipine	Procardia	4	B
Niflumic Acid	Niffluril	3	B
Nikethamide	Coramine	1	A
Nimesulide		3	B
Nimetazepam	Erimin	2	A
Nimodipine	Nemotop	4	B
Nitrazepam	Mogadon	2	A
Nitroglycerin		((3)) <u>2</u>	B
Nizatidine	Axid	5	C
19-Norandrostenediol		3	B
19-Norandrostenedione		3	B
Norbolethone		3	(( <del>B</del> )) <u>A</u>

Drug	Trade Name	Class	Penalty Class
Norclostebol		3	B
<u>Norclostebon</u>		<u>3</u>	<u>A</u>
Nordiazepam	Calmday, Nordaaz, etc.	2	A
Norepinephrine		2	A
Norethandrolone		3	A
Nortestosterone		((+) <u>3</u> )	((€) <u>B</u> )
Nortiptyline	Aventyl, Pamelor	2	A
Nylidrine	Arlidin	3	A
Olanzapine	Zyprexa	2	A
Olmesartan	Benicar	3	A
Olsalazine	Dipentum	((4) <u>5</u> )	((B) <u>C</u> )
*Omeprazole	Prilosec, Losec	5	D
Orphenadrine	Norlfex	4	B
Oxabolone		3	((B) <u>A</u> )
Oxandrolone	Anavar	3	B
Oxaprozin	Daypro, Deflam	4	((€) <u>B</u> )
Oxazepam	Serax	2	A
Oxazolam	Serenal	2	A
Oxcarbazepine	Trileptal	3	A
Oxilofrine (hydroxyephedrine)		2	A
Oxprenolol	Trasicor	3	((B) <u>A</u> )
Oxycodone	Percodan	1	A
Oxymesterone		3	B
Oxymetazoline	Afrin	4	B
Oxymetholone	Adroyd, Anadrol	3	B
Oxymorphone	Numorphan	1	A
Oxyperitine	Forit, Integrin	2	A
Oxyphenbutazone	Tandearil	4	C
Oxyphencyclimine	Daricon	4	B
Oxyphenonium	Antrenyl	4	B
Paliperidone		2	A
Pancuronium	Pavulon	2	A
Pantoprazole	Protonix	5	D
Papaverine	Pavagen, etc.	3	A
Paraldehyde	Paral	2	A
Paramethadione	Paradione	3	A
Paramethasone	Haldrone	4	C
Pargyline	Eutonyl	3	A
Paroxetine	Paxil, Seroxat	2	A
Pemoline	Cylert	1	A
Penbutolol	Levatol	3	B
Penfluridol	Cyperon	2	A
Pentareythritol tetranitrate	Duotrate	3	A

Drug	Trade Name	Class	Penalty Class
Pentazocine	Talwin	3	B
Pentobarbital	Nembutal	2	A
Pentoxyfylline	Trental, Vazofirin	4	C
Pentylentetrazol	Metrazol, Nioric	1	A
Perazine	Taxilan	2	A
Perflurodecolin		2	A
Perfluorodecahydronophthalene		2	A
Perfluorooctylbromide		2	A
Perfluorotripropylamine		2	A
Perfluorocarbons		2	A
Pergolide	Permax	3	B
Pericianzine	Alodept, etc.	2	A
Perindopril	Biprel	3	A
Perlazine	Hypnodin	2	A
Perphenazine	Trilafon	2	A
Phenacemide	Phenurone	4	B
Phenaglycodol	Acalo, Alcamid, etc.	2	A
Phenazocine	Narphen	1	A
Phencyclidine (PCP)	Sernylan	1	A
Phendimetrazine	Bontril, etc.	1	A
Phenelzine	Nardelzine, Nardil	2	A
Phenindione	Hedulin	5	((€)) <u>D</u>
Phenmetrazine	Preludin	1	A
Phenobarbital	Luminal	2	A
Phenoxybenzamine	Dibenzyline	3	B
Phenprocoumon	Liquamar	5	((€)) <u>D</u>
Phensuximide	Milontin	4	B
Phentermine	Iomamin	2	A
Phentolamine	Regitine	3	B
*Phenylbutazone	Butazolidin	4	C
Phenylephrine	Isophrin, Neo-Synephrine	3	B
Phenylpropanolamine	Propadrine	3	B
Phenytoin	Dilantin	4	B
Physostigmine	Eserine	3	((B)) <u>A</u>
Picrotoxin		1	A
Piminodine	Alvodine, Cimadon	2	A
Pimozide	Orap	2	A
Pinazepam	Domar	2	A
Pindolol	Viskin	3	((A)) <u>B</u>
Pipamperone	Dipiperon	2	A
Pipecuronium	Arduan	2	A
Pipequaline		2	A
Piperacetazine	Psymod, Quide	2	A

Drug	Trade Name	Class	Penalty Class
Piperocaine	Metycaine	2	A
Pipotiazine	Lonseren, Piportil	2	A
Pipradrol	Datril, Gerondyl, etc.	2	A
Piquindone		2	A
Pirbuterol	Maxair	3	((A)) <u>B</u>
Pirenzapine	Gastrozepin	5	((€)) <u>B</u>
Piretanide	Arelix, Tauliz	3	B
Piritramide		1	A
Piroxicam	Feldene	((3)) <u>4</u>	B
Polyethylene glycol		5	((€)) <u>D</u>
Polythiazide	Renese	4	B
Pramoxine	Tronothaine	4	C
Prazepam	Verstran, Centrax	2	A
Prazosin	Minipress	3	B
*Prednisolone	Delta-Cortef, etc.	4	C
Prednisone	Meticorten, etc.	4	C
Prilocaine	Citanest	2	((€)) <u>A</u>
Primidone	Mysoline	3	B
Probenecid		4	C
Procainamide	Pronestyl	4	B
*Procaine		3	B
Procatamol	Pro Air	3	A
Prochlorperazine	Darbazine, Compazine	2	A
Procyclidine	Kemadrin	3	B
*Promazine	Sparine	3	B
Promethazine	Phenergan	3	B
Propafenone	Rythmol	4	B
Propanidid		2	A
Propantheline	Pro-Banthine	3	A
Proparacaine	Ophthaine	4	C
Propentophylline	Karsivan	3	B
Propiomazine	Largon	2	A
Propionylpromazine	Tranvet	2	A
Propiram		2	A
Propofol	Diprivan, Disoprivan	2	A
Propoxycaine	Ravocaine	2	A
Propranolol	Inderal	3	B
Propylhexedrine	Benzedrex	4	B
Prostanazol		3	B
<u>Prostanol</u>		<u>3</u>	<u>A</u>
Prothipendyl	Dominal	2	A
Protolyolol	Ventaire	3	A
Protriptyline	Concordin, Triptil	2	A

Drug	Trade Name	Class	Penalty Class
Proxibarbital	Axeen, Centralgol	2	A
Pseudoephedrine	Cenafed, Novafed	3	B
Pryidostigmine	Mestinon, Regonol	3	B
*Pyrilamine	Neoantergan, Equihist	3	B
Pyrithyldione	Hybersulfan, Sonodor	2	A
Quazipam	Doral	2	A
Quetiapine	Seroquel	2	A
<del>Quinapril, Quinaprilat</del>	<del>Accupril</del>	<del>3</del>	<del>A</del>
<del>Quinbolone</del>		<del>3</del>	<del>B))</del>
<u>Quinbolone</u>		<u>3</u>	<u>A</u>
<u>Quinapril, Quinaprilat</u>	<u>Accupril</u>	<u>3</u>	<u>A</u>
Quinidine	Quinidex, Quinicardine	4	B
Rabeprazole	Aciphex	5	D
Racemethorphan		2	A
Racemorphan		2	A
Raclopride		2	A
Ractopamine	Raylean	<del>(3)</del> <u>2</u>	A
Ramipril, metabolite Ramiprilat	Altace	3	A
*Rantidine	Zantac	5	D
Remifentanil	Ultiva	1	A
Remoxipride	Roxiam	2	A
Reserpine	Serpasil	2	A
Rilmazafone		2	A
Risperidone		2	A
Ritanserlin		2	A
Ritodrine	Yutopar	3	B
Rivastigmine	Exelon	<del>(3)</del> <u>2</u>	<del>(B)</del> <u>A</u>
Rizatriptan	Maxalt	3	B
Rocuronium	Zemuron	2	A
Rofecoxib	Vioxx	2	<del>(A)</del> <u>B</u>
Romifidine	Sedivet	<del>(2)</del> <u>3</u>	B
Ropivacaine	Naropin	2	A
Salicylamide		4	C
*Salicylates		4	C
Salmeterol		3	B
Scopolamine (Hyoscine)	Triptone	<del>(3)</del> <u>4</u>	<del>(B)</del> <u>C</u>
Secobarbital (Quinalbarbitone)	Seconal	2	A
Selegiline	Eldepryl, Jumex	2	A
Sertraline	Lustral, Zolofl	2	A
Sibutramine	Meridia	3	B
Sildenafil	Viagra	3	A
Snake Venoms		<del>(2)</del> <u>1</u>	A
Somatrem	Protropon	2	A

Drug	Trade Name	Class	Penalty Class
Somatropin	Nutropin	2	A
Sotalol	Betapace, Sotacor	3	B
Spiclomazine		2	A
Spiperone		2	A
Spirapril, metabolite Spiraprilat	Renomax	3	A
Spiroinalactone	Aldactone	4	B
Stanozolol	Winstrol-V	3	B
Stenbolone		3	<del>(B)</del> <u>A</u>
Strychine		1	<del>(B)</del> <u>A</u>
Succinylcholine	Sucostrin, Quelin, etc.	2	A
Sufentanil	Sufenta	1	A
Sulfasalazine	Axulfidine, Azaline	4	C
Sulfondiethylmethane		2	A
Sulfonmethane		2	A
Sulforidazine	Inofal	2	A
Sulindac	Clinoril	3	A
Sulpiride	Aiglonyl, Sulpitil	2	A
Sultopride	Barnetil	2	A
Sumatriptan	Imitrex	3	B
Synthetic cannabis	Spice, K2, Kronic	1	A
Tadalafil	Cialis	3	A
Talbutal	Lotusate	2	A
Tandospirone		2	A
<u>TCO2</u>		<u>3</u>	<u>B</u>
Telmisartan	Micardis	3	B
Temazepam	Restoril	2	A
Tenoxicam	Alganex, etc.	3	B
Tepoxalin		3	B
Terazosin	Hytrin	3	A
Terbutaline	Brethine, Bricanyl	3	B
Terfenadine	Seldan, Triludan	4	<del>(B)</del> <u>C</u>
Testolactone	Teslac	3	B
*Testosterone		3	B
Tetrabenzaine	Nitoman	2	A
Tetracaine	Pontocaine	2	A
Tetrahydrogestrinone		3	A
Tetrahydrozoline	Tyzine	4	B
Tetrazepam	Musaril, Myolastin	2	A
Thebaine		2	A
* <u>Theobromine</u>		4	B
Theophylline	Aqualphyllin, etc.	3	B
Thialbarbital	Kemithal	2	A
Thiamylal	Surital	2	A

Drug	Trade Name	Class	Penalty Class
Thiethylperazine	Torecan	2	A
Thiopental	Pentothal	2	A
Thiopropazate	Dartal	2	A
Thiorpoperazine	Mejeptil	2	A
Thioridazine	Mellaril	2	A
Thiosalicylate		4	((€)) B
Thiothixene	Navane	2	A
Thiphenamil	Trocinate	4	B
Tiapride	Italprid, Luxoben, etc.	2	A
Tiaprofenic Acid	Surgam	3	B
Tiletamine	Component of Telazol	2	A
Timiperone	Tolopelon	2	A
Timolol	Blocardrin	3	B
Tocainide	Tonocard	4	B
Tofisopam	Grandaxain, Sერიel	2	A
Tolazoline	Priscoline	3	B
Tolmetin	Tolectin	3	B
Topirimate	Topamax	2	A
Torsemide (Torasemide)	Demadex	3	A
Tramadol	Ultram	2	A
Trandolapril (and metabolite, Trandolaprilat)	Tarka	3	B
Tranexamic Acid		4	C
Tranlycypromine	Parnatet	2	A
Trazonde	Desyrel	2	A
Trenbolone	Finoplix	3	B
Tretoquinol	Inolin	2	A
*Triamcinolone	Vetalog, etc.	4	C
Triamterene	Dyrenium	4	B
Triazolam	Halcion	2	A
Tribromethanol		2	A
Tricaine methanesulfonate	Finquel	2	A
Trichlormethiazide	Naqua, Naquasone	4	C
Trichloroethanol		2	A
Trichloroethylene	Trilene, Trimar	2	A
Triclofos	Triclos	2	A
Tridihexethyl	Pathilon	4	B
Trifluomeprazine	Nortran	2	A
Trifluoperazine	Stelazine	2	A
Trifluperidol	Triperidol	2	A
Triflupromazine	Vetame, Vesprin	2	A
Trihexylphenidyl	Artane	3	A
Trimeprazine	Temaril	4	B
Trimethadione	Tridione	3	B



Drug	Trade Name	Class	Penalty Class
Trimethaphan	Arfonad	3	A
Trimipramine	Surmontil	2	A
Tripelennamine	PBZ	3	B
Triprolidine	Actidil	<del>((4))</del> 3	B
Tubocurarine (Curare)	Metubin	2	A
Tybamate	Benvil, Nospan, etc.	2	A
Urethane		2	A
Valdecoxib		2	A
Valerenic Acid		3	A
Valnoctamide	Nirvanyl	2	A
Valsartan	Diovan	3	B
Vardenafil	Levitra	3	A
Vedaprofen		4	B
Venlafaxine	Effexor	2	A
Veralipride	Accional, Veralipril	2	A
Verapamil	Calan, Isoptin	4	B
Vercuronium	Norcuron	2	A
Viloxazine	Catatrol, Vivalan, etc.	2	A
Vinbarbital	Delvinol	2	A
Vinylbital	Optanox, Speda	2	A
Warfarin	Coumadin, Coufarin	5	<del>((€))</del> D
*Xylazine	Rompun, Bay VA 1470	3	B
Xylometazoline	Otrivin	4	B
Yohimbine		2	<del>((A))</del> B
Zafirlukast	Accolate	4	C
Zaleplon	Sonata	2	A
Zeranol	Ralgro	4	C
Ziconotide		1	A
Zileuton	Zyflo	4	C
Zilpaterol hydrochloride	<u>Zilpaterol</u>	<del>((3))</del> 2	A
Ziprasidone	Geodon	2	A
Zolazepam		2	A
Zolmitriptan	Zomig	3	B
Zolpidem	Ambien, Stilnox	2	A
Zomepirac	Zomax	2	<del>((A))</del> B
Zonisamide	Zonegran	3	B
Zopiclone	Imovan	2	A
Zotepine	Lodopin	2	A
Zuclopenthixol	Ciatyl, Cesordinol	2	A
Δ-1-androstene-3, 17-diol		3	A
Δ-1-androstene-3, 17-dione		3	A
Δ-1-dihydrotestosterone		3	A

<sup>1</sup> Penalty class "A" recommended if regulators can prove intentional administration.

**WSR 17-07-056**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**

[Filed March 10, 2017, 3:23 p.m., effective April 10, 2017]

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

Purpose: Adds a matrix to address penalties given to trainer[s] that have multiple medication violations within a three hundred sixty-five day period.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 17-04-064 on January 30, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 10, 2017.

Douglas L. Moore  
 Executive Secretary

**NEW SECTION**

**WAC 260-84-125 Multiple medication violations. (1)**

A trainer who receives a penalty for a medication violation based upon a horse testing positive for a class 1-5 medication, as provided in WAC 260-70-685 shall be assigned points based upon the substances penalty class designation for the substance.

Class	Points if Threshold is Established by WHRC	Points if No Threshold is Established by WHRC
Class A	N/A	6
Class B	2	4
Class C	1/2, with incremental increases of 1/2 point for each additional violation within 365 days	1, with incremental increases of 1/2 point for each additional violation within 365 days
Class D	0	0

If the stewards or commission determine that the violation is due to environmental contamination, they may assign fewer or no points against a trainer based on specific facts of the case.

(a) The points assigned to a medication violation shall be included in the steward's or commission ruling. The ruling

will contain the penalty imposed for the original violation as defined in chapters 260-70 and 260-84 WAC.

(b) If an appeal is filed after the original ruling is issued, a second ruling will be issued citing the appeal and stating that no points shall be applied until the licensee has exhausted their rights of appeal.

(c) If the trainer's point total exceeds the limit for a secondary suspension, a conference will be held to assess the suspension. Once all appeals period have expired or all appeals are exhausted or waived, the second conference will be held at which time the points, based on the WHRC guidelines shall immediately become part of the trainer's record and shall then subject the trainer to the enhanced penalties imposed by the stewards or commission.

(d) A trainer's cumulative points, based on the commission guidelines, for violations in all jurisdictions shall be used in determining the enhanced penalty for medication violations and whether enhanced penalties shall be imposed. Points will be reported to Association of Racing Commissioners International and become part of the trainer's official record.

(e) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice of the violations by the commission may be treated as a single violation.

(f) The official ARCI record of the trainer's past violations shall be prima facie evidence of a trainer's past violations.

(2) In addition to the penalty imposed for the original violation, the following enhanced penalty shall be imposed upon a trainer based on the cumulative points as determined by the stewards or commission.

Points	Suspension in Days
5 to 5.5	15 to 30 days
6 to 8.5	30 to 60 days
9 to 10.5	90 to 180 days
11 or more	180 to 360 days

(a) Enhanced penalties for multiple medication violations are not a substitute for the original penalty and are intended to be an additional penalty when the licensee:

(i) Has more than one violation for the relevant time period; and

(ii) Exceeds the permissible number of points.

(b) The suspension periods as provided above shall run consecutive to any suspension imposed for the original offense. The stewards or commission ruling shall distinguish the penalty for the original offense and enhanced penalty based on the trainer's cumulative points.

(c) Points shall expire as follows:

Penalty Classification	Expunged Time
Class A	3 years
Class B	2 years
Class C	1 year

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date when the suspension is completed.

**WSR 17-07-057**  
**PERMANENT RULES**  
**EASTERN WASHINGTON**  
**STATE HISTORICAL SOCIETY**

[Filed March 11, 2017, 12:14 p.m., effective April 11, 2017]

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

Purpose: Eastern Washington state historical society is governed by chapter 27.34 RCW and as such is required by RCW 42.56.040 to adopt rules reflecting the organization and operation of eastern Washington state historical society and a description of the procedures for individuals to request public records from the institution including where to request records, who to request records from and the methods for submitting requests for records. Eastern Washington state [historical society] is also required by RCW 27.34.070 to adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests and devises. Eastern Washington state historical society is required to adopt rules pertaining to the integration of the policies and procedures of the State Environmental Policy Act pursuant to RCW 43.21C.120.

Statutory Authority for Adoption: Chapter 27.34 RCW.

Other Authority: RCW 42.56.040, 27.34.070, 43.21C.-120.

Adopted under notice filed as WSR 16-23-151 on December 7 [November 22], 2016.

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

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

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

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

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

Date Adopted: March 1, 2017.

Betsy Godlewski  
 Development Director

**Chapter 256-10 WAC**

**EASTERN WASHINGTON STATE HISTORICAL SOCIETY—ORGANIZATION AND OPERATION**

NEW SECTION

**WAC 256-10-010 Organization.** (1) The eastern Washington state historical society is a designated trustee for the state. It is also a registered 501 (c)(3) public benefit corporation. The eastern Washington state historical society operates a state museum which supports cultural, artistic, and educational activities and performs other responsibilities as required pursuant to RCW 27.34.070. The eastern Washington state historical society's central office is located at 2316 W 1st Avenue, Spokane, WA 99201. Normal business hours are 10:00 a.m. to 5:00 p.m., Tuesday through Sunday, and Wednesday 10:00 a.m. to 8:00 p.m. except museum holidays.

(2) The institution is governed by a board of trustees. The board appoints the executive director with the consent of the governor. The executive director is responsible for the day-to-day operations of the institution and establishes the structure of the administration.

(3) The eastern Washington state historical society is organized into divisions, administered by individuals, who supervise the following areas: Facilities; business and finance; exhibit preparation; development; collection management; guest services; archiving; curation; education; volunteer coordination; and marketing. All directors are directly responsible for operations within their divisions. The directors directly report to the executive director of the society. The executive director reports to the society's governing board.

(4) The public may obtain information, make submittals or requests, and obtain copies of the society's decisions by contacting the society's designated public records office staff located in the principal place of business. Additional and detailed information concerning the society is available through the society's web site at [www.northwestmuseum.org](http://www.northwestmuseum.org).

NEW SECTION

**WAC 256-10-020 Operations and procedures.** (1) Society rules are promulgated in accordance with the Administrative Procedure Act (APA), chapter 34.05 RCW and approved by the governing board.

(2) The society may promulgate internal policies that are not governed by the APA. Policies that are generally applicable to the society are approved by the governing board.

(3) Informal procedures regarding society operations typically include:

(a) Decisions made by persons authorized by board resolution, the executive director or any designee to make a decision within the scope of responsibility assigned to such person; or

(b) Methods of persuasion used by any person in an attempt to influence society decisions.

NEW SECTION

**WAC 256-10-030 Society rules library.** The society maintains a repository of its WAC and policies, which are open to the general public, at [www.northwestmuseum.org](http://www.northwestmuseum.org). This repository includes current substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the society. Historical amendments, revisions, and/or former provisions may be obtained by inquiry or request to the office of the society's executive directors.

**Chapter 256-20 WAC****EASTERN WASHINGTON STATE HISTORICAL SOCIETY—PUBLIC RECORDS**NEW SECTION

**WAC 256-20-010 Authority and purpose.** (1) RCW 42.56.070(1) requires eastern Washington state historical society to make available for inspection and copying nonexempt "public records" in accordance with published rules. Chapter 42.56 RCW, Public Records Act (act) defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the eastern Washington state historical society.

(2) The purpose of these rules is to establish the procedures eastern Washington state historical society will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the eastern Washington state historical society and establish processes for both requestors and eastern Washington state historical society staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the eastern Washington state historical society will be guided by the provisions of the act describing its purposes and interpretation.

NEW SECTION

**WAC 256-20-020 Eastern Washington state historical society description—Contact information—Public records officer.** (1) Any person wishing to request access to public records of eastern Washington state historical society, or seeking assistance in making such a request, should contact the public records officer of the eastern Washington state historical society:

Public Records Officer  
Eastern Washington State Historical Society  
2316 W 1st Avenue  
Spokane, WA 99201

Phone: 509-456-3931

E-mail: [themac@northwestmuseum.org](mailto:themac@northwestmuseum.org)

Information is also available at the eastern Washington state historical society's web site at <http://www.northwestmuseum.org/>.

(2) The public records officer will oversee compliance with the act but another eastern Washington state historical society staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the eastern Washington state historical society will provide the "fullest assistance" to requestors; create and maintain for use by the public and eastern Washington state historical society officials an index to public records of the eastern Washington state historical society; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the eastern Washington state historical society.

NEW SECTION

**WAC 256-20-030 Availability of public records. (1) Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the eastern Washington state historical society, Tuesdays through Fridays during normal business hours, excluding legal holidays. The eastern Washington state historical society and requestor can also make mutually agreeable arrangements for the times of inspection and copying. Records must be inspected at the offices of the eastern Washington state historical society.

(2) **Records index.** An index of public records, which includes eastern Washington state historical society's policies, is available for use by members of the public. The index may be accessed online at <http://www.northwestmuseum.org/>.

(3) **Organization of records.** The eastern Washington state historical society will maintain its records in a reasonably organized manner. The eastern Washington state historical society will take reasonable actions to protect records from damage and disorganization. A requestor shall not take eastern Washington state historical society records from eastern Washington state historical society offices without the permission of the public records officer or designee. A variety of records are available on the eastern Washington state historical society web site at <http://www.northwestmuseum.org/>.

Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

**(4) Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the eastern Washington state historical society should make the request in writing on the eastern Washington state historical society's public records request form and address it to the public records officer and include the following information:

(i) The requestor's name, mailing address, telephone number, and any e-mail address;

(ii) Identification of the public records adequate for the public records officer or designee to locate the records; and

(iii) The date of the request.

(b) The requestor should indicate whether he/she wishes to inspect the records, obtain copies of the records, or both. If the request is for copies, the requestor will make arrangements to pay for copies of the records. Pursuant to WAC 256-10-070, standard photocopies will be provided at fifteen cents per page.

(c) The requestor should indicate whether the request is for printed or digital copies of the public records.

(d) If the request is for a list of individuals, the requestor will provide confirmation as to whether the list will be used for any commercial purposes or confirmation that the requestor is authorized or directed by law to obtain the list of individuals for commercial purposes, with a specific reference to that law.

(e) A form is available for use by requestors at the office of the public records officer and online at <http://www.northwestmuseum.org/>.

(f) The public records officer or designee may accept requests for public records by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

#### NEW SECTION

**WAC 256-20-040 Processing of public records requests—General.** (1) **Acknowledging receipt of request.** Within five business days of receipt of the public records request, the public records officer will respond by:

(a) Notifying the requestor that the documents requested for inspection are available, and make the records available for inspection;

(b) Providing copies of the requested documents to requestor if payment of a deposit for the copies, if any, is made or terms of payment are agreed upon;

(c) Acknowledging receipt of the request, and provide a reasonable estimate of when records will be available. Additional time for eastern Washington state historical society to respond may be based upon:

(i) Need to identify, locate, assemble and/or make the records ready for inspection or disclosure;

(ii) Need to notify third persons or agencies affected by the request;

(iii) Need to determine whether any of the records or information requested is exempt from disclosure and whether a denial should be made as to all or part of the request; or

(iv) Need to clarify the request, if it is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone; or

(d) Denying the request.

(2) **Consequences of failure to respond.** If the eastern Washington state historical society does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(3) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of third persons or agencies and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the eastern Washington state historical society believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

#### (5) **Inspection of records.**

(a) Consistent with other business demands, the eastern Washington state historical society will provide space to inspect public records. No requestor or representative of the requestor may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the eastern Washington state historical society to copy.

(b) The requestor must claim or review the assembled records within thirty days of eastern Washington state historical society's notification to him or her that the records are available for inspection or copying. The eastern Washington state historical society will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the eastern Washington state historical society to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the eastern Washington state historical society may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate

that the eastern Washington state historical society has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the eastern Washington state historical society has closed the request.

(10) **Later discovered documents.** If, after the eastern Washington state historical society has informed the requestor that it has provided all available records, the eastern Washington state historical society becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

#### NEW SECTION

**WAC 256-20-050 Processing of public records requests—Electronic records.** (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the eastern Washington state historical society and is generally commercially available, or in a format that is reasonably translatable from the format in which the eastern Washington state historical society keeps the record. Costs for providing electronic records are governed by WAC 44-14-07003.

#### NEW SECTION

**WAC 256-20-060 Exemptions.** (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure.

(2) Eastern Washington state historical society is prohibited by statute from disclosing lists of individuals for commercial purposes.

#### NEW SECTION

**WAC 256-20-070 Costs of providing copies of public records.** (1) **Costs for inspection.** There is no fee for inspecting public records.

(2) **Costs for standard copies.** A requestor may obtain standard black and white photocopies, 8.5" x 11" for fifteen cents per page.

(3) **Costs of nonstandard copies.** Nonstandard copies include nonstandard black and white copies, color copies, engineering drawings, and photographs. An eastern Washington state historical society requestor will be charged the actual costs for nonstandard photocopies.

(4) **Use of outside vendor.** Eastern Washington state historical society is not required to copy records at its own

facilities. Eastern Washington state historical society can send the project to a commercial copying center and bill the requestor for the amount charged by the vendor.

(5) **Costs for electronic records.** The cost of electronic copies of records shall be the cost of the disk or storage device. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(6) **Costs of mailing.** The eastern Washington state historical society may also charge actual costs of mailing, including the cost of the shipping container.

(7) **Payment.** Payment may be made by cash, check, or money order to the eastern Washington state historical society. Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The eastern Washington state historical society will not charge sales tax when it makes copies of public records.

#### NEW SECTION

**WAC 256-20-080 Review of denials of public records.** (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the eastern Washington state historical society official designated by the eastern Washington state historical society to conduct the review. That person will immediately consider the petition and either affirm or reverse the denial within two business days following eastern Washington state historical society's receipt of the petition, or within such other time as eastern Washington state historical society and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if eastern Washington state historical society denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 regardless of any internal administrative appeal.

## Chapter 256-30 WAC

## EASTERN WASHINGTON STATE HISTORICAL SOCIETY—GIFTS, GRANTS, CONVEYANCES, BEQUESTS AND DEVICES

NEW SECTION

**WAC 256-30-010 Purpose.** Eastern Washington state historical society (society) has the power and authority to accept gifts, grants, conveyances, bequests, of real or personal property or both, whether or not these are held in trust or otherwise. It is also authorized to sell, lease, exchange, invest, or expend the same or the proceeds from rents, profits, and income except as limited by the donor's terms. The society is required by law to adopt rules to:

- (1) Govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests and devises to the society;
- (2) Ensure compliance with state and federal laws, rules and regulations, society policies, northwest museum of arts and culture foundation policies, and professional standards of ethical and donor-centered fund-raising; and
- (3) Provide protocols for individuals soliciting or accepting gifts on behalf of the society.

The purpose of these rules is to fulfill the society's legal responsibility to adopt these rules.

NEW SECTION

**WAC 256-30-020 Definitions.** (1) "Bequest" means property or money that an individual promises to give to another person or organization after he or she dies.

(2) "Bond" means an official document in which a government or company promises to pay back an amount of money that it has borrowed and to pay interest for the borrowed money.

(3) "Conveyance" means the transfer or delivery of an item to another, commonly used to describe the transfer of title to land from one person to another by deed.

(4) "Devise" means a testamentary disposition of land or realty, a gift of real property by the last will and testament of the donor.

(5) "Eastern Washington state historical society" means a 501(c)(3) corporation and a trustee for the state of Washington pursuant to chapter 27.34 RCW. The society is responsible for collecting, cataloging and preserving objects, manuscripts, sites, photographs and other items that illustrate the cultural, artistic, and natural history of the state and in this capacity operates a state museum which supports cultural, artistic, and educational activities and performs other responsibilities as required pursuant to RCW 27.34.070.

(6) "Grant" means to legally or formally transfer a possession.

(7) "Northwest museum of arts and culture foundation" means the foundation's articles of incorporation specify that its purpose is to support the society and it has important fiduciary responsibilities related to the funds it holds on behalf of the society. The foundation is a separate 501 (c)(3) corporation and the society does not have authority to direct the

activities of the foundation. Similarly the foundation does not have authority to direct the activities of the society.

(8) "Personal property" means something that is owned by a person, business or other entity such as goods, money, notes, bonds, stocks, merchandise, furniture, etc. It does not include land, an interest in land, buildings, or items affixed to the land.

(9) "Real property" means land, including all natural resources, and generally whatever is erected or growing upon or affixed to the land including buildings and crops.

(10) "Restricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor imposes conditions of ownership, retention deposition or use of the item given.

(11) "Security" means an instrument of investment in the form of a document (such as a stock certificate or bond) providing evidence of its ownership.

(12) "Stock" means a share of the value of a company which can be bought, sold, or traded as an investment.

(13) "Trust" means property, real or personal, or money held by some person, firm or corporation for the benefit of the society.

(14) "Unrestricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor does not specify the imposition of any conditions as to the ownership or use of the gift.

NEW SECTION

**WAC 256-30-030 Procedures for accepting gifts.** (1) Donors: The society greatly values its donors and their support of the society. Society staff will treat donors with respect and professionalism. Donors will be acknowledged and thanked for their gifts in writing within a reasonable period of time, generally not to exceed one month.

(2) Donor intent: Society staff and representatives agree to respect and carry out the intentions of the donors whose gifts, grants, conveyances, bequests, or devises have been accepted by the society or the foundation on behalf of the society.

(3) Gift documentation: The society will document the receipt of all gifts. Some gifts may be accompanied by a letter or form from the donor. Ideally, the donor's gift form or letter will record:

- (a) The name of donor(s);
- (b) The date the gift was received;
- (c) A brief description of the item(s);
- (d) Serial number (if any);
- (e) The gift's value;
- (f) A declaration that the gift is irrevocable; and
- (g) The purpose of the gift.

If a gift form or letter does not accompany the gift, the society staff shall prepare and send a letter to the donor which documents this information.

NEW SECTION**WAC 256-30-040 Income tax charitable deductions.**

Receipts shall be issued for gifts that qualify for income tax charitable deductions.

(1) Cash and checks: Cash and checks may be accepted regardless of the amount. The value of any cash or check gift is its face value. Checks should be written to the eastern Washington state historical society or EWSHS.

(2) Real or personal property: If the gift is personal or real property the society may document the value of the gift as it was formally appraised or accept the donor's stated value as a good faith estimate.

(3) Life insurance: If the donor named the society as the beneficiary of a new or existing whole life insurance policy, the designation will be recorded as a gift, at its present value, when the gift becomes irrevocable. Alternatively, when the society is named as both beneficiary and irreversible owner of a whole life insurance policy, it will be recorded as a gift.

(4) Charitable remainder trusts, charitable lead trusts, and willed bequests: The income from a trust and/or a willed legacy will be recorded as a gift, at its present value, when a gift becomes irreversible.

(5) Retirement plan beneficiary designations: If a donor designates the society as a beneficiary of his or her retirement plan, it will be recorded as a gift, at its present value, when the gift becomes irreversible/permanent.

(6) Gifts in-kind: These include gifts of time and services. The society will record the donation of time and services, but will not identify a dollar value.

NEW SECTION

**WAC 256-30-050 Donations to the society.** (1) When the society receives a donation, it shall comply with all the rules and regulations related to gift giving for gifts it receives directly. Those rules are found in state, federal and corporate law related to:

(a) State entities and public 501 (c)(3) corporations;

(b) Federal and state laws and regulations that apply to the society as a 501 (c)(3) corporation including, but not limited to, the U.S. Internal Revenue Service Code; and

(c) Professional standards of ethical and donor-centered fund-raising.

(2) The society cannot have ownership in stocks nor can it make gifts of public funds.

(3) Private funds donated directly to the society shall be held consistent with all state rules and regulations governing expenditure of those funds.

(4) Restricted funds shall be kept in a separate line account as nonlapsing funds of the society together with earned interest and shall be used in accordance with the directions provided by the donor.

(5) Unrestricted funds shall be retained in a separate line account of the society as nonlapsing funds. Disbursement shall be made by the executive director in accordance with policy established by the board of trustees or in consultation with the board of trustees.

NEW SECTION**WAC 256-30-060 Donations to the northwest museum of arts and culture foundation.**

The northwest museum of arts and culture foundation, a separate 501 (c)(3) corporation was incorporated for the purpose of providing funds to support the operations and programs of the society. If the society receives any donations designated for the foundation, those donations shall be delivered to the foundation as soon as possible. All gifts designated for the society shall be retained by the society consistent with these regulations. If it is unclear whether a gift was intended to be given to the foundation or to the society, the society shall clarify the donor's intent and handle the donation consistently.

NEW SECTION

**WAC 256-30-070 Deferred gifts.** (1) The society welcomes and encourages deferred gifts such as:

(a) Charitable remainder trusts;

(b) Charitable lead trusts; and

(c) Testamentary bequests.

(2) Society trustees and staff members shall not serve as an executor (personal representative) for a donor's estate.

(3) Society trustees and staff members shall not serve as trustee or co-trustee on a charitable remainder trust or a charitable lead trust.

(4) If planned gift illustrations or sample documents are provided to donors, they shall be provided free of charge and shall include the following disclaimer:

"The eastern Washington state historical society, northwest museum of arts and culture, strongly urges that you consult with your attorney, financial and/or tax advisor to review and approve this complimentary information. This information in no way constitutes advice. We will gladly work with your independent advisors to assist in any way we can."

NEW SECTION

**WAC 256-30-080 Tangible personal property requirements.** (1) The following requirements apply to tangible personal property that is donated with the intent for the society to sell:

(a) Acceptance of personal property is contingent on formal approval of the society's board of trustees. The board may delegate authority for approval with formal action which identifies who has delegated authority, and the limits of any such authority;

(b) Acceptance of property shall not violate any federal, state or local statute or ordinance; and the purposes for which the item is being donated are permissible under the state expenditure rules which apply to donations to the society;

(c) All tangible property shall be valued by the proceeds from the sale or by a qualified appraisal;

(d) The society must be able to dispose of the property within a short time, normally not to exceed six months following the receipt of the gift; and

(e) The society shall adhere to all IRS requirements relating to the disposition of gifts of tangible personal property and shall provide appropriate forms to the donor and IRS where required.



(2) The following requirements apply to tangible personal property that is donated with the intent for the society to maintain:

- (a) Acceptance of property shall not violate any federal, state or local statute or ordinance;
- (b) The purpose for which the item is being donated shall be permissible under the state expenditure rules which apply to donations to the society;
- (c) Acceptance of the property shall not interfere with the proper management and operations of the society;
- (d) The property shall not place excessive burdens on the available society space, staff or budget;
- (e) Use of the property shall not compromise the integrity of building structures or landscaping features;
- (f) Use of gift shall not place the society in violation of the federal Occupational Safety and Health Act (OSHA) or the Washington Industrial Safety and Health Act (WISHA);
- (g) Property does not require the society to employ a specified person now or at a future date;
- (h) Property serves the mission, goals, and interests of the society;
- (i) Property does not require the payment of maintenance costs or other expenses for which no specific provision has been made;
- (j) Property cannot generate unrelated business income to the society which may jeopardize its tax-exempt status; and/or
- (k) Acceptance of the property shall be financially sound.

#### NEW SECTION

**WAC 256-30-090 Acceptance of artwork.** In addition to the considerations outlined in WAC 256-30-080, prior to the acceptance of art, the society shall comply with the additional requirements of the society's *Collections Policies and Procedures, Board Policy 203*.

#### NEW SECTION

**WAC 256-30-100 Acceptance of real estate.** (1) The society may accept gifts of developed or undeveloped real estate. The following requirements apply to the acceptance of real estate:

- (a) Acceptance of real estate is contingent on formal approval of the society's board of trustees;
- (b) Acceptance of property shall not violate any federal, state or local statute or ordinance;
- (c) The property shall be useful for the society's purposes;
- (d) The purpose for which the item is being donated shall be permissible under the state expenditure rules which apply to donations to the society;
- (e) The property shall be marketable;
- (f) The donor agrees that the property can be sold at the society's discretion;
- (g) Acceptance of property shall not violate any federal, state or local statute or ordinance; and the purpose for which the item is being donated is permissible under the state expenditure rules which apply to donations to the society;

(h) The society shall adhere to all IRS requirements relating to the disposition of gifts of real estate and shall provide appropriate forms to the donor and IRS where required;

- (i) Acceptance of the property shall not interfere with the proper management and operations of the society;
- (j) The acceptance of the real estate shall not place excessive burdens on the available society space, staff or budget;
- (k) Possession of the property shall not place the society in violation of the Federal Occupational Safety and Health Act (OSHA) or the Washington Industrial Safety and Health Act (WISHA);
- (l) Property does not require the society to employ a specified person now or at a future date;
- (m) Property serves the mission, goals, and interests of the society;
- (n) Property cannot generate unrelated business income to the society which may jeopardize its tax-exempt status; and

(o) Acceptance of the property shall be financially sound.

(2) Prior to any acceptance of real estate the following is required:

- (a) Gifts of real estate must first be reviewed by the society's board of trustees before acceptance;
- (b) The donor normally is responsible for obtaining and paying for an appraisal of the property. The appraisal must be performed by an independent, qualified appraiser;
- (c) The society's board of trustees may require an environmental appraisal of any proposed gift of real estate;
- (d) The appraisal shall contain photographs of the property, the tax map number, the assessed value, the current asking price, a legal description of the property, the zoning status, and complete information regarding all mortgages, liens, litigation, title disputes, and any environmental involvement;
- (e) Depending on the value and desirability of the gift, the donor's connection with the society, and the donor's past gift record, the donor may be asked to pay for all or a portion of the following:
  - (i) Maintenance costs, if any;
  - (ii) Real estate taxes due prior to date of conveyance;
  - (iii) Insurance;
  - (iv) Real estate broker's commission and other costs of sale;
  - (v) Appraisal and preliminary title report costs; and
  - (vi) Environmental appraisal.
- (f) The property shall be conveyed by warranty deed prior to the execution of any contract of sale by the grantor; and
- (g) The value of any gift of real estate shall be its appraised value; however, this value may be reduced by costs of maintenance, insurance, real estate taxes, broker's commissions, and other expenses of sale incurred by the society.

#### NEW SECTION

**WAC 256-30-120 Acknowledgment—Receipt for gifts.** On delivery of any contribution, the society is encouraged to provide a written acknowledgment of the receipt of a gift. For gifts in the amount of two hundred fifty dollars or more, the society shall provide the donor with a contempora-

neous written acknowledgment; either paper or electronic document is acceptable. The acknowledgment will include:

- (1) The organization's name;
- (2) The name of the donor(s);
- (3) An expression of gratitude;
- (4) A description indicating receipt of a cash contribution and the amount of the contribution; a description of real or personal property (noncash) contributions and the value; a description of the deferred gift or insurance and the value; and/or a description of in-kind services provided;
- (5) A statement that no goods or services were provided by the society in return for the contribution, if that was the case; and
- (6) A description and good faith estimate of the value of goods or services, if any, that the society provided in return for the contribution.

The society will make an effort to issue the acknowledgment within thirty calendar days of the contribution, and no later than January 31st of the year following the donation. A copy of the written acknowledgment needs to be maintained by the society consistent with state records retention and Internal Revenue Code requirements.

#### Chapter 256-40 WAC

### STATE ENVIRONMENTAL POLICY ACT COMPLIANCE

#### NEW SECTION

**WAC 256-40-010 State Environmental Policy Act.** It is the policy of eastern Washington state historical society that any project shall be accomplished in compliance with chapter 43.21C RCW, the State Environmental Policy Act (SEPA) and in accordance with chapter 197-11 WAC, guidelines for the State Environmental Policy Act implementation. Further, it is the policy of the society to provide leadership in resource conservation and environmental protection. Environmental issues will be considered in the decision-making and planning process. To this end, eastern Washington state historical society adopts by reference chapter 197-11 WAC, SEPA guidelines and all subsequent amendments thereto. In compliance with chapter 197-11 WAC, the executive director is the responsible official for carrying out this policy.

#### WSR 17-07-059

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

[Filed March 13, 2017, 9:21 a.m., effective April 13, 2017]

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

Purpose: WAC 246-976-320 Air ambulance services, the department of health is adopting amendments to the air ambulance licensure requirements to align with federal law.

Citation of Existing Rules Affected by this Order: Amending WAC 246-976-320.

Statutory Authority for Adoption: RCW 70.168.050.

Other Authority: *Eagle Air Med Corp. v. Colorado Board of Health*, 570 F. Supp. 2d 1289.

Adopted under notice filed as WSR 16-20-047 on September 29, 2016.

Changes Other than Editing from Proposed to Adopted Version: One minor grammatical change was made. In WAC 246-976-320 (3)(b), the word "met" was replaced with "meets."

A final cost-benefit analysis is available by contacting Catie Holstein, P.O. Box 47853, Tumwater, WA 98504-7853, phone (360) 236-2841, fax (360) 236-2830, email [catie.holstein@doh.wa.gov](mailto:catie.holstein@doh.wa.gov).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 13, 2017.

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 11-07-078, filed 3/22/11, effective 5/15/11)

**WAC 246-976-320 Air ambulance services.** The purpose of this rule is to ensure the consistent quality of medical care delivered by air ambulance services in the state of Washington.

~~((1) Air ambulance services must:~~

~~(a) Comply with all regulations and standards in this chapter pertaining to verified ambulance services and vehicles, except that WAC 246-976-290 and 246-976-300 are replaced for air ambulance services by subsection (4)(b) and (e) of this section;~~

~~(b) Comply with the standards in this section for all types of transports, including interfacility and prehospital transports;~~

~~(c) Provide proof of compliance with Federal Acquisition Regulation (FAR), 14 C.F.R. Part 135 (October 10, 1978) of the operating requirements; commuter and on demand operations and rules governing persons on board such aircraft.~~

~~(2) Air ambulance services currently licensed or seeking licensure must have and maintain accreditation by the commission on accreditation of medical transport services (CAMTS) or another accrediting organization approved by the secretary as having equivalent requirements as CAMTS for aeromedical transport.~~

~~(3) Air ambulance services requesting initial licensure that are ineligible to attain accreditation because they lack a history of operation at the site, must meet the criteria of sub-~~

sections (4) and (5) of this section and within four months of licensure must have completed an initial consultation with CAMTS or another accrediting organization approved by the secretary as having equivalent requirements as CAMTS for aeromedical transport. A provisional license will be granted for no longer than two years at which time the service must provide documentation that it is accredited by CAMTS or another accrediting organization approved by the secretary as having equivalent requirements as CAMTS for aeromedical transport.

(4) Air ambulance services must provide:

(a) A physician director:

(i) Licensed to practice in the state of Washington;

(ii) Trained and experienced in emergency, trauma, and critical care;

(iii) Knowledgeable of the operation of air medical services; and

(iv) Responsible for supervising and evaluating the quality of patient care provided by the air medical flight personnel;

(b) If the air medical service utilizes Washington certified EMS personnel:

(i) The physician director must be a delegate of the MPD in the county where the air service declares its primary base of operation.

(ii) Certified EMS personnel must follow department approved MPD protocols when providing care;

(c) Sufficient air medical personnel on each response to provide patient care, specific to the mission, including:

(i) One specially trained, experienced registered nurse or paramedic; and

(ii) One other person who must be a physician, nurse, physician's assistant, respiratory therapist, paramedic, EMT, or other appropriate specialist appointed by the physician director. If an air ambulance responds directly to the scene of an incident, at least one of the air medical personnel must be trained in prehospital emergency care;

(d) Aircraft that, when operated as air ambulances:

(i) Are configured so that the medical personnel can access the patient. The configuration must allow medical personnel to begin and maintain advanced life support and other treatment;

(ii) Allow loading and unloading the patient without excessive maneuvering or tilting of the stretcher;

(iii) Have appropriate communication equipment:

(A) The capability to communicate between flight personnel, hospitals, medical control, and the services communication center;

(B) Helicopters must also have the capability to communicate with ground EMS services and public safety vehicles;

(iv) Are equipped with:

(A) Airway management equipment, including:

(I) Oxygen;

(II) Suction;

(III) Ventilation and intubation equipment, adult and pediatric;

(B) Cardiac monitor/defibrillator;

(C) Supplies, equipment, and medication as required by the program physician director, for emergency, cardiac, trauma, pediatric care, and other missions; and

(D) The ability to maintain appropriate patient temperature;

(v) Have interior lighting for patient care; and

(vi) Helicopter aircraft must have a protective barrier sufficiently isolating the cockpit, to minimize in-flight distraction or interference.

(5) All air medical personnel must:

(a) Be certified in ACLS;

(b) Be trained in:

(i) Emergency, trauma, and critical care;

(ii) Altitude physiology;

(iii) EMS communications;

(iv) Aircraft and flight safety; and

(v) The use of all patient care equipment on board the aircraft;

(e) Be familiar with survival techniques appropriate to the terrain;

(d) Perform under protocols.

(6) Exceptions:

(a) If aeromedical evacuation of a patient is necessary because of a life threatening condition and a licensed air ambulance is not available, the nearest available aircraft that can accommodate the patient may transport. The physician ordering the transport must justify the need for air transport of the patient in writing to the department within thirty days after the incident.

(b) Excluded from licensure requirements are:

(i) Air services operating aircraft for primary purposes other than civilian air medical transport. These services may be called to initiate an emergency air medical transport of a patient to the nearest available treatment facility or rendezvous point with other means of transportation. Examples are: United States Army Military Assistance to Safety and Traffic, United States Navy, United States Coast Guard, Search and Rescue, and the United States Department of Transportation;

(ii) Air ambulance services that solely transport patients into Washington state from points originating outside of the state of Washington;))

(1) An air ambulance service operating in the state of Washington must:

(a) Be licensed by the department in compliance with this section unless an exception in RCW 18.73.130 applies;

(b) Comply with all regulations and standards in this chapter pertaining to licensed and verified ambulance services and vehicles, except that WAC 246-976-290 and 246-976-300 are replaced for air ambulance services by subsections (7) and (8) of this section; and

(c) Comply with the standards in this section for all types of transports, including interfacility and prehospital transports.

(2) An air ambulance service applying for initial or renewal licensure must:

(a) Provide a completed application for licensure on forms provided by the department;

(b) Provide copies of the following current and valid documentation issued by the Federal Aviation Administration (FAA):

(i) Air Taxi Registration (OST Form 4507) showing the effective date of FAA registration and exemption under 14 C.F.R. 298;

(ii) Air carrier certificate authorizing common carriage under 14 C.F.R. 135, including Operations Specifications (FAA form 8430-18) authorizing aeromedical helicopter or fixed-wing air ambulance operations as applicable;

(iii) Certificate of Registration (AC form 8050-3) for each air ambulance operated; and

(iv) Standard Airworthiness Certificate (FAA form 8100-2) for each air ambulance operated;

(c) Provide a certificate of insurance establishing current and valid public and passenger liability insurance coverage for the air ambulance service;

(d) Provide a certificate of insurance establishing current and valid professional and general liability insurance coverage for the air ambulance service; and

(e) Provide proof of the air ambulance service's current accreditation status and a copy of the current accreditation report by a nationally recognized and department approved air ambulance accreditation entity that demonstrates that the air ambulance service meets the standards in this section. Failure to produce the accreditation report and supporting documentation to the department may be grounds for denial, suspension, or revocation of an ambulance license.

(3) An air ambulance service requesting initial licensure or renewal of licensure:

(a) That is ineligible to attain accreditation because it lacks a history of operation, must meet the standards in this section and provide proof that the air ambulance service is pursuing accreditation review with an accreditation entity approved by the department. A provisional license may be granted for no longer than two years at which time the service must provide documentation from a department approved accreditation entity that it meets the standards in this section.

(b) That has been unable to obtain accreditation may apply for a waiver of the full accreditation requirement if the air ambulance service meets all components of accreditation that are consistent with the standards in this section other than criteria related to the Federal Aviation Agency or Airline Deregulation Act regulated activities. The applicant must supply a copy of the accreditation report and supporting documentation to the department to show that it meets the standards in this section.

(4) To meet the minimum standards for medical oversight and patient care protocols an air ambulance service must:

(a) Have a physician director. The physician director must be:

(i) The department-certified medical program director (MPD) of the county where the air ambulance service declares its primary base of operation or a physician delegate of that county's MPD, as provided in WAC 246-976-920(4);

(ii) Licensed to practice in the state of Washington and in current good standing; and

(iii) Able to provide proof of educational experience consistent with the mission statement and scope of care provided by the air ambulance service;

(b) Ensure that all medical team members hold current and valid Washington state health care profession licenses;

(c) Ensure that all prehospital personnel used by the air ambulance service per subsection (5) of this section hold current and valid Washington state certifications as defined in

WAC 246-976-010 and in accordance with RCW 18.71.200 and 18.71.205. Certified prehospital personnel must comply with department approved, MPD patient care protocols;

(d) Have a quality management program; and

(e) Ensure data related to patient care and transport services is collected and reviewed regularly and protected health care information is handled according to state and federal law and regulations.

(5) An air ambulance service must meet the following minimum standards for staffing of air ambulances:

(a) All medical personnel on each transport must have education, experience, qualifications, and credentials consistent with the mission statement and scope of care provided by the air ambulance service;

(b) Each critical care transport (CCT) is staffed by a medical team of at least two individuals with at least the following qualifications and licensure:

(i) One paramedic or registered nurse trained in prehospital emergency care; and

(ii) One other person who must be a registered nurse, respiratory therapist, paramedic, advanced EMT, EMT, or other appropriate specialist as appointed by the physician director;

(c) Each advanced life support (ALS) transport is staffed by a medical team of at least two individuals with at least the following qualifications and licensure:

(i) One paramedic; and

(ii) One other person, who must be a paramedic, advanced EMT, EMT, or other appropriate specialist as appointed by the physician director; and

(d) Each basic life support (BLS) transport is staffed by a medical team of at least two individuals in accordance with ambulance personnel requirements listed in RCW 18.73.150.

(6) An air ambulance service must meet the following minimum standards for training of air ambulance medical personnel:

(a) Establish and maintain a structured training program. If prehospital personnel are used by the air ambulance service, the training program must also meet requirements as defined in chapter 246-976 WAC;

(b) Create and maintain a file for each medical team member containing documentation of the personnel member's qualifications including, as applicable, licenses, certifications, and training records; and

(c) Ensure that each medical team member completes training in the following subjects before serving on a transport:

(i) Aviation terminology;

(ii) Altitude physiology and stressors of flight;

(iii) Patient loading and unloading;

(iv) Safety in and around the aircraft;

(v) In-flight communications;

(vi) Use, removal, replacement, and storage of the medical equipment installed on the aircraft;

(vii) In-flight emergency procedures;

(viii) Emergency landing and evacuation procedures; and

(ix) Policies and procedures for the air ambulance service, including policies to address altitude limitations.

(7) An air ambulance service must meet the following minimum standards for aircraft configuration and equipment to safely and effectively treat ill and injured patients on air ambulance transports and that include:

(a) A climate control system to prevent temperature extremes that would adversely affect patient care;

(b) Interior lighting that allows for patient care and monitoring without interfering with the pilot's vision;

(c) At least one outlet per patient and electric current which is capable of operating all electrically powered medical equipment unless battery power is available that exceeds the flight time for the transport;

(d) A back-up source of electric current or batteries capable of operating all electrically powered life support equipment for at least a minimum of one hour;

(e) An entry that allows for patient loading and unloading without rotating a patient and stretcher more than thirty degrees about the longitudinal (roll) axis or forty-five degrees about the lateral (pitch) axis and without compromising the operation of monitoring systems, intravenous lines, or manual or mechanical ventilation;

(f) Adequate space that allows each medical team member sufficient access to each patient to begin and maintain treatment modalities, including complete access to the patient's head and upper body for effective airway management;

(g) Adequate placement of stretcher and medical equipment that does not impede rapid egress by personnel or patient from the aircraft; and

(h) A communications system that is capable of air to ground communication with, ground fire and EMS services, public safety vehicles, hospitals, medical control, and communication centers and that allows the flight crew and medical team members to communicate with each other during the transport.

(8) An air ambulance service must meet the following minimum standards for medical equipment aboard air ambulances:

(a) Maintain and provide a minimum of the following equipment, supplies, and medications consistent with the mission statement and scope of care provided on transports. All equipment, supplies, and medications must be approved for use by the MPD and physician director.

(i) Minimum equipment available for each basic life support (BLS) transport must include:

(A) Oral/nasal pharyngeal airway;

(B) Nonrebreather oxygen mask;

(C) Bag valve mask;

(D) Pulse oximeter;

(E) Oxygen source;

(F) Automated external defibrillator;

(G) Noninvasive vital sign measurement;

(H) Glucometer;

(I) Equipment for control of bleeding to include tourniquets;

(J) Infection control;

(K) Medications consistent with scope of practice and care required for the transport type;

(L) Spinal motion restriction; and

(M) Neonatal and pediatric equipment sufficient for all aspects of prehospital and interfacility specialized care, if the air ambulance service provides transport to this population.

(ii) Minimum equipment available for each advanced life support (ALS) transport must include:

(A) All BLS equipment required in (a)(i) of this subsection; and

(B) Equipment for endotracheal intubation to include alternative airways such as supraglottic airways;

(C) Equipment for needle thoracostomy;

(D) Noninvasive carbon dioxide (CO<sub>2</sub>) monitoring with numerical and waveform capability;

(E) Equipment to establish and maintain a peripheral IV;

(F) Equipment to establish and maintain an intraosseous infusion;

(G) Ventilator;

(H) Equipment to provide continuous positive airway pressure (CPAP);

(I) Cardiac monitor capable of performing twelve lead ECG, defibrillation, cardioversion, and external pacing;

(J) Medications consistent with scope of practice and care required for the transport type; and

(K) Neonatal and pediatric equipment sufficient for all aspects of prehospital and interfacility specialized care, if the air ambulance service provides transport to this population.

(iii) Minimum equipment available for each critical care transport (CCT) must include:

(A) All BLS equipment required in (a)(i) of this subsection; and

(B) All ALS equipment required in (a)(ii) of this subsection; and

(C) Multimodality ventilators capable of invasive ventilation appropriate to all age groups transported;

(D) Invasive hemodynamic monitoring, transvenous pacemakers, central venous pressure and arterial pressure;

(E) Medications consistent with scope of practice and care required for the transport type; and

(F) Neonatal and pediatric equipment sufficient for all aspects of prehospital and interfacility specialized care, if the air ambulance service provides transport to this population.

(iv) Ensure that during a transport, the air ambulance has the equipment and supplies necessary to provide an appropriate level of medical care for the patient and to protect the health and safety of the personnel on the transport;

(v) Maintain and provide upon request equipment, supply and medication inventories that document what is included for each type of transport; and

(vi) Ensure the equipment and supplies on an air ambulance are secured, stored, and maintained in a manner that prevents hazards to personnel and patients.

## WSR 17-07-062

### PERMANENT RULES SEATTLE COLLEGES

[Filed March 13, 2017, 3:29 p.m., effective April 13, 2017]

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

Purpose: Proposed changes set forth limitations on the ability of visitors to carry firearms or weapons on college property, subject to the exceptions listed.

Citation of Existing Rules Affected by this Order: Amending WAC 132F-136-030.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 16-20-072 on October 3, 2016.

Changes Other than Editing from Proposed to Adopted Version: The agency clarified the definition of "weapon" and "firearm" in subsection (4)(a) in response to public comment. The agency also changed language in subsection (4)(c) to allow the campus president or designee to permit the presence of a weapon if found necessary for safety and security purposes.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: March 9, 2017.

Shouan Pan  
Chancellor

**AMENDATORY SECTION** (Amending WSR 14-01-015, filed 12/6/13, effective 1/6/14)

**WAC 132F-136-030 Limitation of use.** (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) College facilities may be rented to private or commercial organizations or associations but shall not be rented to persons or organizations conducting programs for private gain.

(3) College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college governing student affairs.

(4) No person or group may use or enter onto college facilities having in their possession weapons or firearms, even if licensed to do so, except commissioned police officers ~~((as prescribed by law))~~ or legally authorized military personnel while in performance of their duties.

(a) Any individual, including those visiting or conducting business on any of the Seattle Colleges campuses, found in possession of any firearm, dagger, sword, knife or other

cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm, on or about the property of the Seattle Colleges knowingly, or found in possession of a weapon or firearm under circumstances in which the individual should have known that he or she was in possession of a weapon or firearm, may be banned from the colleges for such time and extent as Seattle Colleges determines appropriate. Individuals will be directed and required to remove their weapons or themselves from Seattle Colleges property or premises, with all appropriate legal actions (including arrest) being taken upon failure to comply.

(b) Individuals with a valid Washington state concealed weapons permit must keep any firearm in his or her vehicle locked and concealed from view while parked on campus in accordance with RCW 9.41.050.

(c) The president or his/her designee may grant permission to bring a weapon on campus upon a determination that the weapon is necessary for safety and security purposes. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

## WSR 17-07-087

### PERMANENT RULES

### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed March 20, 2017, 10:59 a.m., effective April 20, 2017]

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

Purpose: The agency is amending these rules because it is delegating third-party activities to managed care organizations.

Citation of Existing Rules Affected by this Order: Amending WAC 182-538A-130 and 182-538A-190.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-04-054 on January 27, 2017.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 20, 2017.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

**WAC 182-538A-130 Exemptions and ending enrollment in fully integrated managed care (FIMC).** (1) Fully integrated managed care (FIMC) and behavioral health services only (BHSO) are mandatory for individuals residing in FIMC regional service areas.

(2) The medicaid agency enrolls a client ~~((into))~~ residing in an FIMC regional service area in either FIMC or BHSO, depending on the client's eligibility, in accordance with WAC 182-538A-060.

~~((2) WAC 182-538A-060 applies to disenrollment and choice.~~

(3) A client may end enrollment in FIMC if:

(a) The client has comparable coverage; or

(b) The client's request to end enrollment is approved by the agency under one of the following circumstances:

(i) The enrollee moves out of the FIMC regional service area;

(ii) Medically necessary care is unavailable from the MCO including, but not limited to, when:

(A) The MCO does not, because of moral or religious objections, deliver the service the enrollee seeks; or

(B) The enrollee needs related services performed at the same time and not all related services are available within the network and the enrollee's primary care provider or another provider determines receiving the services separately would subject the enrollee to unnecessary risk.) (3) The agency may end enrollment of an enrollee in FIMC or authorize an exemption of a client from enrollment in FIMC according to the rules in WAC 182-538-130.

(4) If ~~((an enrollee))~~ the agency authorizes a request to end ~~((s))~~ enrollment ~~((in))~~ of an enrollee in FIMC or authorizes exemption of a client from enrollment in FIMC based on WAC 182-538-130, the ~~((agency enrolls the))~~ enrollee ~~((in BHSO if the enrollee))~~ is required to enroll in BHSO if eligible.

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

**WAC 182-538A-190 Behavioral health services only (BHSO).** This section applies to enrollees receiving behavioral health services only (BHSO) under the fully integrated managed care (FIMC) medicaid contract.

(1) The medicaid agency requires eligible clients in FIMC regional service areas to enroll in the BHSO program.

(2) A BHSO enrollee in an FIMC regional service area may change managed care organizations (MCOs) but may not disenroll from the BHSO program.

(3) For BHSO enrollees, the MCO covers the behavioral health benefit included in the FIMC medicaid contract.

(4) WAC 182-538-110 applies to BHSO enrollees in FIMC regional service areas.

(5) The agency assigns the BHSO enrollee to an MCO available in the area where the client resides.

(6) A BHSO enrollee may change MCOs for any reason with the change becoming effective according to the agency's managed care policy.

~~((7) The agency ends enrollment in BHSO managed care when the enrollee becomes eligible for any third-party health care coverage comparable to BHSO.))~~

## WSR 17-07-096

### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed March 20, 2017, 4:37 p.m., effective April 20, 2017]

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

Purpose: WAC 246-808-150 Commission approved continuing education, the chiropractic commission adopted rules to implement RCW 43.70.442, which extends the suicide continuing education reporting period to 2017 and requires training be taken from a vendor identified on the department of health's model list, as of July 1, 2017. The text in WAC 246-808-155 and 246-808-165 is also being merged into WAC 246-808-150, after which WAC 246-808-155 and 246-808-165 will be repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-808-155 and 246-808-165; and amending WAC 246-808-150.

Statutory Authority for Adoption: RCW 18.25.0171.

Other Authority: RCW 18.130.050, 18.25.070, and 43.70.442.

Adopted under notice filed as WSR 16-22-030 on October 25, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 2.

Date Adopted: March 20, 2017.

Matthew Waldron, D.C.  
Commission Chair

AMENDATORY SECTION (Amending WSR 15-07-005, filed 3/6/15, effective 4/6/15)

**WAC 246-808-150 Commission approved continuing education.** (1) ~~((Chiropractors must complete))~~ A chiropractor must demonstrate completion of twenty-five hours of continuing education ~~((per year under))~~ each annual renewal

cycle as required by RCW 18.25.070 and chapter 246-12 WAC, Part 7. ~~((2))~~ The required continuing education must be obtained during the period between renewals.

(2) A chiropractor must attest to completion of the continuing education requirement upon renewal. If the first renewal period is less than one full year from the date of licensure, no continuing education will be due for the first renewal period.

(3) A chiropractor in active status who resides and practices outside Washington must meet all the requirements.

(4) A chiropractor is not required to obtain prior approval of any continuing education.

(5) The commission approves the following subject material within the scope of practice for continuing chiropractic education credit:

- (a) Diagnosis and treatment of the spine or extremity articulations within the scope of practice;
- (b) X-ray/diagnostic imaging;
- (c) Adjustive technique;
- (d) Detection of a subluxation;
- (e) Physical examination;
- (f) Hygiene;
- (g) Symptomatology;
- (h) Neurology;
- (i) Pathology;
- (j) Orthopedics;
- (k) Patient/case management, documentation, coding;
- (l) Impairment within the scope of practice;
- (m) CPR (not to exceed a total of four hours);
- (n) Dietary and nutrition advice;
- (o) Chiropractic philosophy; and
- (p) Governmental regulations relevant to chiropractic and public health (not to exceed a total of twelve hours).

~~((3) Beginning June 12, 2014,)~~ (6) As part of the continuing education, a chiropractor ~~(s are required to)~~ must obtain a one-time, three-hour ~~(s)~~ training in suicide screening and referral from a qualified suicide prevention training program. ~~((This is a one-time suicide prevention training that))~~ The training must be completed during the first full reporting period after ~~((June 12, 2014, or the first full continuing education reporting period after))~~ initial licensure ~~((; whichever is later))~~.

(a) A qualified training program is empirically supported training in suicide screening and referral that is at least three hours in length ~~((which))~~ and may be provided in one or more sessions.

(b) The hours spent completing a training program in suicide screening and referral under this section count toward meeting any applicable continuing education requirements.

(c) Effective July 1, 2017, in order to meet the suicide training requirements, a chiropractor must obtain the three-hour training in suicide screening and referral from a qualified suicide prevention training program identified on the department of health's model list as required under RCW 43.70.442.

(d) Nothing in this subsection is intended to expand or limit the chiropractic scope of practice.

~~((4))~~ (7) Subject matter not approved for continuing education credit:

(a) Subject matter not directly relating to the chiropractic clinical scope of practice; and

(b) Conduct prohibited by Washington state statutes or rules governing chiropractic practice.

~~((5))~~ (8) A chiropractor may earn a maximum of twelve hours for:

(a) Completing a multimedia chiropractic education program, which includes, but is not limited to, the internet, tele-seminars, employer led training ~~((offering continuing education hours))~~, and audio or video presentations.

(b) Serving as teachers or lecturers in continuing education programs approved under subsection ~~((2))~~ (5) of this section. A chiropractor may receive credit on the same basis as those attending the program.

~~((6))~~ (9) The commission may randomly audit license holders for compliance. A chiropractor must provide acceptable documentation of attendance upon commission request or audit. Acceptable forms of documentation include:

- (a) Transcripts;
- (b) ~~((Letters))~~ Written documentation from the course instructors;
- (c) Certificate of completion indicating the name of the course, date(s) of the course, and the number of credit hours completed; or
- (d) Other formal documentation which includes:
  - (i) Participant's name;
  - (ii) Course title;
  - (iii) Course content;
  - (iv) Date(s) of course;
  - (v) ~~((Provider's))~~ Number of credit hours completed;
  - (vi) Instructor's name(s); and
  - ~~((vi))~~ (vii) Signature of the program sponsor or course instructor. Multimedia courses are exempt from the signature requirement.

~~((7) Chiropractors in active status who reside and practice outside Washington must meet all the requirements.)~~

(10) A sponsor offering a continuing chiropractic education program does not need prior commission approval for a formal continuing education program. The number of creditable hours may be determined by counting the contact hours of instruction. A credit hour for time actually spent in a course cannot be less than fifty minutes as required in chapter 246-12 WAC, Part 7.

(11) The commission may grant exemptions or time extensions on an individual basis, if a licensee fails to meet continuing education requirements due to illness, retirement, or other extenuating circumstances.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-808-155 Prior approval not required.

WAC 246-808-165 Exemptions.



**WSR 17-07-136**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed March 22, 2017, 11:35 a.m., effective April 22, 2017]

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

Purpose: This rule-making order amends chapter 16-531 WAC, Washington grain commission, by including public records disclosure procedures as required by RCW 42.56.-040.

Statutory Authority for Adoption: RCW 15.115.160 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-03-125 on January 18, 2017.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 0.

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

Date Adopted: March 22, 2017.

Derek I. Sandison  
 Director

NEW SECTION

**WAC 16-531-005 Definitions.** "Commission" means the Washington grain commission.

"Disclosure" means inspection or copying.

"Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals, or any unit or agency of local or state government.

"Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the commission regardless of physical form or characteristics.

NEW SECTION

**WAC 16-531-020 Public records officer.** (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding dis-

closure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

NEW SECTION

**WAC 16-531-030 Request for public records.** (1) Requests for disclosure of public records should be directed to the commission's public records officer by mail at 2702 W. Sunset Blvd., Suite A, Spokane, WA 99224; by email to [wgc@wagrains.org](mailto:wgc@wagrains.org); or by fax at 509-456-2812. The written request should include:

(a) The name of the person requesting the records and the person's contact information, i.e., address, telephone number or email address;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify records being requested.

(2) A person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during the inspection; and

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

(3) If a requestor cannot submit a request for public records in writing and desires to make an oral request either in person or by telephone, the public records officer or designee receiving the request will summarize the request in writing and then verify in writing with the requestor that the summary correctly memorializes the request.

NEW SECTION

**WAC 16-531-040 Response to public records requests.** (1) The commission will respond promptly to requests for disclosure. Email requests will be handled in the same manner as other types of mail received by the commission. Public records requests received by email after regular business hours will be considered received on the next business day. Within five business days of receiving a public records request, the public records officer will respond by doing one or more of the following:

(a) Providing the record;

(b) Providing an internet address and link on the commission's web site to the specific records requested (reference RCW 42.56.520);

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request; or

(d) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record (or any part of the record) and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

#### NEW SECTION

##### **WAC 16-531-050 Fees—Inspection and copying.** (1)

No fee will be charged for the inspection of public records.

(2) The commission reserves the right to charge a fee of fifteen cents per page of black and white photocopy plus postage to reimburse itself for the costs of providing copies of public records.

(3) Requests for records in special formatting, including color copies, will be charged at the amount necessary to reimburse the commission for its actual production costs. If the public records officer deems it more efficient to have copying or duplicating done outside the commission, the charges will be based on the actual cost of such outside copying or duplicating services. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of the invoice and is payable to the Washington grain commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The public records officer may waive the fee when the expense of processing payment exceeds the cost of providing copies.

#### NEW SECTION

**WAC 16-531-060 Exemptions.** The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.115 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.115 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy (reference RCW 42.56.230(3)).

(4) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(5) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2) and 42.56.290).

(6) List of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(7) Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers and emergency contact information of dependents of employees or volunteers of the commission that are held by the commission in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of the commission (reference RCW 42.56.250(3)).

#### NEW SECTION

##### **WAC 16-531-070 Review of denial of public records requests.** (1)

Any person who objects to the initial denial of a records request may petition in writing to the commission for review of that decision. The petition shall include a copy of, or reasonably identify, the written statement by the commission denying the request.

(2) The commission's executive director or designee will immediately consider the petition and either affirm or reverse the denial. In any case, the request shall be returned with a final decision within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

#### NEW SECTION

**WAC 16-531-080 Records index.** The commission shall establish a records index, which shall be made available for public review. The records index may be accessed on the commission's web site at [www.wagrains.org](http://www.wagrains.org).