

WSR 18-21-134
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed October 19, 2018, 9:41 a.m.]

Supplemental Notice to WSR 18-12-065.

Preproposal statement of inquiry was filed as WSR 18-09-027.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-828-4200 What activities are assessed in the home living activities subscale of the support needs scale?, 388-828-4220 What activities are assessed in the community living activities subscale of the support needs scale?, 388-828-4240 What activities are assessed in the lifelong learning activities subscale of the support needs scale?, 388-828-4260 What activities are assessed in the employment activities subscale of the support needs scale?, 388-828-4280 What activities are assessed in the health and safety activities subscale of the support needs scale?, 388-828-4300 What activities are assessed in the social activities subscale of the support needs scale?, 388-828-4320 What activities are assessed in the supplemental protection and advocacy activities subscale?, 388-828-4360 What exceptional medical support activities are evaluated to assess your medical support needs?, 388-828-4380 What exceptional behavioral support activities are evaluated to assess your behavioral support needs?, 388-828-4400 How does DDD determine if you meet the eligibility requirements for ICF/MR level of care if you are age sixteen or older?, 388-828-5460 How does DDD determine your ADL support needs score if you are age sixteen or older?, 388-828-5700 How does DDD determine your medical acuity level?, 388-828-5800 How does DDD determine your interpersonal support needs score if you are age sixteen or older?, 388-828-5900 How does DDD determine your mobility acuity level if you are age sixteen or older?, 388-828-8040 How does DDD determine which health and welfare needs must be addressed in your individual support plan if you are age birth through fifteen?, 388-828-8060 How does DDD determine which health and welfare needs must be addressed in your individual support plan if you are age sixteen or older?, 388-828-9560 How does the residential algorithm determine your daily support needs score?, 388-828-9580 How does the residential algorithm determine your mid-frequency support needs score?, 388-828-9650 How does the residential algorithm determine your toileting support needs score?, 388-828-9660 How does the residential algorithm calculate your daily critical support time?, 388-828-9670 How does the residential algorithm calculate your mid-frequency critical support time?, and 388-828-9680 How does the residential algorithm determine your weekly critical support time?

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Service (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than December 12, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 11, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending sections from chapter 388-828 WAC to align DDA's current supports intensity scale (SIS) with the American Association on Intellectual and Developmental Disabilities' (AAIDD) latest version of the supports intensity scale - adult version (SIS-A).

Reasons Supporting Proposal: These rules have not been updated since 2007 and amendments are necessary to align DDA's current SIS with the AAIDD's latest version of the SIS-A. The amendments clarify language and reorder the assessment questions without changing the effect of the rules. The text has been amended from the previous CR-102 filed as WSR 18-12-065 on June 1, 2018. A second public hearing is necessary to add more sections to the set of proposed rules. These amendments, like those in the first proposal, are not substantive; the algorithm in the assessment remains unchanged.

Statutory Authority for Adoption: RCW 71A.12.030.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Bob Morris, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1513.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from cost-benefit analysis requirements because the proposed amendments, as described under RCW 34.05.328 (5)(b)(iv), clarify the language of the rule without changing its effect.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

October 17, 2018
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4200 What activities are assessed in the home living activities subscale of the support needs scale? The home living activities subscale measures your personal support needs for the following home living activities:

#	Home living activities	Type of support					Frequency of support					Daily support time					Raw score
A1	((Using the toilet)) <u>Operating home appliances/electronics</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A2	<u>Bathing and taking care of</u> ((clothes (includes laundering))) <u>personal hygiene and grooming needs</u>	0	1	2	3	4	0	1	2	3	((4)) * <u>4</u>	0	1	2	3	4	
A3	((Preparing food)) <u>Using the toilet</u>	0	1	2	3	4	0	1	2	3	((*) <u>4</u>	0	1	2	3	4	
A4	((Eating food)) <u>Dressing</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A5	((Housekeeping and cleaning)) <u>Preparing food</u>	0	1	2	3	4	0	1	2	3	((4)) * <u>4</u>	0	1	2	((*) <u>3</u>	((*) <u>4</u>	
A6	((Dressing)) <u>Eating food</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A7	((Bathing and)) <u>Taking care of</u> ((personal hygiene and grooming needs)) <u>clothes, including laundering</u>	0	1	2	3	4	0	1	2	3	((*) <u>4</u>	0	1	2	3	4	
A8	((Operating home appliances)) <u>Housekeeping and cleaning</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	((3)) * <u>4</u>	((4)) *	
A9	Using currently prescribed equipment or treatment	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total raw score for home living activities:																	
* = Score is not an option per AAIDD.																	
Note: Question A9 is a question added by ((DDD)) DDA. It is for ((information)) <u>informational</u> purposes only and is not used to calculate scores or levels for service determination.																	

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4220 What activities are assessed in the community living activities subscale of the support needs scale? The community living activities subscale measures your personal support needs for the following community living activities:

#	Community living activities	Type of support					Frequency of support					Daily support time					Raw score
B1	Getting from place to place throughout the community (transportation)	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B2	Participating in recreation/leisure activities in community ((settings))	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B3	((Using public services in the)) <u>Participating in preferred community activities (churches, volunteer, etc.)</u>	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B4	((Going to visit friends and family)) <u>Accessing public buildings and settings</u>	0	1	2	3	4	0	1	2	3	((*) <u>4</u>	0	1	2	3	4	

#	Community living activities	Type of support					Frequency of support					Daily support time					Raw score
B5	((Participating)) <u>Using public services in ((preferred)) the community ((activities (church, volunteer, etc.)))</u>	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B6	Shopping and purchasing goods and services	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
B7	Interacting with community members	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
B8	((Accessing public buildings and settings)) <u>Going to visit friends and family</u>	0	1	2	3	4	0	1	2	3	((4)) *	0	1	2	3	4	
Total raw score for community living activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4240 What activities are assessed in the lifelong learning activities subscale of the support needs scale? The lifelong learning activities subscale measures your personal support needs for the following lifelong learning activities:

#	Lifelong learning activities	Type of support					Frequency of support					Daily support time					Raw score
C1	((Interacting with others in learning activities)) <u>Learning and using problem-solving strategies</u>	0	1	2	3	4	0	1	2	3	((≠)) 4	0	1	2	3	4	
C2	((Participating in training/educational decisions)) <u>Learning functional academics (reading signs, counting change, etc.)</u>	0	1	2	3	4	0	1	2	3	((≠)) 4	0	1	2	3	((≠)) 4	
C3	Learning ((and using problem-solving strategies)) <u>health and physical education skills</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C4	((Using technology for)) <u>Learning self-determination skills</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C5	((Accessing training/educational settings)) <u>Learning self-management strategies</u>	0	1	2	3	4	0	1	2	3	((4)) *	0	1	2	3	4	
C6	((Learning functional academics (reading signs, counting change, etc.))) <u>Participating in training/educational decisions</u>	0	1	2	3	4	0	1	2	3	((4)) *	0	1	2	3	((4)) *	
C7	((Learning health and physical education skills)) <u>Accessing training/educational settings</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C8	<u>Interacting with others in learning ((self-determination skills)) activities</u>	0	1	2	3	4	0	1	2	3	((4)) *	0	1	2	3	4	
C9	<u>Using technology for learning ((self-management strategies))</u>	0	1	2	3	4	0	1	2	3	((≠)) 4	0	1	2	3	4	
Total raw score for lifelong learning activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4260 What activities are assessed in the employment activities subscale of the support needs scale?

The employment activities subscale measures your personal support needs for the following employment activities:

#	Employment activities	Type of support					Frequency of support					Daily support time					Raw score
		0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D1	((Accessing/receiving/job/tasks accommodations)) <u>Learning and using specific job skills</u>	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D2	((Learning and using specific job skills)) <u>Accessing/receiving job/task accommodations</u>	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D3	Interacting with co-workers	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D4	Interacting with supervisors ((and/or)) /coaches	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D5	Completing work-related tasks with acceptable speed	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D6	Completing work-related tasks with acceptable quality	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D7	Changing job assignments	0	1	2	3	4	0	1	2	*	*	0	1	2	3	4	
D8	Seeking information and assistance from an employer	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
Total raw score for employment activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4280 What activities are assessed in the health and safety activities subscale of the support needs scale? The health and safety activities subscale measures your personal support needs for the following health and safety activities:

#	Health and safety activities	Type of support					Frequency of support					Daily support time					Raw score
		0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E1	Taking medications	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E2	((Avoiding health)) <u>Ambulating and ((safety hazards)) moving about</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E3	((Obtaining health care services)) <u>Avoiding health and safety hazards</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	((3)) 3	((4)) 4	
E4	((Ambulating and moving about)) <u>Obtaining health care services</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	((3)) *	((4)) *	
E5	Learning how to access emergency services	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E6	Maintaining a nutritious diet	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E7	Maintaining physical health and fitness	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E8	Maintaining emotional well-being	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total raw score for health and safety activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4300 What activities are assessed in the social activities subscale of the support needs scale? The social activities subscale measures your personal support needs for the following social activities:

#	Social activities	Type of support					Frequency of support					Daily support time					Raw score
		0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
F1	((Socializing within the household)) Using appropriate social skills	0	1	2	3	4	0	1	2	3	((4)) 4	0	1	2	3	4	
F2	Participating in recreation ((and/or)) /leisure activities with others	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
F3	Socializing outside the household	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
F4	Making and keeping friends	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
F5	((Communicating with others about personal needs)) Engaging in loving and intimate relationships	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
F6	((Using appropriate social skills)) Socializing within the household	0	1	2	3	4	0	1	2	3	((4)) *	0	1	2	3	4	
F7	((Engaging in loving and intimate relationships)) Communicating with others about personal needs	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
F8	Engaging in volunteer work	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total raw score for social activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4320 What activities are assessed in the supplemental protection and advocacy activities subscale? The supplemental protection and advocacy activities subscale measures your personal support needs for the following protection and advocacy activities:

#	Protection and advocacy activities	Type of support					Frequency of support					Daily support time					Raw score
		0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G1	Advocating for self	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
G2	((Managing money)) ((personal finances)) Making choices and decisions	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G3	Protecting self from exploitation	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G4	Exercising legal/civic responsibilities	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G5	Belonging to and participating in self-advocacy/support organizations	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G6	Obtaining legal services	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G7	((Making choices)) ((decisions)) Managing money and personal finances	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G8	Advocating for others	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
Total raw score for protection and advocacy activities:																	
* = Score is not an option for AAIDD.																	

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4360 What exceptional medical support activities are evaluated to assess your medical support needs? The SIS exceptional medical support needs scale measures your personal support needs for the following medical support need(s) activities:

#	Medical supports needed	No support needed	Some support needed	Extensive support needed
1.	Inhalation or oxygen therapy	0	1	2
2.	Postural drainage	0	1	2
3.	Chest PT	0	1	2
4.	Suctioning	0	1	2
5.	Oral stimulation or jaw positioning	0	1	2
6.	Tube feeding (e.g., nasogastric)	0	1	2
7.	Parenteral feeding (e.g., IV)	0	1	2
8.	Turning or positioning	0	1	2
9.	Dressing of open wound(s)	0	1	2
10.	Protection from infectious diseases due to immune system impairment	0	1	2
11.	Seizure management	0	1	2
12.	Dialysis	0	1	2
13.	Ostomy care	0	1	2
14.	Lifting and/or transferring	0	1	2
15.	Therapy services	0	1	2
16.	((Diabetes Management*)) Hypertension	0	1	2
17.	((Other(s) Specify*)) Allergies	0	1	2
18.	Diabetes	0	1	2
19.	Other(s) - specify	0	1	2
Subtotal scores of 1s and 2s:				
Add subtotals scores for 1s and 2s for total exceptional medical support needs score:				
((* #16 is a question added by DDD. It is used as part of the DDD medical acuity scale and is not used to calculate SIS percentiles.))				

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4380 What exceptional behavioral support activities are evaluated to assess your behavioral support needs? The SIS exceptional behavioral support needs scale measures your personal support needs for the following behaviors:

#	Behavioral supports needed	No support needed	Some support Needed	Extensive support needed
1.	Prevention of ((assaults or injuries to others)) <u>emotional outbursts</u>	0	1	2
2.	Prevention of ((property destruction (e.g., fire setting, breaking furniture))) <u>assault or injury to others</u>	0	1	2
3.	Prevention of ((stealing)) <u>property destruction (e.g. fire setting, breaking furniture)</u>	0	1	2
4.	Prevention of ((self injury)) <u>stealing</u>	0	1	2
5.	Prevention of ((PICA (ingestion of inedible substances))) <u>self-injury</u>	0	1	2
6.	Prevention of suicide attempts	0	1	2
7.	Prevention of ((sexual aggression)) <u>PICA (ingestion of inedible substances)</u>	0	1	2
8.	Prevention of nonaggressive but inappropriate behavior (e.g., exposes self in public, exhibitionism, inappropriate touching or gesturing)	0	1	2

#	Behavioral supports needed	No support needed	Some support Needed	Extensive support needed
9.	Prevention of ((tantrums or emotional outbursts)) <u>sexual aggression</u>	0	1	2
10.	Prevention of ((wandering)) <u>substance abuse</u>	0	1	2
11.	Prevention of ((substance abuse)) <u>wandering</u>	0	1	2
12.	Maintenance of mental health treatments	0	1	2
13.	Managing attention-seeking behavior*	0	1	2
14.	Managing uncooperative behavior*	0	1	2
15.	Managing agitated/over reactive behavior*	0	1	2
16.	Managing obsessive/repetitive behavior*	0	1	2
17.	Prevention of other serious behavior problem(s) - Specify:	0	1	2
Subtotal scores of 1s and 2s:				
Add subtotals scores for 1s and 2s for total exceptional behavioral support needs scores:				
* #13-16 are questions added by ((DDA)) <u>DDA</u> . They are used as part of the ((DDA)) <u>DDA</u> behavior acuity scale and are not used to calculate SIS percentiles.				

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4400 How does (~~(DDA)~~) DDA determine if you meet the eligibility requirements for (~~(ICF/MR)~~) ICF/IID level-of-care if you are age sixteen or older? If you are age sixteen or older, (~~(DDA)~~) DDA determines you to be eligible for (~~(ICF/MR)~~) ICF/IID level-of-care from your SIS scores. Eligibility for (~~(ICF/MR)~~) ICF/IID level-of-care requires that your scores meet at least one of the following:

- (1) You have a percentile rank (~~(that is)~~) over nine percent for three or more of the six subscales in the SIS support needs scale;
- (2) You have a percentile rank (~~(that is)~~) over twenty-five percent for two or more of the six subscales in the SIS support needs scale;
- (3) You have a percentile rank (~~(that is)~~) over fifty percent in at least one of the six subscales in the SIS support needs scale;

(4) You have a support score of one or two for any of the questions listed in the SIS exceptional medical support needs scale;

(5) You have a support score of one or two for at least one of the following items in the SIS exceptional behavior support needs scale:

- (a) Prevention of assaults or injuries to others;
- (b) Prevention of property destruction (e.g., fire setting, breaking furniture);
- (c) Prevention of self-injury;
- (d) Prevention of PICA (ingestion of inedible substances);
- (e) Prevention of suicide attempts;
- (f) Prevention of sexual aggression; or
- (g) Prevention of wandering.

(6) You have a support score of two for any of the questions listed in the SIS exceptional behavior support needs scale; or

(7) You meet or exceed any of the qualifying scores for one or more of the following SIS questions:

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
((A1)) <u>A2</u>	((Using the toilet)) <u>Bathing and take care of personal hygiene and grooming needs</u>	2 or more	4
		3 or more	2
((A2)) <u>A3</u>	((Taking care of clothes)) <u>Using the toilet</u>	2 or more	((2 or more)) <u>4</u>
		3 or more	((1)) <u>2</u>
((A3)) <u>A4</u>	((Preparing food)) <u>Dressing</u>	2 or more	4
		3 or more	2
((A4)) <u>A5</u>	((Eating)) <u>Preparing food</u>	2 or more	4
		3 or more	2

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
((A5)) <u>A6</u>	((Housekeeping and cleaning) <u>Eating food</u>)	2 or more	((2 or more) <u>4</u>)
		3 or more	((+) <u>2</u>)
((A6)) <u>A7</u>	((Dressing) <u>Taking care of clothes, including laundering</u>)	2 or more	((4) <u>2 or more</u>)
		3 or more	((2) <u>1</u>)
((A7)) <u>A8</u>	((Bathing and taking care of personal hygiene) <u>Housekeeping and ((grooming needs)) cleaning</u>)	2 or more	((4) <u>2 or more</u>)
		3 or more	((2) <u>1</u>)
((E3)) <u>B6</u>	((Learning) <u>Shopping and ((using problem-solving strategies)) purchasing goods and services</u>)	2 or more	((3) <u>2 or more</u>)
		3 or more	((2) <u>1</u>)
((E9)) <u>C1</u>	<u>Learning ((self-management)) and using problem-solving strategies</u>	2 or more	3 or more
		3 or more	2
((B6)) <u>C5</u>	((Shopping and purchasing goods and services) <u>Learning self-management strategies</u>)	2 or more	((2) <u>3 or more</u>)
		3 or more	((+) <u>2</u>)
E1	<u>Taking medications</u>	2 or more	4
		3 or more	2
E2	((Avoiding health) <u>Ambulating and ((safety hazards)) moving about</u>)	2 or more	((3 or more) <u>4</u>)
		3 or more	2
((E4)) <u>E3</u>	((Ambulating) <u>Avoiding health and ((moving about)) safety hazards</u>)	2 or more	((4) <u>3 or more</u>)
		3 or more	2
E6	<u>Maintaining a nutritious diet</u>	2 or more	2 or more
		3 or more	1
E8	<u>Maintaining emotional well-being</u>	2 or more	3 or more
		3 or more	2
((F6)) <u>F1</u>	<u>Using appropriate social skills</u>	2 or more	3 or more
		3 or more	2
((G2)) <u>G7</u>	<u>Managing money and personal finances</u>	2 or more	2 or more
		3 or more	1

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5460 How does ((DDD)) DDA determine your ADL support needs score if you are age sixteen or older? (1) If you are age sixteen or older, your ADL support needs score is the total adjusted "Type of support" scores from the following SIS questions:

ADL questions from the SIS assessment in WAC 388-828-4200 and 388-828-4280	
Question #	Text of ADL questions:
<u>A2</u>	<u>Bathing and taking care of personal hygiene and grooming needs</u>
((A+) <u>A3</u>	<u>Using the toilet</u>
A4	((Eating food) <u>Dressing</u>)
A6	((Dressing) <u>Eating food</u>)

ADL questions from the SIS assessment in WAC 388-828-4200 and 388-828-4280

((A7)	<u>Bathing and taking care of personal hygiene and grooming needs</u>)
E1	<u>Taking medications</u>
((E4)) <u>E2</u>	<u>Ambulating and moving about</u>

(2) If your "Frequency of support" score for a SIS ADL question is zero or one, adjust your "Type of support" score for that question to zero.

(3) If your "Frequency of support" score for a SIS ADL support question is two, three, or four, no adjustment is needed to your "Type of support" score.

Example:

SIS ADL Questions	Text of SIS ADL Questions	If your "Frequency of Support" score is:	And your "Type of Support" score is:	Then your adjusted "Type of Support" score is:
A2	<u>Bathing and taking care of personal hygiene and grooming needs</u>	1	2	0
((A1)) A3	Using the toilet	3	3	3
A4	((Eating food)) <u>Dressing</u>	((+)) 3	((2)) 3	((0)) 3
A6	((Dressing)) <u>Eating food</u>	((3)) 1	((3)) 2	((3)) 0
((A7))	Bathing and taking care of personal hygiene and grooming needs	+	2	0))
E1	Taking medications	3	2	2
((E4)) E2	Ambulating and moving about	0	0	0
Your SIS ADL support needs score:				8

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5700 How does ~~((DDD))~~ **DDA** determine your medical acuity level? ~~((DDD))~~ **DDA** uses your SIS support scores to questions in the exceptional medical support needs scale per WAC 388-828-4360 and the following table to determine your medical acuity level:

If you meet the following criteria:	Then your medical acuity level is:	Value
(1) If you have a score of 2 on questions 1, 4, and 7;	High	3
(2) If you have a score of 2 on any two of the following questions: 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, ((or)) 17, 18, or 19;	High	3
(3) If your total exceptional medical support needs score is 8 or higher;	High	3
(4) If you have a score of 2 on any of the following questions: 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, ((or)) 17, 18, or 19 and do not meet the criteria for a high medical acuity level;	Medium	2
(5) If your total exceptional medical support needs score is 6 or 7 and you do not meet the criteria for a high medical acuity level;	Medium	2
(6) If your total exceptional medical support needs score is 5 or less, but greater than zero, and you do not have a score of 2 on any questions excluding number 15;	Low	1
(7) If your total exceptional medical support needs score equals zero.	None	0

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5800 How does ~~((DDD))~~ **DDA** determine your interpersonal support needs score if you are age sixteen or older? If you are age sixteen or older, your interpersonal support needs score is determined by adding your raw scores to the following SIS questions:

Interpersonal support needs questions from the SIS assessment	
Question #	Text of interpersonal support needs questions:
B7	Interacting with community members
((C1)) C8	Interacting with others in learning activities
D3	Interacting with co-workers
D4	Interacting with supervisors/coaches

Interpersonal support needs questions from the SIS assessment	
D8	Seeking information and assistance from an employer
F1	((Socializing within the household)) <u>Using appropriate social skills</u>
F3	Socializing outside the household
((F5)) F6	((Communicating with others about personal needs)) <u>Socializing within the household</u>
((F6)) F7	((Using appropriate social skills)) <u>Communicating with others about personal needs</u>

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5900 How does ~~((DDD))~~ **DDA** determine your mobility acuity level if you are age sixteen or older? If you are age sixteen or older, your mobility acuity level is determined by your scores to question ~~((E4 or))~~ E2 "Ambulating and moving about" in WAC 388-828-4280 using the following table:

If you score for "Frequency of Support" is:	And your score for "Type of Support" is:	Then your Mobility Acuity Level is:	Value
3 or 4	4	High	3
3 or 4	3	Medium	2

If you score for "Frequency of Support" is:	And your score for "Type of Support" is:	Then your Mobility Acuity Level is:	Value
If your raw score for question ((E4 or)) <u>E2</u> is 5 or more and you do not meet the criteria for a high or medium mobility acuity level		Low	1
If your raw score for question ((E4)) <u>E2</u> is 4 or less		None	0

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-8040 How does ~~((DDD))~~ **DDA** determine which health and welfare needs must be addressed in your individual support plan if you are age birth through fifteen? If you are age birth through fifteen and are receiving ~~((DDD))~~ **DDA** HCBS waiver services or reside in a state only residential setting, ~~((DDD))~~ **DDA** uses the following tables to determine the health and welfare needs that must be addressed in your individual support plan:

(1) Activities from the support needs assessment for children:

#	Questions in the Support Needs Assessment for Children:	((DDD)) DDA must address in your ((ISP)) PSCP if you have an acuity score of:	Health and Welfare Category
1	Dress and groom self	2 or more	Home Living
2	Toilet self	2 or more	Home Living
3	Eat at age level	3 or more	Home Living
4	Move around	3 or more	Home Living
5	Communicate	2 or more	Home Living
7	Make choices and take responsibility	2 or more	Protection and Advocacy
8	Explore environment	3 or more	Community Living
9	Meet therapy health needs	1 or more	Medical Supports
10	Help family continue to meet child's needs	1 or more	Protection and Advocacy
15	Identify and respond safely to emergencies	1 or more	Health and Safety
16	Practice age-level safety measures	2 or more	Protection and Advocacy
17	Effectively relate to other students/peers	3 or more	Employment
18	Have behaviors which promote being included	3 or more	Behavior Supports

(2) Medical supports from the SIS exceptional medical support needs scale

#	Questions in the Exceptional Medical Support Needs Scale	((DDD)) DDA must address in your ((ISP)) PSCP if you have an acuity score of:	Health and Welfare Category
1	Inhalation or oxygen therapy	1 or more	Medical Supports
2	Postural drainage	1 or more	Medical Supports
3	Chest PT	1 or more	Medical Supports
4	Suctioning	1 or more	Medical Supports

#	Questions in the Exceptional Medical Support Needs Scale	((DDD)) DDA must address in your ((ISP)) PSCP if you have an acuity score of:	Health and Welfare Category
5	Oral Stimulation or Jaw Repositioning	1 or more	Medical Supports
6	Tube feeding (e.g., nasogastric)	1 or more	Medical Supports
7	Parenteral feeding (e.g., IV)	1 or more	Medical Supports
8	Turning or positioning	1 or more	Medical Supports
9	Dressing of open wound(s)	1 or more	Medical Supports
10	Protection from infectious diseases due to immune system impairment	1 or more	Medical Supports
11	Seizure management	1 or more	Medical Supports
12	Dialysis	1 or more	Medical Supports
13	Ostomy care	1 or more	Medical Supports
14	Lifting and/or transferring	1 or more	Medical Supports
15	Therapy services	1 or more	Medical Supports
16	((Diabetes management)) Hypertension	1 or more	Medical Supports
17	((Other(s))) Allergies	1 or more	Medical supports
18	Diabetes	1 or more	Medical supports
19	Other(s)-Specify	1 or more	Medical Supports

(3) Behavioral supports from the SIS exceptional behavior support needs scale

#	Questions in the Exceptional Behavior Support Needs Scale:	((DDD)) DDA must address in your ((ISP)) PSCP if you have an acuity score of:	Health and Welfare Category
1	Prevention of ((assaults or injuries to others)) <u>emotional outbursts</u>	1 or more	Behavioral Supports
2	Prevention of ((property destruction (e.g., fire setting, breaking furniture))) <u>assault or injury to others</u>	1 or more	Behavioral Supports
3	Prevention of ((stealing)) <u>property destruction (e.g., fire setting, breaking furniture)</u>	1 or more	Behavioral Supports
4	Prevention of ((self-injury)) <u>stealing</u>	1 or more	Behavioral Supports
5	Prevention of ((pica (ingestion of inedible substances))) <u>self-injury</u>	1 or more	Behavioral Supports
6	Prevention of suicide attempts	1 or more	Behavioral Supports
7	Prevention of ((sexual aggression)) <u>pica (ingestion of inedible substances)</u>	1 or more	Behavioral Supports
8	Prevention of nonaggressive but inappropriate behavior (e.g., exposes self in public, exhibitionism, inappropriate touching or gesturing)	1 or more	Behavioral Supports
9	Prevention of ((tantrums or emotional outbursts)) <u>sexual aggression</u>	1 or more	Behavioral Supports
10	Prevention of ((wandering)) <u>substance abuse</u>	1 or more	Behavioral Supports
11	Prevention of ((substance abuse)) <u>wandering</u>	1 or more	Behavioral Supports
12	Maintenance of mental health treatments	1 or more	Behavioral Supports
13	Managing attention-seeking behavior	1 or more	Behavioral Supports
14	Managing uncooperative behavior	1 or more	Behavioral Supports

#	Questions in the Exceptional Behavior Support Needs Scale:	((DD)) DDA must address in your ((ISP)) PSCP if you have an acuity score of:	Health and Welfare Category
15	Managing agitated/over-reactive behavior	1 or more	Behavioral Supports
16	Managing obsessive/repetitive behavior	1 or more	Behavioral Supports
17	Prevention of other serious behavior problem(s)-Specify	1 or more	Behavioral Supports

(4) Caregiver from the SIS exceptional behavior support needs scale

#	Question in the ((DD)) DDA Caregiver Status Acuity Scale:	((DD)) DDA must address in your ((ISP)) PSCP if you have a score:	Health and Welfare Category
6	How long do you think you expect to continue providing care?	1 to 6 months or less than 1 month	((DD)) DDA Caregiver Status

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-8060 How does ~~((DD))~~ DDA determine which health and welfare needs must be addressed in your individual support plan if you are age sixteen or older? (1) If you are age sixteen or older and receiving ~~((DD))~~ DDA HCBS waiver services or reside in a state-only residential setting, ~~((DD))~~ DDA uses the following table to determine the health and welfare needs that must be addressed in your individual support plan:

#	SIS Activity	((DD)) DDA must address in the ((ISP)) PSCP if your Type of Support score is:	Health and Welfare Category
A1	((Using the toilet)) <u>Operating home appliances</u>	3 or more	Home Living
A2	<u>Bathing and taking care of</u> ((clothes (includes laundering))) <u>personal hygiene and grooming needs</u>	3 or more	
A3	((Preparing food)) <u>Using the toilet</u>	3 or more	
A4	((Eating food)) <u>Dressing</u>	3 or more	
A5	((Housekeeping and cleaning)) <u>Preparing food</u>	3 or more	
A6	((Dressing)) <u>Eating food</u>	3 or more	
A7	((Bathing and)) <u>Taking care of</u> ((personal hygiene and grooming needs)) <u>clothes, including laundering</u>	3 or more	
A8	((Operating home appliances)) <u>Housekeeping and cleaning</u>	3 or more	
A9	Using currently prescribed equipment or treatment	3 or more	
B1	Getting from place to place throughout the community (transportation)	2 or more	Community Living
B2	Participating in recreation/leisure activities in the community ((settings))	2 or more	
((B3)) <u>Using public services in the community</u>	2 or more		
B4	((Going to visit friends and family)) <u>Accessing public buildings and settings</u>	((4)) <u>2 or more</u>	
B5	<u>Using public services in the community</u>	<u>2 or more</u>	
B6	Shopping and purchasing goods and services	2 or more	

#	SIS Activity	((DDD)) DDA must address in the ((ISP)) PSCP if your Type of Support score is:	Health and Welfare Category
B7	Interacting with community members	4	
B8	((Accessing public buildings and settings)) Going to visit friends and family	((2 or more)) 4	
D3	Interacting with co-workers	3 or more	Employment
D4	Interacting with supervisors and or coaches	3 or more	
E1	Taking medications	2 or more	Health and Safety
E2	((Avoiding health and safety hazards)) Ambulating and moving about	3 or more	
E3	((Obtaining health care services)) Avoiding health and safety hazards	3 or more	
E4	((Ambulating and moving about)) Obtaining health care services	3 or more	
E6	Maintaining a nutritious diet	3 or more	
E7	Maintaining physical health and fitness	3 or more	Social Activities
F2	Participating in recreation/leisure activities with others	2 or more	
F4	Making and keeping friends	4	
F6	((Using appropriate social skills)) Socializing within the household	4	Protection and Advocacy
G2	((Managing money and personal finances)) Making choices and decisions	2 or more	
G3	Protecting self from exploitation	2 or more	
G7	((Making choices and decisions)) Managing money and personal finances	2 or more	

(2) If you have a support score of one or more for any of the questions in the SIS exceptional medical support needs scale, ~~((DDD))~~ DDA must address your support need using the medical supports category.

(3) If you have a support score of one or more for any of the questions in the SIS exceptional behavior support needs scale, ~~((DDD))~~ DDA must address your support need using the behavior supports category.

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9560 How does the residential algorithm determine your daily support needs score? The residential algorithm determines that you have daily support needs if you meet or exceed all of the qualifying scores for one or more of the following activities from the SIS:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your score for type of support is:	And your score for frequency of support is:	And your daily support time is:
((A1: Using the toilet)) A2: Bathing and taking care of personal hygiene and grooming needs	2 or more	3 or more	1 or more
((A4: Eating food)) A3: Using the toilet	2 or more	3 or more	1 or more
((A6)) A4: Dressing	2 or more	3 or more	1 or more
((A7: Bathing, personal hygiene, grooming)) A6: Eating food	2 or more	3 or more	1 or more

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your score for type of support is:	And your score for frequency of support is:	And your daily support time is:
A9: Using currently prescribed equipment or ((treatments)) <u>treatment</u>	2 or more	3 or more	1 or more
E1: Taking medication	2 or more	3 or more	1 or more
E2: ((Avoiding health and safety hazards)) <u>Ambulating and moving about</u>	((+)) <u>3</u> or more	3 or more	1 or more
((E4: Ambulating and moving about)) E3: <u>Avoiding health and safety hazards</u>	((3)) <u>1</u> or more	3 or more	1 or more
Or			
Any combination of 3 of the SIS activities listed above ((A1)) <u>A2, A3, A4, A6, ((A7,)) A9, E1, E2, ((E4)) E3</u>	1 or more	3 or more	1 or more

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9580 How does the residential algorithm determine your mid-frequency support needs score? The residential algorithm determines that you have mid-frequency support needs if you meet one of the following three conditions:

- (1) You meet or exceed all of the qualifying scores for one or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:
((A3)) <u>A5: Preparing food</u>	2 or more	2 or more	2 or more
((A5)) <u>A8: Housekeeping and cleaning</u>	3 or more	3 or more	2 or more
B2: Participating in recreational/leisure activities in community settings	3 or more	2 or more	2 or more
B7: Interacting with community members	3 or more	2 or more	2 or more
G3: Protecting self from exploitation	2 or more	2 or more	2 or more

- (2) Or you meet or exceed all of the qualifying scores for four or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)				
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Score if you meet or exceed criteria
((A1: Using the toilet)) <u>A2: Bathing and taking care of personal hygiene and grooming needs</u>	1 or more	2 or more	1 or more	
A3: ((Preparing food)) <u>Using the toilet</u>	1 or more	2 or more	1 or more	
A4: ((Eating food)) <u>Dressing</u>	1 or more	2 or more	1 or more	
A5: ((Housekeeping and cleaning)) <u>Preparing food</u>	1 or more	2 or more	1 or more	

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)				
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Score if you meet or exceed criteria
A6: ((Dressing)) <u>Eating food</u>	1 or more	2 or more	1 or more	
((A7: Bathing, personal hygiene and grooming)) <u>A8: House-keeping and cleaning</u>	1 or more	2 or more	1 or more	
A9: Using currently prescribed equipment and medications	1 or more	2 or more	1 or more	
B2: Participating in recreational/leisure activities in community settings	1 or more	2 or more	1 or more	
B7: Interacting with community members	1 or more	2 or more	1 or more	
E1: Taking medications	1 or more	2 or more	1 or more	
E2: ((Avoiding health and safety hazards)) <u>Ambulating and moving about</u>	1 or more	2 or more	1 or more	
((E4: Ambulating and moving about)) <u>E3: Avoiding health and safety hazards</u>	1 or more	2 or more	1 or more	
G3: Protecting self from exploitation	1 or more	2 or more	1 or more	
Total of all questions where criteria is met or exceed =				Sum of scores entered

(3) Or you meet the qualifying scores for the following SIS activities and your total weekly critical support time score exceeds ten hours:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Your weekly critical support time is:	Enter one time for each qualifying SIS activity
((A2)) <u>A7: Taking care of clothes (((includes))) <u>including</u> laundering((+))</u>	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
((B3)) <u>B5: Using public services in the community</u>	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B6: Shopping and purchasing (((foods))) <u>goods and services</u>	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Your weekly critical support time is:	Enter one time for each qualifying SIS activity
F2: ((Participation)) Participating in ((recreational)) recreation/leisure activities with others	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F8: Engaging in volunteer work	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
((G2)) G7: Managing money and personal finances	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
Mid-frequency support needs weekly critical support time total =					Sum of times entered

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9650 How does the residential algorithm determine your toileting support needs score? The residential algorithm adds the three dimensions of the SIS activity "~~((A1))~~A3: Using the toilet" (see WAC 388-828-4200) to determine your toileting support score. Formula:

$$\begin{aligned}
 &\text{Type of support score (0-4)} \\
 &+ \\
 &\text{Frequency of support score (0-4)} \\
 &+ \\
 &\text{Daily support time score (0-4)} \\
 &= \\
 &\text{Toileting support needs score (0-12)}
 \end{aligned}$$

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9660 How does the residential algorithm calculate your daily critical support time? The residential algorithm uses the following chart to calculate your daily critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)						
SIS Activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity	
((A1 : Using the toilet)) <u>A2: Bathing and taking care of personal hygiene and grooming needs</u>	1 or more	0	0 or more	0		
		1	0 or more	0		
		2	0 or more	0		
		3	0	0		
			1	.25		
			2	1		
			3	3		
		4	4	5		
			0	0		
			1	.25		
			2	1		
			3	3		
			4	5		
			((A4 : Eating food)) <u>A3: Using the toilet</u>	1 or more		0
1	0 or more				0	
2	0 or more	0				
3	0	0				
	1	.25				
	2	1				
	3	3				
4	4	5				
	0	0				
	1	.25				
	2	1				
	3	3				
	4	5				
	((A6) <u>A4: Dressing</u>	1 or more			0	0 or more
			1	0 or more	0	
2			0 or more	0		
3			0	0		
			1	.25		
			2	1		
			3	3		
			4	5		

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
		4	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
((A7: Bathing and taking care of personal hygiene and grooming needs) A6: <u>Eating food</u>)	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0 or more	0				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	0	0				
			1	.25				
			2	1				
			3	3				
		A9: Using currently prescribed equipment or treatment	1 or more	0		0 or more	0	
				1		0 or more	0	
				2		0 or more	0	
				3		0	0	
						1	.25	
2	1							
3	3							
4	0			0				
	1			.25				
	2			1				
	3			3				
E1: Taking medications	1 or more			0	0 or more	0		
				1	0 or more	0		
				2	0 or more	0		
				3	0	0		
					1	.25		
		2	1					
		3	3					
					4	5		

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
		4	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
E2: ((Avoiding health and safety hazards)) Ambulating and moving about	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0 or more	0				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	4	5				
			0	0				
			1	.25				
			2	1				
		((E4: Ambulating and moving about)) E3: Avoiding health and safety hazards	1 or more	0		0 or more	0	
				1		0 or more	0	
2	0 or more			0				
3	0			0				
	1			.25				
	2			1				
	3			3				
4	4			5				
	0			0				
	1			.25				
	2			1				
	3			3				
	4			5				

Daily critical support time score = Sum of all times entered.

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9670 How does the residential algorithm calculate your mid-frequency critical support time? The residential algorithm uses the following chart to calculate your mid-frequency critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)						
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity	
((A1: Using the toilet) <u>A2: Bathing and taking care of personal hygiene and grooming needs*</u>	1 or more	0	0 or more	0		
		1	0 or more	0		
		2	0	0		
			1	.25		
			2	1		
			3	3		
		4	5			
		3	0 or more	0		
		4	0 or more	0		
		<u>A3: ((Preparing food) Using the toilet</u>	1 or more	0		0 or more
1	0 or more			0		
2	0			0		
	1			.25		
	2			1		
	3			3		
4	5					
3	0			0		
	1			.25		
	2			1		
	3			3		
4	5					
4	0			0		
	1			.25		
	2			1		
	3			3		
	4			5		
	<u>A4: ((Eating food) Dressing*</u>			1 or more	0	0 or more
		1	0 or more		0	
		2	0		0	
1			.25			
2			1			
3			3			
4		5				
3		0 or more	0			
4		0 or more	0			

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
A5: (Housekeeping and cleaning) <u>Preparing food</u>	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	4	5				
			0	0				
			1	.25				
			2	1				
		4	3	3				
			4	5				
			0	0				
			1	.25				
		2	2	1				
			3	3				
4	5							
0	0							
A6: (Dressing) <u>Eating food*</u>	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	4	5				
			0 or more	0				
			0 or more	0				
			(A7: Bathing and taking care of personal hygiene and grooming needs*) <u>A8: Housekeeping and cleaning</u>	1 or more		0	0 or more	0
		1				0 or more	0	
		2				0	0	
						1	.25	
						2	1	
						3	3	
		3				4	5	
0 or more	0							
0 or more	0							
4	0 or more				0			

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)									
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity				
A9: Using currently prescribed equipment or treatment*	1 or more	0	0 or more	0					
		1	1	0 or more		0			
			2	0		0			
				1		.25			
				2		1			
				3		3			
		4	5						
		3	0 or more	0					
		4	0 or more	0					
		B2: Participating in recreation/leisure activities in community ((settings))	1 or more	0		0 or more	0		
1	1			0 or more	0				
	2			0	0				
				1	.25				
				2	1				
				3	3				
4	5								
3	0			0					
1	.25								
	1								
	3								
	5								
4	0			0					
	.25								
	1								
	3								
B7: Interacting with community members	1 or more			0	0 or more	0			
				1	1	0 or more			0
					2	0			0
						1			.25
		2	1						
		3	3						
		4	5						
		3	0	0					
		1	.25						
			1						
			3						
			5						

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
E1: Taking medications*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
E2: (Avoiding health and safety hazards) <u>Ambulating and moving about</u> *	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
(E4: Ambulating and moving about) E3: <u>Avoiding health and safety hazards</u> *	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
G3: Protecting self from exploitation	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
4	5				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
		3	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		4	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		Mid-frequency critical support time score =					Sum of all times entered	
		*Daily support activities that have less than daily support needs are added into the mid-frequency critical support time score.						

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9680 How does the residential algorithm determine your weekly critical support time? The residential algorithm uses the following chart to calculate your weekly critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)						
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity	
((A2)) <u>A7</u> : Taking care of clothes (including laundering)	1 or more	0	0 or more	0		
			0 or more	0		
		2	0	0		
			1	.25		
			2	1		
			3	3		
			4	5		
			3	0		0
				1		.25
		2		1		
		3		3		
		4	0	0		
			1	.25		
			2	1		
			3	3		
			4	5		

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)									
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity				
(B3) B5: Using public services in the community	1 or more	0	0 or more	0					
		1	0 or more	0					
		2	0	0					
			1	.25					
			2	1					
			3	3					
			4	5					
		3	0	0					
			1	.25					
			2	1					
			3	3					
			4	5					
		4	0	0					
			1	.25					
			2	1					
			3	3					
			4	5					
			B6: Shopping and purchasing goods and services	1 or more		0	0 or more	0	
						1	0 or more	0	
						2	0	0	
1	.25								
2	1								
3	3								
4	5								
3	0	0							
	1	.25							
	2	1							
	3	3							
	4	5							
4	0	0							
	1	.25							
	2	1							
	3	3							
	4	5							

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
F2: Participating in recreation ((and/or)) leisure activities with others	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		3	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		4	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		F8: Engaging in volunteer work	1 or more	0		0 or more	0	
				1		0 or more	0	
				2		0	0	
1	.25							
2	1							
3	3							
4	5							
3	0			0				
	1			.25				
	2			1				
	3			3				
	4			5				
4	0			0				
	1			.25				
	2			1				
	3			3				
	4			5				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
(G2) G7: Managing money and personal finances	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		3	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		4	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		Weekly critical support time score =					Sum of all times entered	

WSR 18-21-149
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed October 19, 2018, 3:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-098.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) division of child support (DCS) is proposing to amend several sections in chapter 388-14A WAC as we implement Part I of SSB 6334 (chapter 150, Laws of 2018); the effective date of Part I of the act was June 7, 2018. These sections include WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-3312 The division of child support serves a notice of support owed to establish a fixed dollar amount owed by either parent for medical support, 388-14A-3324 What happens in a hearing on a notice of support owed served under WAC 388-14A-3312?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to

provide medical support for my children, what do I have to do?, 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide medical support?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4160 Are there any limits on the amount an obligated parent may be required to pay for health insurance premiums?, 388-14A-4175 Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS medicaid purchasing administration?, and 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation.

SSB 6334 introduces new terminology, but does not change the way that medical support obligations are established, either in court or in the administrative process. However, there are changes in the policies and procedures regarding how DCS enforces medical support obligations, most notably that an obligated parent can satisfy his or her health care coverage obligation by enrolling the child(ren) in public health care coverage. In Washington, "public health care coverage" means medicaid and the other programs included in the apple health program.

At the same time as we commenced the permanent rule-making process, DCS adopted emergency rules effective June 7, 2018, under WSR 18-13-011; a second emergency rule was necessary because emergency rules may not remain in effect for longer than one hundred twenty days after filing with the office of the code reviser and it is not always possible to complete the permanent rule adoption process within that time limit. The second emergency rule, adopted under WSR 18-21-022, took effect on October 6, 2018, in order to maintain the status quo as the permanent rule adoption process continues; the text of the second emergency rule is exactly the same as the text of the first emergency rule.

The text of the proposed permanent rules differs from the text of the emergency rules; although the intent of the rules remains the same, there have been some changes made. Please review the text of the proposed rules carefully.

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than December 12, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 11, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS DCS is proposing to adopt permanent rules to implement Part I of SSB 6334 (chapter 150, Laws of 2018), which made changes to the law and terminology concerning medical child support obligations. The statutory change introduces new terminology, but does not change the way that medical support obligations are established, either in court or in the administrative process. However, there are changes in the policies and procedures regarding how DCS enforces medical support obligations, most notably that an obligated parent can satisfy his or her health care coverage obligation by enrolling the child(ren) in public health care coverage. In Washington, "public health care coverage" means medicaid and the other programs included in the apple health program.

Reasons Supporting Proposal: The proposed rules provide updates to, and clarification of, procedures and requirements dealing with medical support obligations. Part I of SSB 6334 amended various statutes dealing with medical child support obligations as required under the final rule entitled *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* ("Flexibility Rule"), which was published on December 20, 2016, in the Federal Register, Volume 81, Number 244, on page 93492. Under the implementation schedule for the Flexibility Rule, 45 C.F.R. 303.31 (a)(2) was required to be implemented on or before July 1, 2018. In light of that requirement, the Washington legislature passed

SSB 6334 and made Part I of the bill effective on June 7, 2018. Other parts of the bill take effect January 1, 2019.

Statutory Authority for Adoption: Part I of SSB 6334 (chapter 150, Laws of 2018), effective date June 7, 2018; RCW 26.09.105, 26.18.170, 26.23.050, 34.05.220 (1)(a), 34.05.350(1), 74.08.090, 74.20.040(9).

Statute Being Implemented: Part I of SSB 6334 (chapter 150, Laws of 2018), effective date June 7, 2018; SSB 6334 amended RCW 26.09.105, 26.18.020, 26.18.170, 26.23.050, 74.20A.055, 74.20A.056, 74.20A.059, and 74.20A.300.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507, 360-664-5065.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vii) provides that no cost-benefit analysis is required for rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

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

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

Is exempt under RCW 19.85.025.

Explanation of exemptions: RCW 19.85.025(4) provides that chapter 19.85 RCW does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses. These rules apply only to the establishment of support obligations for dependent children.

October 16, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order either setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health ((~~insurance~~)) care coverage which provides primary care services to the children with reasonable effort by the ((~~custodian~~)) custodial parent.

"Accrued debt" means past-due child support which has not been paid.

"Acknowledged father" means a man who has established a father-child relationship (~~(under)~~ by:

(1) Signing a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 prior to January 1, 2019;

(2) Signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019; or

(3) Signing a valid acknowledgment of paternity or parentage under another jurisdiction's laws.

"Acknowledged parent" means an individual who, after January 1, 2019, has established a parent-child relationship by signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by the agency of an Indian tribe or another state or country's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state or tribe, or the central authority of another country. (~~(It)~~ For the state of Washington, ((this)) the Title IV-D provider is the division of child support (DCS) within the department of social and health services (DSHS).

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or "public assistance" means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the ~~((twenty-five dollar annual))~~ fee charged on never-assistance cases based on the amount of collections between October 1 and September 30 each year, required by the Federal Deficit Reduction Act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state, tribe, or country for the birth of a child.

"Cash medical support" ~~((is a term used in RCW 26.09.105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order))~~ means a combination of:

(1) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but this amount is limited to no more than twenty-five percent of the obligated parent's basic support obligation; and

(2) A parent's proportionate share of uninsured medical expenses.

"Central authority" means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the federal Social Security Act.

"Child," for the purposes of this chapter, means:

(a) An individual for whom a child support obligation is being established or enforced; or

(b) A dependent child as defined in RCW 74.20A.020 (3); and

(c) Unless the context or the facts of a particular case clearly requires otherwise, "child" may be used interchangeably with the term "children."

"Children," for the purpose of this chapter, means more than one child, unless the context or the facts of a particular case clearly requires the term to refer to only one child.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Controlling order" means the only order issued or, where multiple orders exist, the order determined by a tribunal to control prospective current support pursuant to the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

"Controlling order state" means the state in which the only order was issued or, where multiple orders exist, the state in which the order determined by a tribunal to control

prospective current support pursuant to the UIFSA was issued.

"Country" means a foreign country (or a political subdivision thereof) declared to be a Foreign Reciprocating Country (FRC) under 42 U.S.C. 659A and any foreign country (or political subdivision thereof) with which the state has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with federal law pursuant to 42 U.S.C. 659A.

"Court order" means a judgment, decree or order of a Washington state superior court, or a court of comparable jurisdiction of an Indian tribe or another state or country.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

"Department" means the Washington state department of social and health services (DSHS).

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Determination of parentage" means the establishment of the parent-child relationship by:

(1) A judicial proceeding;

(2) The signing of a valid acknowledgment of paternity under;

(a) RCW 26.26.300 through 26.26.375 prior to January 1, 2019; or ((adjudication by the court))

(b) Another jurisdiction's laws dealing with the acknowledgment or affidavit of paternity or the acknowledgment of parentage; or

(3) The signing of a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019.

"Differentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

"Differentiated support order" means a child support order which provides a monthly amount of child support for

two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be divided into a "per child" amount for each child covered by the support order.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Benefits under the family and medical leave insurance program under Title 50A RCW;

(7) Gains from capital, labor, or a combination of the two; and

~~((7))~~ (8) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or ~~((a child))~~ one or more children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the ~~((child(ren)))~~ child or children, and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington, including an order entered by a tribunal in an Indian tribe or another state or country.

"Foreign reciprocating country" or FRC means a country which the federal government has declared to be a foreign reciprocating country, which means that the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to custodial parents who are residents of the United States, and that such procedures are substantially in conformity with the standards prescribed under title IV-D of the federal Social Security Act.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the ~~((state division of child and family services (DCFS)))~~ the department of children, youth, and families (DCYF).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health care coverage" means fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child or children. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. The term "health care coverage" includes, but is not limited to, health insurance coverage.

"Health insurance" ~~((means insurance coverage for all medical services related to an individual's general health and well-being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.); pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. Health insurance coverage does not include medical assistance provided under chapter 74.09 RCW))~~ or "health insurance coverage" is included in the definition of "health care coverage." Health insurance coverage includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Initiating agency" or **"initiating jurisdiction"** means a state or Tribal IV-D agency or the central authority of another country, as defined in this rule, in which an individual has applied for or is receiving services.

"Intergovernmental IV-D case" means an IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and ~~((child(ren)))~~ children that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes, and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking

only to collect support arrearages, whether owed to the family or assigned to the state.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF. This term includes public health care coverage, which is called apple health in Washington state.

"Medical expenses," for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental, orthodontic, and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" ~~((means any combination))~~ consists of ((the following)):

(1) Health ((insurance)) care coverage ((for a dependent child)), which may be health insurance coverage or public health care coverage; and

(2) ((Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;)) Cash medical support, which consists of;

~~((3) Amounts owed by a noncustodial parent to the state as a) (a) A parent's monthly payment toward the ((cost of managed care)) premium paid for coverage ((for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment)) provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and~~

~~((4) Amounts owed by one parent to the other parent as his or her) (b) A parent's proportionate share of uninsured medical expenses ((for a dependent child)).~~

"Monthly payment toward the premium" means a parent's contribution toward(=

•) premiums paid ((by the other)) for coverage provided by a public entity or by another parent ((for insurance coverage for the child; or

• Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical cov-

erage through the department under chapter 74.09 RCW for which there is an assignment.

This contribution)), which is based on the obligated parent's proportionate share of the premium paid, but ((may not exceed)) is limited to no more than twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or "NMSN" is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity or parentage, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Nonmedical expenses" means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such as tuition and long-distance transportation costs to and from the parents for visitation purposes.

"Obligated parent" means a parent who is required under a child support order to provide medical support, which could include health ((insurance)) care coverage or to reimburse the other parent for his or her share of uninsured medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Parent" means an individual who has established a parent-child relationship under:

- (1) RCW 26.26.101 prior to January 1, 2019;
- (2) RCW 26.26A.100 on or after January 1, 2019; or
- (3) Under the laws of another jurisdiction.

"Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or "PSO" means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 U.S.C. 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Premium" means the amount paid for coverage provided by a public entity or by another parent for a child covered by a child support order. This term may also mean "cost of coverage."

"Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

"Private insurance" (~~means~~) is a term used in this chapter to refer to accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include public health ((insurance)) care coverage provided by the state ((without a contribution from either parent)).

"Proportionate share" or **"proportional share"** means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Public health care coverage," sometimes called "state purchased health care," means state-financed or federally financed medical coverage, whether or not there is an assignment of rights. For children residing in Washington state, public health care coverage is called apple health; this includes coverage through the department of social and health services or the health care authority, except for coverage under chapter 41.05 RCW. For children residing outside of Washington, this includes coverage through another state's agencies that administer state purchased health care programs.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responding agency" or **"responding jurisdiction"** means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support," (~~means a~~) depending on the context in which it is used, can mean one of the following:

(1) An amount paid directly to the custodial parent by the noncustodial parent during a time when there is an open TANF grant, which the custodial parent does not immediately report or turn over to the department;

(2) A debt owed to the division of child support by anyone other than a noncustodial parent; or

(3) Amounts collected and retained by the division of child support which are applied to current or past due child support obligations which have been assigned to the state.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

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

"Self-support reserve" or **"self support reserve"** means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of a court of comparable jurisdiction in an Indian tribe or another state or country.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including uninsured medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, ~~((enforcement of))~~ reimbursement for uninsured medical expenses, health ~~((insurance))~~ care coverage, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health ~~((insurance))~~ care coverage, uninsured medical expenses, birth costs, and child care or special child rearing expenses.

"Support order" means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy

families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-D agency" or "IV-D agency" means the ~~((division of child support, which is the))~~ agency responsible for carrying out the Title IV-D plan in ~~((the))~~ a state ~~((of))~~ or tribe. For the state of Washington~~((-Also refers to the Washington state support registry (WSSR)))~~, this is the division of child support (DCS) within the department of social and health services (DSHS).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage, and includes such courts, agencies or entities in other states or countries.

"Underlying order" means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

"Undifferentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided into "per child" amounts for each child covered by the support order.

"Undifferentiated support order" means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

"Uninsured medical expenses,"~~((of))~~ for the purpose of establishing or enforcing support obligations, means:

- (1) Medical expenses not paid by insurance for medical, dental, orthodontic, prescription, and optometrical costs incurred on behalf of a child; and
- (2) Premiums, copayments, or deductibles incurred on behalf of a child.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a

child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"Washington State Support Registry" or "WSSR" is the entity created under RCW 26.23.030 within the division of child support (DCS) which, among other duties, contains a central unit for the collection, accounting and disbursement of support payments.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

(~~"WSSR" is the Washington state support registry.~~)

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3312 The division of child support serves a notice of support owed to establish a fixed dollar amount owed by either parent for medical support. (1) Depending on the specific requirements of the child support order, and only if the case meets the criteria set out in WAC 388-14A-4111, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section:

(a) On either the noncustodial parent (NCP) or the custodial parent (CP), as appropriate, in order to:

(i) Establish as a sum certain and collect the obligated parent's proportionate share of uninsured medical expenses owed to the parent seeking reimbursement. This process is called reimbursement of uninsured medical expenses;

(ii) Establish as a sum certain and collect the obligated parent's monthly payment toward the premium currently being paid by the other parent for (~~insurance~~) health care coverage for (~~the~~) a child named in the support order; or

(iii) Establish and collect amounts owed under both subsections (a)(i) and (a)(ii) of this section.

(b) On the NCP in order to establish as a sum certain and collect the NCP's monthly payment toward the premium paid by the state for managed care coverage for (~~the~~) a child named in the support order, if the child receives (~~state-financed medical~~) public health care coverage (~~through the department under chapter 74.09 RCW for which~~) in the state of Washington, whether or not there is an assignment of rights.

(2) Unless otherwise specified in the order, each parent's proportionate share of uninsured medical expenses and (~~medical insurance~~) health care premiums is the same as the proportionate share of income shown on the Washington state child support schedule worksheet that was completed as part of the support order.

(a) On occasion, a tribunal may specify that medical support obligations are to be shared between the parents at a different percentage than the one on the worksheet.

(b) DCS follows the terms of the underlying order when serving a notice of support owed under this section.

(3) WAC 388-14A-4111 and 388-14A-4112 set out some of the reasons why DCS may decline a party's request to enforce a medical support obligation.

(4) Only a CP who is both a parent of the child and a party to the support order may ask DCS to serve a notice of support owed on the NCP under subsection (1)(a) of this section. If the CP is not both a parent of the child and a party to the support order, DCS' denial of the request does not affect the CP's ability to bring an action in another tribunal to enforce the CP's claim against the NCP for medical support. The CP may file an action in court to:

(a) Make a claim for reimbursement of uninsured medical expenses;

(b) Make a claim for a monthly contribution toward any (~~insurance~~) health care coverage provided by the CP; or

(c) Seek both kinds of relief against the NCP.

(5) DCS may serve a notice of support owed on the NCP under subsection (1)(b) of this section without regard to the CP's status as a parent or party to the order, if the child receives (~~state-financed medical~~) public health care coverage (~~through the department under chapter 74.09 RCW for which~~) in the state of Washington, whether or not there is an assignment of rights.

(6) Except as limited in subsection (4) above, either the NCP or the CP may ask DCS to serve a notice of support owed on the other party to the support order in order to establish the obligated parent's proportionate share of uninsured medical expenses as a sum certain amount if the support order establishes such an obligation. The parent seeking reimbursement for uninsured medical expenses must:

(a) Apply for full collection services at the time of the request, unless the parent already has an open full collection case with DCS;

(b) Have paid the uninsured medical expenses before seeking reimbursement through DCS;

(c) Provide proof of payment of at least five hundred dollars in uninsured medical expenses;

(d) Complete the forms provided by DCS for the claim, or at a minimum present the required information and documentation in a format similar to that in the DCS forms; and

(e) Declare under penalty of perjury that he or she has asked the obligated parent to pay his or her share of the uninsured medical expenses or provide good cause for not asking the obligated parent.

(i) If the uninsured medical expenses have been incurred within the last twelve months, this requirement is waived; and

(ii) If the obligated party denies having received notice that the other party was seeking reimbursement for uninsured medical expenses or support, the service of the notice of support owed constitutes the required notice.

(7) A party's request that DCS serve a notice of support owed to establish the other parent's obligation for medical support, including reimbursement for uninsured medical expenses:

(a) May be for a period of up to twenty-four consecutive months;

(b) May include only medical services provided after July 21, 2007;

(c) May not include months which were included in a prior notice of support owed for medical support or a prior judgment;

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for medical support;

(e) May include a claim for the obligated parent's proportionate share of any health ~~((insurance))~~ care coverage premiums paid by the requesting parent after July 21, 2007, but this type of claim is limited as provided in subsections (11) and (12) of this section; and

(f) May include a request that DCS establish a monthly payment toward the premium representing the obligated parent's proportionate share of the premium paid by the requesting parent only for premiums paid for health ~~((insurance))~~ care coverage provided after September 30, 2009.

(8) The party seeking reimbursement must ask DCS to serve a notice of support owed for medical support within two years of the date that the uninsured medical expense or premium was incurred.

(a) The fact that a request that DCS serve a notice of support owed for medical support is denied, either in whole or in part, does not mean that the party cannot pursue reimbursement of those uninsured medical expenses by proceeding in court.

(b) If a party obtains a judgment for reimbursement of uninsured medical expenses or other type of medical support, DCS enforces the judgment.

(9) When either party asks DCS to serve a notice of support owed under this section to establish the other party's proportionate share of uninsured medical expenses as a sum certain amount and the medical expenses include premiums for health ~~((insurance))~~ care coverage for the ~~((child(ren)))~~ children covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

(a) If the order does not have such a requirement, DCS includes the health ~~((insurance))~~ care coverage premiums in the claim for reimbursement of uninsured medical expenses, but limits the obligated parent's obligation as provided in subsections (11) and (12) of this section.

(b) If the order does have such a requirement, DCS serves a notice of support owed which:

(i) Includes the health ~~((insurance))~~ care coverage premiums in the claim for reimbursement of uninsured medical expenses; and

(ii) If appropriate, includes the provisions necessary to establish a monthly contribution which represents the obligated parent's proportionate share of the premium paid by the other parent (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health ~~((insurance))~~ care coverage for the ~~((child(ren)))~~ children.

(10) There are two circumstances under which DCS may serve a notice of support owed to establish the amount owed by an obligated parent as a monthly payment toward the premium paid for coverage by the other parent or the state. DCS may serve the notice of support owed when the support order:

(a) Specifically provides that the obligated parent's medical support obligation under RCW 26.09.105 (1)(c) is to pay a monthly payment toward the premium instead of providing

health ~~((insurance))~~ care coverage, but does not set that obligation as a sum certain; or

(b) Provides that, if health insurance is not available through the obligated parent's employer or union at a cost not to exceed twenty-five percent of the obligated parent's basic support obligation, the obligated parent must pay a monthly payment toward the premium but does not set that obligation as a sum certain. In this situation, DCS serves the notice of support owed to establish a monthly payment toward the premium paid only if the obligated parent is not already providing coverage for the children.

(11) DCS may collect a maximum of twenty-five percent of the obligated parent's basic support obligation for medical premium costs claimed by the requesting party.

(12) DCS may not collect for medical premium costs claimed by the requesting party through either the monthly payment toward the premium or the reimbursement of uninsured medical expenses if the obligated parent is providing accessible health ~~((insurance))~~ care coverage for the child. The obligated parent is only required to pay those costs if he or she is not providing accessible health ~~((insurance))~~ care coverage for the child.

(13) Once DCS serves a notice of support owed under this section that establishes a medical support obligation representing the obligated parent's proportionate share of the premium paid by the other parent, the obligated parent is not required to reimburse the other parent for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the obligated parent's basic support obligation.

(a) That portion of the obligated parent's proportionate share of the premium for a month that is not included in the obligated parent's monthly payment toward the premium may not be recovered by a later claim for unreimbursed medical expenses; and

(b) The obligation to contribute a proportionate share of other uninsured medical expenses is not affected by the establishment of a medical support obligation for medical premiums paid by the requesting parent under this section.

(14) Once DCS serves a notice of support owed under this section that establishes a monthly payment toward the premium which represents the NCP's proportionate share of the premium paid by the state, the NCP is not required to reimburse the state for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the NCP's basic support obligation.

(15) An NCP who wants DCS to enforce the CP's medical support obligation must first apply for full child support enforcement services.

(a) DCS enforces a CP's medical support obligation only as provided under WAC 388-14A-4112.

(b) If the parties already have an open full enforcement case with DCS, DCS opens up a new case which is called the medical support case, and the previously existing case is called the main case.

(c) If the parties do not already have an open full enforcement case with DCS, DCS opens two cases:

(i) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case; and

(ii) The case where DCS is enforcing the underlying support order and collecting from the NCP is called the main case.

(16) In a notice of support owed under this section, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.

(17) Whenever DCS serves a notice of support owed under this section, that notice may also include a determination of the fixed dollar amount of:

(a) Any medical support debt owed by the obligated parent;

(b) Any amounts owed by the obligated parent under a previous notice of support owed that exceed the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed twenty-five percent of the obligated parent's basic support obligation; and

(c) Any amounts owed by the obligated parent under a previous notice of support owed that are less than the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed twenty-five percent of the obligated parent's basic support obligation.

(18) If the notice of support owed contains a determination that the order resulting from a previous notice of support owed calculated a medical support obligation that differed from the obligated parent's actual obligation after actual expenses or updated proportionate shares owed are considered, the notice may address how any difference may be credited or repaid in the absence of any agreement between the parties.

(19) If the obligated parent is the NCP, any amounts owed under a previous notice of support owed exceeding the actual obligation after actual expenses or updated proportionate shares owed are considered in the final administrative order are added to the NCP's support debt.

(a) Amounts owed to the CP are added to the unassigned arrears on the case.

(b) Amounts owed to reimburse the state for medicaid or other ((state financed medical)) public health care coverage ((through the department under chapter 74.09 RCW for which there is an assignment)) in the state of Washington are added to the main case as permanently assigned arrears.

(20) If the obligated parent is the CP, any amounts owed under a previous notice of support owed exceeding the actual obligation after actual expenses are considered in the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsection (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

(21) If both the CP and the NCP request that DCS serve a notice of support owed under this section on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

(22) DCS does not serve a second or subsequent notice of support owed under this section on an obligated parent until the party seeking reimbursement once again meets the conditions set forth in WAC 388-14A-3330.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3324 What happens in a hearing on a notice of support owed served under WAC 388-14A-3312? (1) A hearing on a notice of support owed for medical support served under WAC 388-14A-3312 is subject to WAC 388-14A-3320 and this section. See WAC 388-14A-3323 for the rules concerning a hearing on a notice of support owed under WAC 388-14A-3311.

(2) A hearing on a notice of support owed served under WAC 388-14A-3312 is only for the purpose of determining:

(a) Issues regarding the reimbursement of uninsured medical expenses, such as:

(i) Whether the party on whom the notice was served is obligated under a support order to pay for uninsured medical expenses for the children covered by the order;

(ii) Whether the party seeking reimbursement has provided sufficient proof of payment for uninsured medical expenses for the children;

(iii) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(iv) The obligated parent's share of the uninsured medical expenses;

(v) The amount, if any, the obligated parent has already paid to the party seeking reimbursement;

(vi) Whether the obligated parent provided coverage during the time in question if reimbursement of medical premium costs is requested; and

(vii) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(b) Issues regarding a monthly payment toward the premium paid for coverage for the children, such as:

(i) Whether the support order requires the obligated parent to pay when the obligated parent does not provide coverage;

(ii) Whether the obligated parent is currently providing coverage, or did so during the time period in question;

(iii) The amount of the premium paid by the other parent or by the state to cover the ~~((child(ren)))~~ children;

(iv) The obligated parent's proportionate share of the premium;

(v) The amount, if any, the obligated parent has already contributed toward health ~~((insurance))~~ care coverage premiums paid by the other parent or the state for the time period in question; and

(vi) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health ~~((insurance))~~ care coverage premium.

(3) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the party seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determinations listed in subsection (2)(a) above.

(4) In an annual review hearing under WAC 388-14A-3330, the ALJ may not set a payment schedule on the support debt other than as provided in WAC 388-14A-3312 if the ALJ determines that the obligated parent has paid less than his or her actual obligation for medical support under the order after actual expenses or updated proportionate shares owed are considered.

(a) If the obligated parent is the noncustodial parent (NCP), any amounts owed are added to the NCP's support debt.

(i) Any amounts owed to the custodial parent (CP) are added to the nonassistance child support arrears owed by the NCP to the CP.

(ii) Any amounts owed to the state are added to the assigned child support arrears owed by the NCP.

(b) If the obligated parent is the CP, any amounts owed are paid as provided in WAC 388-14A-3312(17).

(5) If, in an annual review hearing under WAC 388-14A-3330, the ALJ determines that the NCP's obligation calculated in a previous notice of support owed is more than his or her actual obligation for medical support under the order after actual expenses or updated proportionate shares owed are considered, and the parties cannot agree on how the difference may be credited or repaid, the ALJ must enter an order providing that any difference may be:

(a) Applied as an offset to any nonassistance child support arrears owed by the NCP to the CP.

(b) In the form of a credit against the NCP's future child support obligation, if there is no nonassistance debt owed to the CP:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) Paid in the form of a direct reimbursement by the CP to the NCP, but only with the consent of the CP.

(6) If the ALJ determines that the CP's obligation under a previous notice of support owed is more than his or her actual obligation for medical support under the order after actual expenses and updated proportionate share amounts are considered, and the parties cannot agree on how the difference may be credited or repaid, the ALJ must enter an order providing that any difference must be added to the nonassistance child support arrears owed by the NCP.

(7) The ALJ must determine either or both of the following, depending on what was requested in the notice of support owed:

(a) The amount owed by the obligated parent to the other for reimbursement of uninsured medical expenses; and

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health ~~((insurance))~~ care coverage premium paid by the other parent or the state.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

(a) Any circumstances that have changed;

(b) Any relief requested; and

(c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition to prospectively modify an administrative order for child support on behalf of an initiating jurisdiction in an inter-governmental case.

(4) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

(5) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

(6) A request to add a requirement for the custodial parent (CP) to provide health ~~((insurance))~~ care coverage, or to add a provision in the order to include the CP's share of uninsured medical expenses, is not by itself a sufficient basis for modification of the order.

(7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

~~((8))~~ (9) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(10) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4100 How does the division of child support enforce my obligation to provide health ~~((insurance))~~ care coverage for my children? (1) If a child support order requires a parent to provide health ~~((insurance))~~ care coverage for the children named in the order, the division of child support (DCS) attempts to enforce that requirement according to the terms of the order.

(2) A parent required to provide medical support or health ~~((insurance))~~ care coverage for a child is called the obligated parent, and can be either the custodial parent (CP) or the noncustodial parent (NCP).

(3) WAC 388-14A-4111 and 388-14A-4112 describe when DCS may accept or decline a request to enforce a medical support obligation.

(4) When DCS is enforcing a support order which contains a specific dollar limit for the cost of health ~~((insurance))~~ care coverage premiums or provides for coverage which is available at no cost to the obligated parent, DCS does not require the obligated parent to provide health ~~((insurance))~~ care coverage if coverage is not available within the limitations of the order.

(5) When DCS is enforcing a support order entered in Washington on or after October 1, 2009, providing that either or both parents must provide coverage and/or a proportionate share of uninsured medical expenses as part of the medical support obligation under RCW 26.09.105, the rules in this subsection apply unless the support order specifies differently:

(a) The obligated parent must provide health ~~((insurance))~~ care coverage for the dependent ~~((child(ren)))~~ children covered by the order if coverage is:

(i) Available or becomes available through accessible ~~((private insurance))~~ health care coverage which is not provided through the obligated parent's employer or union; or

(ii) Available or becomes available through the obligated parent's employment or union at a cost that is not more than twenty-five percent of the obligated parent's basic support obligation.

(b) If the obligated parent does not provide proof of coverage or if coverage is not available, DCS may serve a notice of support owed under WAC 388-14A-3312 to determine the

monthly amount that the obligated parent must pay as his or her proportionate share of any premium paid by the other parent or by the state on behalf of the ~~((child(ren)))~~ children.

(6) When DCS is enforcing a support order entered in Washington between May 13, 1989 and September 30, 2009, unless the support order specifies differently, the obligated parent must provide health insurance for the dependent children if coverage is:

(a) Available or becomes available through the obligated parent's employment or union; and

(b) Available at a cost of not greater than twenty-five percent of the obligated parent's basic support obligation.

(7) When DCS is enforcing a Washington support order entered prior to May 13, 1989, unless the support order specifies differently, the obligated parent must provide health insurance for the dependent ~~((child(ren)))~~ children if coverage is available or becomes available through the obligated parent's employment or union:

(a) For a maximum of twenty-five dollars per month, if the order specifies that the obligated parent must provide coverage only if it is available at a reasonable cost; or

(b) For any premium amount whatsoever, if the order does not specify reasonable cost.

(8) DCS serves a notice of intent to enforce a health ~~((insurance))~~ care coverage obligation if the support order:

(a) Requires the obligated parent either to provide health ~~((insurance))~~ care coverage or prove that coverage is not available; and

(b) Does not inform the obligated parent that failure to provide health ~~((insurance))~~ care coverage or prove it is not available may result in enforcement of the order without notice to the obligated parent.

(9) DCS serves the notice of intent to enforce a health ~~((insurance))~~ care coverage obligation on the obligated parent by certified mail, return receipt requested, or by personal service.

(10) The notice advises the obligated parent that he or she must submit proof of coverage, proof that coverage is not available, or proof that the obligated parent has applied for coverage, within twenty days of the date of service of the notice.

(11) The notice advises the obligated parent that, if health ~~((insurance))~~ care coverage is not yet available, the obligated parent must immediately notify DCS if health ~~((insurance))~~ care coverage becomes available through the obligated parent's employer or union.

(12) When DCS enforces an obligated parent's health ~~((insurance))~~ care coverage obligation, such enforcement may include asking the employer and the plan administrator to enroll the obligated parent in a health insurance plan available through the employer.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4110 If my support order requires me to provide medical support for my children, what do I have to do? (1) Once a support order is entered requiring medical support, the obligated parent must take the following actions within twenty days:

(a) Provide health ~~((insurance))~~ care coverage; and
 (b) Provide proof of coverage to the other parent and to the division of child support (DCS), such as:

(i) The name of the insurer providing the health insurance coverage or the type of public health care coverage provided by the obligated parent;

(ii) The names of the beneficiaries covered;

(iii) The policy number;

(iv) That coverage is current; and

(v) The name and address of the obligated parent's employer.

(2) If private, union or employer-provided health insurance coverage that is accessible to the children named in the order is available, the obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the obligated parent, as soon as health insurance becomes available, the obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) ~~((Medical assistance provided by the department under chapter 74.09 RCW does not substitute))~~ Providing public health care coverage for the children satisfies an obligated parent's requirement to provide for health ~~((insurance))~~ care coverage, as long as the obligated parent also covers the children under any insurance available through his or her employer or union which is provided at no cost to the obligated parent.

(5) DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish either or both of the following:

(a) Either parent's share of uninsured medical expenses owed to the other parent; or

(b) Either parent's monthly payment toward the premium paid for coverage by the other parent or the state, if:

(i) Health insurance coverage is not available through the parent's employer or union or is not otherwise provided; and

(ii) The support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage.

(6) See WAC 388-14A-4165 for a description of what happens when the combined total of a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

(7) Both parents must notify DCS any time there is a change to the health ~~((insurance))~~ care coverage for the children named in the order.

(8) WAC 388-14A-4111 and 388-14A-4112 describe when DCS may accept or decline a request to enforce a medical support obligation.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation? The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170 and 26.23.110 if one or more of the following apply:

(1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;

(2) The department of social and health services is not paying public assistance or providing foster care services;

(3) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;

(4) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;

(5) The party is requesting reimbursement of the obligated parent's proportionate share of medical premium costs, and the obligated parent is currently providing accessible health ~~((insurance))~~ care coverage for the child;

(6) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);

(7) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;

(8) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;

(9) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;

(10) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;

(11) DCS denies the application under WAC 388-14A-2020;

(12) The party requesting enforcement of the medical support obligation does not provide proof of payment, any required forms, and/or the declaration under penalty of perjury required under WAC 388-14A-3312;

(13) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide medical support? (1) A noncustodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the medical support obligation of the custodial parent (CP). WAC 388-14A-4111 describes when DCS may accept or decline a request to enforce a medical support obligation.

(2) DCS does not enforce the CP's medical support obligation unless the NCP files an application for nonassistance support enforcement services under WAC 388-14A-2000 (2)(c). The NCP must specify whether he or she is requesting that DCS enforce the CP's obligation to provide:

(a) The CP's proportionate share of uninsured medical expenses;

(b) Health ~~((insurance))~~ care coverage (including the possibility of a monthly payment toward the premium paid by the NCP for coverage of the children named in the order when appropriate); or

(c) Both.

(3) A medical support obligation includes providing health ~~((insurance))~~ care coverage or contributing a monthly payment toward the premium paid for coverage when appropriate, and paying a proportionate share of any uninsured medical expenses for the children.

(a) DCS may enforce the CP's obligation to pay a proportionate share of any uninsured medical expenses for the children under WAC 388-14A-3312.

(b) DCS may decide whether it is appropriate to enforce the CP's obligation to provide health ~~((insurance))~~ care coverage or contribute a monthly payment toward the premium paid for coverage under subsection (4) of this section.

(4) DCS does not enforce a custodial parent's obligation to provide health ~~((insurance))~~ care coverage or pay a monthly payment toward the premium paid for coverage when:

(a) The support order does not include a medical support obligation which includes providing health ~~((insurance))~~ care coverage or paying monthly payment toward the premium paid for coverage for the CP.

(b) The NCP is already providing health ~~((insurance))~~ care coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health ~~((insurance))~~ care coverage exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health ~~((insurance))~~ care coverage provided by someone else.

(e) The children are receiving medicaid or another kind of public health care coverage.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

(5) DCS does not enforce a CP's obligation to pay a proportionate share of medical expenses incurred by an NCP when(~~:~~

~~(a))~~ the support order does not include an obligation for the CP to pay a proportionate share of uninsured medical expenses(~~(:~~

~~(b) The NCP is already providing health insurance coverage for the children covered by the order).~~

(6) If none of the conditions under subsection (4) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

(7) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the obligated parent to provide ~~((insurance))~~ coverage for a dependent child;

(b) The obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the obligated parent's employer or union.

(4) If sending the NMSN does not result in coverage for the child, DCS may seek to enforce the obligated parent's medical support obligation by other means, as provided in RCW 26.18.170 and WAC 388-14A-4100.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4160 Are there any limits on the amount an obligated parent may be required to pay for health insurance premiums? (1) The National Medical Support Notice (NMSN) advises the employer of any limitations on the amount an obligated parent may be required to pay for health insurance premiums to cover the children.

(2) Often the support order which contains the health insurance obligation determines the limitation on premium amounts, or states that there is no limitation. See WAC 388-14A-4100 for a discussion of premium limitation amounts.

(3) The premium limitation amount stated in the NMSN:

(a) Describes the premium amount required to cover the children named in the notice; and

(b) ~~((Does not))~~ May include any amounts required to cover the obligated parent, if DCS requires the employer or plan administrator to enroll the obligated parent in a health care coverage plan in order to obtain coverage for the obligated parent's children.

(4) Even if the medical insurance premium is within the limits set by the order or by WAC 388-14A-4100, the fifty percent limitation on withholding found in RCW 26.23.060 (3) still applies. See WAC 388-14A-4165 for a description of what happens when the fifty percent limitation is exceeded.

(5) When calculating the fifty percent limitation for withholding purposes:

(a) The premium attributable to coverage for the children is always included in this calculation; but

(b) The premium attributable to coverage for the obligated parent is included only when DCS requires the employer or plan administrator to enroll the obligated parent in a health insurance plan in order to obtain coverage for the obligated parent's children. See also WAC 388-14A-4165(3).

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4175 Who is required to notify the division of child support when ~~((insurance))~~ health care coverage for the children ends? (1) Once the division of child support (DCS) has notified an employer that a parent is obligated by a support order to provide health insurance coverage for the children named in the order, the National Medical Support Notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

(3) A parent who is required by a child support order to provide health ~~((insurance))~~ care coverage for his or her children must notify DCS and the other parent within thirty days of the date coverage for the children ends. This requirement applies whether the obligated parent is the custodial parent or the noncustodial parent.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4180 When must the division of child support communicate with the ~~((DSHS medicaid purchasing administration))~~ health care authority? (1) The division of child support (DCS) must inform the ~~((DSHS medicaid purchasing administration (MPA)))~~ health care authority (HCA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. ~~((MPA is the part of DSHS which))~~ The health care authority provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide ~~((MPA))~~ HCA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, medicaid number or the individual's Social Security number;

(b) Name of the obligated parent;

(c) Social Security number of the obligated parent;

(d) Name and Social Security number of the ~~((child(ren)))~~ children named in the order;

(e) Home address of the obligated parent;

(f) Name and address of the obligated parent's employer;

(g) Information regarding the obligated parent's health insurance policy; and

(h) Whether the ~~((child(ren)))~~ children named in the order are covered by the policy.

(3) DCS must periodically communicate with ~~((MPA))~~ HCA to determine if there have been any lapses (stops and starts) in the obligated parent's health ~~((insurance))~~ care coverage for medicaid applicants.

(4) Before DCS may serve a notice of support owed under WAC 388-14A-3312 (1)(b) to establish an obligated parent's monthly payment toward the premium paid by the state for coverage, ~~((MPA))~~ HCA must provide information regarding the premium paid for each child covered by the notice.

(a) DCS distributes to ~~((MPA))~~ HCA any collections based on the obligation established under WAC 388-14A-3312 (1)(b) when the ~~((child receives))~~ children receive state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(b) Such collections are retained by ~~((the department))~~ HCA to reimburse the state, subject to the limitations in WAC 388-14A-2035(4).

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105, 26.18.170, and 26.23.050. The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and the other parent of the ~~((child))~~ children;

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) Each parent's proportionate share of costs such as ~~((health care))~~ uninsured medical expenses, day care and special child rearing expenses;

(f) If requested by a party, the NCP's proportionate share of costs such as ~~((health care))~~ uninsured medical expenses or day care expenses in a sum certain amount per month;

(g) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, as provided in subsection (3) of this section, including but not limited to notice that if proof of health ~~((insurance))~~ care coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS

may seek direct enforcement through the obligated parent's employer or union without further notice to the parent;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a sum certain amount per month, and also as a "per month per child" amount if appropriate under WAC 388-14A-3200(4) and 388-14A-4800, and order payments in that amount.

(3) In determining the medical support obligation of the parents, the ALJ must:

(a) Require both parents to provide medical support for the children covered by the order. Medical support includes both:

(i) The obligation to provide health ~~((insurance))~~ care coverage for the children;

(A) If coverage that can be extended to cover the children is or becomes available through the obligated parent's employer or union((:));

(B) If the obligated parent can enroll the children in public health care coverage; or

(C) To make a monthly contribution toward the premium paid for coverage by the other parent or the state when coverage is not available; and

(ii) The obligation to pay his or her proportionate share of uninsured medical expenses.

(b) Determine whether one (but not both) of the parents should be excused from the obligation to provide coverage or contribute to a premium.

(i) The ALJ must state the reasons for excusing a parent from the coverage obligation.

(ii) The ALJ may not excuse that parent from the obligation to contribute his or her proportionate share of uninsured medical expenses.

(4) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(5) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(6) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(7) In a hearing held on a notice of support owed served on the NCP under WAC 388-14A-3310 or 388-14A-3311, the ALJ must comply with WAC 388-14A-3323 and 388-14A-3325 to determine, depending on what was requested in the notice:

(a) Whether a condition precedent in the order to begin or adjust the support obligation was met;

(b) The amount of monthly support as a fixed dollar amount;

(c) Any accrued arrears;

(d) Any difference between the amount calculated in the order resulting from a previous notice of support owed and

the actual amount of the NCP's obligation for the period covered by the order; and

(e) The amount of the NCP's share of daycare or child care expenses for the children, including:

(i) The amount that the NCP must pay each month as his or her ongoing share of daycare or child care expenses for the children; and

(ii) The amount of NCP's accrued debt for daycare or child care expenses.

(8) In a hearing held on a notice of support owed served on either the NCP or the CP issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:

(a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health ~~((insurance))~~ care coverage premium paid by the other parent or the state.

(9) Except as provided in WAC 388-14A-3324, the ALJ does not specify how the amounts owed by the obligated parent should be paid.

(10) In the event that DCS has served a notice of support owed under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

WSR 18-22-004

WITHDRAWAL OF PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed October 25, 2018, 8:27 a.m.]

The office of financial management requests the withdrawal of proposed rule making filed as WSR 18-20-079 on September 28, 2018.

Should you have any questions regarding this matter, please contact Kristie Wilson, 360-407-4139.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

WSR 18-22-032

PROPOSED RULES

HEALTH CARE AUTHORITY

(Employees and Retirees Benefits Division)

[Admin #2018-02—Filed October 29, 2018, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-034.

Title of Rule and Other Identifying Information: WAC 182-13-010 Purpose, 182-13-020 Definitions, 182-13-030 Eligibility, and 182-13-040 Application for medicare supplemental coverage.

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Drivingparking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: No sooner than December 12, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, email arc@hca.wa.gov, fax 360-586-9727, by December 11, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-725-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by December 7, 2018.

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

- Change references from medicare supplement coverage to medicare supplemental coverage.
- Revise several definitions in WAC 182-13-020.
- Align eligibility in WAC 182-13-030 with RCW 41.05-197.
- Clarify state residents can apply for medicare supplemental coverage thirty days before they are enrolled in Parts A and B of medicare.
- Allow residents to apply within sixty-three days instead of sixty days for coverage after becoming a new resident.
- Include guaranteed issue periods by cross-referencing RCW 48.66.045 and 48.66.055.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.197, 41.05.160.

Statute Being Implemented: RCW 41.05.197, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, 626 8th Avenue S.E., Olympia, WA, 360-725-0852; Implementation: Barbara Scott, 626 8th Avenue S.E., Olympia, WA, 360-725-0830, and Enforcement: Scott Palafox, 626 8th Avenue S.E., Olympia, WA, 360-725-1858.

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

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

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

October 29, 2018

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-07-011, filed 3/3/95, effective 4/3/95)

WAC 182-13-010 Purpose. The purpose of this chapter is to establish criteria for state residents for participation in medicare ~~((supplement))~~ supplemental coverage available through the HCA.

AMENDATORY SECTION (Amending WSR 95-07-011, filed 3/3/95, effective 4/3/95)

WAC 182-13-020 Definitions. Unless otherwise specifically provided, the definitions contained in this section apply throughout this chapter.

(1) "HCA" means the Washington state health care authority.

(2) "Health plan," or "plan" means any individual or group: Policy, agreement, or other contract providing coverage for medical, surgical, hospital, or emergency care services, whether issued, or issued for delivery, in Washington or any other state. "Health Plan" or "plan" also includes any group health plan that is maintained by any state and governed by the Public Health Services Act in 42 U.S.C. Chapter 6A, self-insured coverage governed by the federal Employee Retirement Income Security Act of 1974, coverage through the Washington state health insurance ((Access Act)) pool as described in chapter 48.41 RCW, ~~((coverage through the Basic Health Plan as described in chapter 70.47 RCW, and))~~ coverage through the medicaid program as described in Title 74 RCW, and coverage through the Washington state health benefit exchange as described in chapter 43.71 RCW. "Health plan" or "plan" does not mean or include: Hospital confinement indemnity coverage as described in WAC 284-50-345; disability income protection coverage as described in WAC 284-50-355; accident only coverage as described in WAC 284-50-360; specified disease and specified accident coverage as described in WAC 284-50-365; limited benefit health insurance coverage as described in WAC 284-50-370; long-term care benefits as described in chapter 48.84 RCW; or limited health care coverage ~~((such as dental only, vision only, or chiropractic only))~~ ((e.g., dental only)).

(3) "Lapse in coverage" means a period of time greater than ~~((ninety))~~ sixty-three continuous days without coverage by a health plan.

(4) "Resident" means a person who demonstrates that ~~((he/she lives))~~ they live in the state of Washington ~~((at the time of application for, and issuance of coverage))~~ by providing evidence of residency.

AMENDATORY SECTION (Amending WSR 95-07-011, filed 3/3/95, effective 4/3/95)

WAC 182-13-030 Eligibility. ~~((Residents are))~~ A resident is eligible to apply for medicare ~~((supplement))~~ supplemental coverage ~~((arranged by))~~ available through the HCA ~~((when they are))~~ provided the resident is:

(1) ~~((Eligible for))~~ Enrolled in Parts A and B of medicare~~(;);~~ and

(2) ~~((Actually enrolled in both Parts A and B of medicare not later than the effective date of medicare supplement cov-~~

~~erage.))~~ Not eligible to purchase coverage as a retired or disabled employee under RCW 41.05.195.

AMENDATORY SECTION (Amending WSR 95-07-011, filed 3/3/95, effective 4/3/95)

WAC 182-13-040 Application for medicare ((~~supplement~~) supplemental coverage. Residents meeting eligibility requirements may apply for medicare ((~~supplement~~) supplemental coverage ((~~arranged by~~) available through the HCA:

(1) ~~((During the initial open enrollment period of January 1 through June 30, 1995, or))~~ No earlier than thirty days before they are enrolled in both Parts A and B of medicare;

(2) Within ~~((sixty))~~ sixty-three days after becoming a resident~~((, or~~

~~(3) In the thirty day period before the resident becomes eligible for medicare, or~~

~~(4) Within sixty days of retirement, or~~

~~(5))~~ of Washington state;

~~(3)~~ During any open enrollment period established by federal or state law~~((, or~~

~~(6))~~;

~~(4)~~ During any open enrollment period established by the HCA subsequent to the initial open enrollment period provided that the applicant is replacing a health plan with no lapse in coverage; or

~~(5)~~ When replacing coverage as described in RCW 48.66.045 or when enrolling during a guaranteed issue period as described in RCW 48.66.055.

WSR 18-22-035

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 29, 2018, 3:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-14-017.

Title of Rule and Other Identifying Information: Revising chapter 172-121 WAC, Student conduct code.

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Room 201, Showalter Hall, Cheney, WA 99004.

Date of Intended Adoption: December 12, 2018.

Submit Written Comments to: Joseph Fuxa, Eastern Washington University, Main Campus, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by December 11, 2018.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 509-359-2874, email jfuxa@ewu.edu, by December 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The revisions to chapter 172-121 WAC, Student conduct code, update university definitions, processes and procedures for student conduct hearings.

Reasons Supporting Proposal: Modifications are being made to the processes and standards due to changes in practice.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

October 29, 2018

Joseph Fuxa

Labor Relations Manager

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-010 Introduction. Eastern Washington University is an academic community dedicated to providing instruction in higher education, advancing knowledge through scholarship and research, and providing related services to the community.

As a public institution of higher education, the university has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities and welfare of students, faculty, staff and guests. To achieve this, the university establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other university policies and directives, the university sets forth specific behavioral and academic expectations for students and student organizations. It is the responsibility of each student to clearly understand and comply with those expectations. ~~((The responsibility for enforcement of the student conduct code rests with the university president.))~~

The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established the following regulations for student conduct and discipline. The responsibility for enforcement of the student conduct code rests with the university president and is further delegated to the vice president for student affairs or designee.

These provisions are not intended to protect any person or class of persons from injury or harm.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Brief hearing" refers to a brief conduct review hearing before a conduct review officer or the student disciplinary council for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion and that do not involve felony-level sexual misconduct.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

~~"Complainant" means ((any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the university when the university files the complaint)) the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, the university may choose to fill the role of the complainant throughout the student conduct proceedings.~~

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a brief or full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a ~~((full))~~ brief conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or ~~((a))~~ designee ~~((of the dean of students))~~.

"Director of SRR" refers to the director of student rights and responsibilities ~~((, or designated representative))~~ or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to ~~((300 Showalter Hall))~~ 301 Pence Union Building, or emailing them to studentrights@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before a conduct review officer for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion, or that constitute felony-level sexual misconduct.

"Hearing authority" refers to the university official or student disciplinary council who holds a conduct review hearing.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant and the respondent.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization ~~((that is))~~ accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment, domestic violence, ~~((relationship))~~ dating violence, stalking, and acts of ~~((sexual violence))~~ nonconsensual sexual activity for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.

~~((("Sexual misconduct hearing" refers to a full conduct review hearing before a university official for allegations of sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion, or that rise to the level of felony-level sexual misconduct.))~~

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under

this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

~~("Summary hearing" refers to a brief review hearing before the conduct review officer.)~~

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or ~~((a))~~ designee ~~((of the university president))~~.

"Vice president for student affairs" refers to the vice president for student affairs or ~~((their designated representative))~~ designee.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-030 Rights of students. Any student or student organization charged with any violation of the student conduct code and the ~~((victim))~~ complainant in the case of an allegation of ~~((harassment or))~~ sexual misconduct, have the following rights:

- (1) The right to a fair and impartial conduct review process;
- (2) The right to prior written notice to attend a preliminary conference or hearing;
- (3) The right to remain silent during any conduct review hearing;
- (4) The right to know who filed the complaint against them as described in WAC 172-121-110;
- (5) The right to speak on their own behalf in all proceedings;
- (6) The right to hear all information and view all material presented against him or her;
- (7) The right to call witnesses as described in WAC ~~((172-121-120))~~ 172-121-121 or 172-121-122;
- (8) The right to ask or submit questions to be asked of witnesses for a full hearing, in a method determined by the conduct review officer, as described in WAC ~~((172-121-120))~~ 172-121-122;
- (9) The right to consult an advisor as described in WAC ~~((172-121-090))~~ 172-121-105(3);
- (10) The right to appeal as provided in WAC 172-121-130; and
- (11) The right to be subjected to university disciplinary action only one time for the same conduct.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-070 Conduct review officials. (1) The director of SRR or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints are promptly investigated and resolved as required by federal and state laws.

(e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president ~~((shall))~~ delegates to the vice president of student affairs the authority to designate one or more conduct review officers. The director of SRR may be designated as a conduct review officer. The conduct review officer(s) shall preside over brief hearings, council hearings, and full conduct ~~((review proceedings))~~ hearings under this chapter ~~((For sexual misconduct cases where the possible sanction may be suspension, expulsion, or involve felony level sexual misconduct, the CRO also acts as the decision maker as set forth in WAC 172-121-123))~~ and shall serve as the decision maker in such cases unless a brief hearing is held before the student disciplinary council.

As the presiding officer, in full hearings the conduct review officer has authority to:

- (a) Determine the order of presentation of evidence;
 - (b) Administer oaths and affirmations;
 - (c) Issue subpoenas pursuant to RCW 34.05.446;
 - (d) Rule on procedural matters, objections, and motions;
 - (e) Rule on motions for summary judgment;
 - (f) Rule on offers of proof and receive relevant evidence;
 - (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
 - (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
 - (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to ~~((full))~~ each party's opportunity for cross-examination and rebuttal ~~((by all parties))~~;
 - (j) Take official notice of facts pursuant to RCW 34.05.-452(5);
 - (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
 - (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
 - (m) Issue an order of default;
 - (n) Hold prehearing conferences; and
 - (o) Take any other action necessary and authorized by any applicable statute or rule.
- (3) Student disciplinary council: ~~((The student disciplinary council hears cases of student conduct code violations that do not involve sexual misconduct as described in WAC 172-121-120.))~~ All brief hearings are scheduled with a conduct review officer unless one of the parties requests a brief hearing before the student disciplinary council. The council also serves as an appeal authority under WAC 172-121-130.
- (a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the ~~((university president))~~

vice president for student affairs. Appointment of council pool members is as follows:

(i) Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: The director of SRR, or designee, shall serve as chair of council proceedings but will not have the right to vote, except in the case of a tie;

(iii) Vacancies: Council pool vacancies shall be filled as needed through ~~((presidential))~~ appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a brief hearing or an appeal, the director of SRR shall select available members from the council pool to serve as the session council. Each session council must include a quorum. A quorum is three voting members, which must include at least one student ~~((and)),~~ one faculty/staff member, and one other member who could be a student or faculty/staff member.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in receiving, investigating, ~~((and otherwise processing complaints))~~ advising, presiding over, and making decisions pertaining to individual student conduct cases shall not have any conflict of interest in the process. A conflict of interest exists if the investigator, advisor, presiding officer or decision maker is the respondent, complainant, or a witness; if the respondent, complainant, or witness is a family member or friend; if the individual has a personal interest or bias; or if the individual has previously served in an advisory capacity for any of the parties or witnesses. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) ~~((Anyone who serves as an investigator or advocate, or someone who is subject to the authority, direction, or discretion of such a person, may not serve as the conduct review officer for a full adjudicative hearing.~~

(3) Challenges to council membership. Members of the student disciplinary council and the conduct review officer ~~((shall not participate in any case in which they are the respondent, the complainant, a victim, or a witness; in which the respondent, complainant, victim, or a witness is a family member or friend; in which they have a personal interest or bias; or in which they have acted previously in an investigatory, advisory, or adjudicatory capacity))~~ are subject to the conflict of interest limitations set forth in subsection (1) of this section.

(a) If a member has such a conflict, the person shall recuse him/herself from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's or the conduct review officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the conduct review officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the director of SRR will appoint a replacement.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed at least every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a ~~((preliminary))~~ prehearing conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings;

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council or conduct review officer;

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; and

(x) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student discipline council or conduct review officer communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the respondent may review the records relative to their case. The respondent shall request to review the case records by contacting the con-

duct review officer. The conduct review officer shall make every reasonable effort to support the respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants (~~(-victims,)~~) or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities; or

(ii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is acting as the complainant, an EWU employee shall initiate the complaint.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified. The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the (~~(charges)~~) allegations rise to the level of a felony under Washington criminal law (~~(+ all such cases are referred to a council hearing under WAC 172-121-122 or a sexual misconduct hearing under WAC 172-121-123).~~) All allegations that may lead to a possible suspension, expulsion, or that rise to the level of felony sexual misconduct under Washington criminal law shall be referred for a university investigation and full hearing under WAC 172-121-122.

(3) Sexual misconduct (~~(hearings)~~) proceedings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct (~~(-This section shall apply)~~) regardless of the possible level of sanction or where the alleged acts occurred.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct to the university Title IX coordinator within twenty-four hours.

(b) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of sexual misconduct shall be promptly investigated and resolved. ~~((For student conduct cases, the university uses the hearing processes set forth in this code as the means of investigating a complaint.))~~ In the absence of extenuating circumstances, the university will seek to have the allegations resolved within sixty days from the date it is notified of the allegation.

(c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant ~~((or victim))~~ wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant ~~((or victim))~~ wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants ~~((or victims))~~. Files subject to public disclosure will be released to the extent required by law.

(d) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct, it will notify the potential ~~((victim))~~ complainant of their right to file a criminal complaint with campus or local law enforcement. If the ~~((victim))~~ complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the ~~((victim))~~ complainant that he or she is not required to file a report with local law enforcement. The university will report allegations of sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

(4) Interim measures. During the complaint review, the director of SRR, Title IX coordinator, or designee will evaluate the circumstances and recommend to the dean of students if any ~~((interim restriction action against the respondent is warranted or if any))~~ interim measures to assist or protect the ~~((complainant and/or victim))~~ parties during the conduct code process are needed. ~~((In cases of alleged sexual misconduct, the director of SRR shall, in conjunction with the dean of students and other appropriate university officials, take immediate steps to protect the complainant and/or victim from further harassment prior to completion of the investigation/resolution of the complaint. Appropriate steps may include separating the respondent and the complainant/victim.))~~ Interim measures may include, but are not limited to, safety planning with the EWU police department, no contact directives, academic or workplace modifications, providing counseling for the ((complainant/victim and/or harasser, and/or taking disciplinary action against the respondent.

~~((5) Inform complainant. As part of the complaint review process, the director of SRR will follow up with the))~~ complainant and/or respondent, campus housing modifications, and/or an interim restriction for the respondent. The purpose of an interim measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. The procedures and basis for imposing an interim restriction on the respondent is set forth in WAC 172-121-140.

(5) SRR will follow up with the parties as described below.

(a) For cases other than sexual misconduct, the director of SRR will contact the ~~((complainant))~~ parties and provide them with the following information:

(i) The ~~((complainant's))~~ parties' rights under the student conduct code;

(ii) A summary of the allegations ~~((which))~~ the complainant has against the respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct, the director of SRR will, in addition to the information specified under (a) of this subsection, provide ~~((the complainant))~~ both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the ~~((respondent))~~ other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a preliminary conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct, the ~~((complainant/victim))~~ complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within ten days of receiving notice of the dismissal.

(b) Preliminary conference. If the director of SRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-105 Conduct review proceedings. (1) General provisions:

(a) Conduct review proceedings in which the potential sanction is less than suspension, expulsion, or do not involve allegations of felony level sexual misconduct are ~~((summary hearings and considered brief adjudicative proceedings))~~ brief hearings in accordance with WAC ~~((172-108-010))~~ 172-108-050(3), and shall be conducted in an informal manner. Conduct review proceedings in which the potential sanction is suspension, expulsion, or that involve allegations of felony level sexual misconduct ~~((are council hearings or sexual misconduct hearings under this code and))~~ are considered full ~~((adjudicative proceedings))~~ hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant~~((, victim,))~~ and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant~~((, victim,))~~ or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the conduct review officer with a FERPA release signed by the student they are assisting;

(d) If a complainant~~((, victim,))~~ or the respondent is represented by an attorney, the attorney shall provide the conduct review officer and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of repre-

sentation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding.

(4) Review of evidence:

(a) In ~~((summary))~~ brief hearings, the respondent, and, in cases of sexual misconduct, the ~~((complainant/victim))~~ complainant may request to view material related to their case prior to a scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In council hearings, the parties may request to view material related to the case prior to the scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the conduct review officer. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the conduct review officer shall allow any other party to object to the request. The conduct review officer will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-110 ~~((Preliminary conference.))~~ Notice of allegations and initial scheduling. (1) Scheduling.

If, after reviewing a complaint, the director of SRR decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the respondent. In cases alleging sexual misconduct, the CRO assigned must have completed training on issues relating to sexual misconduct, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the ~~((charges))~~ allegations to the respondent must:

(a) Be made in writing;

(b) Include a written list of ~~((charges))~~ the allegations against the respondent; and

(c) Include the name of the conduct review officer assigned to the case and the deadline for the respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the respondent.

(2) Failure to respond: If the respondent fails to respond to the notice of ~~((charges))~~ allegations, the director of SRR shall schedule the preliminary conference and notify the respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Follow up with ~~((complainant/victim)) complainant~~. In all cases alleging sexual misconduct or if there will be a ~~((council)) full~~ hearing, the ~~((CRO)) SRR office~~ shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The ~~((CRO)) SRR office~~ shall also follow up with the complainant(s)/respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the ~~((complainant/victim)) complainant~~ has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the ~~((complainant/victim)) complainant~~ from further harassment or retaliation.

(4) ~~((Appearance.~~

~~(a) For summary hearings only the respondent and the respondent's advisor may appear at the preliminary conference, unless the case involves alleged sexual misconduct. In cases alleging sexual misconduct, the respondent and the complainant/victim, along with their advisors, if they choose to have an advisor, may appear at the preliminary conference.~~

~~(b) For council hearings and sexual misconduct hearings, both parties and their advisors may appear at the preliminary conference.~~

~~(5) Failure to appear. In cases where proper notice has been given but the respondent fails to attend the preliminary conference, the CRO may:~~

~~(a) Proceed with a hearing and decide the case based on the information available; or~~

~~(b) Place a hold on the respondent's academic records as described in WAC 172-121-080.~~

~~(6) Preliminary conference. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. If both of the parties are not present, the CRO will refrain from discussing any nonprocedural matters. During the preliminary conference, the conduct review officer will:~~

~~(a) Review the written list of charges with the respondent;~~

~~(b) Inform the respondent who is bringing the complaint against them;~~

~~(c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;~~

~~(d) Explain the respondent's rights under the student code;~~

~~(e) Explain the conduct review procedures;~~

~~(f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and~~

~~(g) Explain possible penalties under the student conduct code.~~

~~(7) After the preliminary conference, the conduct review officer will take one of the following actions:~~

~~(a) Conduct or schedule a summary hearing with the respondent as described in WAC 172-121-121 for cases where the possible sanction is less than a suspension or the allegations do not involve felony level sexual misconduct; or~~

~~(b) Refer the case to either the student disciplinary council for a council hearing under WAC 172-121-122 or a sexual misconduct hearing under WAC 172-121-123 for any cases where the possible sanction is a suspension, expulsion, or involves an allegation of felony level sexual misconduct.))~~
The procedures for the preliminary conference for brief hear-

ings is contained in WAC 172-121-121. The procedures for the preliminary and prehearing conference for full hearings is contained in WAC 172-121-122.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-120 Hearing procedures. The provisions of this section apply to both ~~((summary)) brief~~ hearings and to ~~((council)) full~~ hearings.

(1) General provisions.

(a) Hearing authority: The hearing authority, through the conduct review officers, exercises control over hearing proceedings. All procedural questions are subject to the final decision of the conduct review officer.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) ~~((Complainant's)) Appearance:~~ The ~~((complainant)) parties~~ will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the ~~((respondent)) other~~ student during the hearing. The ~~((complainant)) parties~~ may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105.

(d) Disruption of proceedings: Any person, including the respondent, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the conduct review officer may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by a telephonic appearance as determined by the conduct review officer.

(3) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(4) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the evidence presented at the hearing as well as any information contained

in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-121 ((Summary)) Brief hearings.
 ((Summary)) Brief hearing procedures.

(1) The conduct review officer (CRO) may hold a ((summary)) brief hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve felony level sexual misconduct. A respondent shall be informed of the option to have a brief hearing before a CRO or before the student discipline council. Unless the respondent affirmatively requests a council hearing, brief hearings shall be conducted with a conduct review officer.

(2) Preliminary conference. The SRR office will schedule a preliminary conference with the respondent. Only the respondent and the respondent's advisor may appear at the preliminary conference, unless the case involves alleged sexual misconduct. In cases alleging sexual misconduct, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate preliminary conferences. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. During the preliminary conference, the conduct review officer will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

At the end of the preliminary conference, the conduct review officer will either conduct or schedule a brief hearing with the respondent as set forth in this subsection. If proper notice was given of the preliminary conference and the respondent fails to attend the conference, the CRO may either proceed with the brief hearing and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

((2)) (3) Scheduling. A ((summary)) brief hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct, a ((summary)) brief hearing cannot take place without first notifying the complainant/respondent of the hearing. If the ((summary)) brief hearing will be held at a later date or time, the ((conduct review officer))

CRO shall schedule the hearing and notify the respondent and, in the case of sexual misconduct, the complainant of the date, time, and place of the hearing. The ((conduct review officer)) CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

((3)) (4) If the respondent fails to appear at the ((summary)) brief hearing, the ((conduct review officer)) CRO may conduct the ((summary)) hearing without the respondent present ((or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110)). The ((conduct review officer)) CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

((4)) (5) Deliberation. After the hearing, the ((conduct review officer)) CRO and/or council shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence. For council hearings, the council shall meet in closed session and, within seven days, determine by majority vote whether the respondent violated the student conduct code.

(a) If the ((conduct review officer)) CRO and/or council determines that there is not sufficient information to establish a violation by a preponderance of evidence, the ((conduct review officer)) CRO and/or council shall dismiss the complaint.

(b) If the ((conduct review officer)) CRO and/or council determines that the respondent violated the student conduct code, the ((conduct review officer)) CRO and/or council shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

((5)) (6) Notification. The ((conduct review officer)) CRO, and/or the presiding officer in cases of a council hearing, shall serve the respondent with a ((brief written statement setting forth the outcome of the summary hearing and notice of the)) decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's/CRO's decision. The findings shall be based exclusively on the evidence provided at the hearing. The decision must also identify the respondent's right to appeal.

In ((a)) cases of sexual misconduct, the ((victim)) complainant shall be provided with written notice of:

(a) The university's determination as to whether such sexual misconduct occurred;

(b) The ((victim's)) complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, ((relationship)) dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-122 ((Council)) Full hearing procedures. (1) Scheduling and notification. ~~((Council))~~ Full hearings are used for allegations ((other than sexual misconduct)) which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion((-If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR)) or that involve felony-level sexual misconduct. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a preliminary conference.

(2) Preliminary conference. The SRR office or designee will arrange for a preliminary conference with each of the parties separately to advise them about the student conduct process. During the preliminary conference, the SRR office or designee will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

(3) Prehearing conference. Following the preliminary conference, the case will be referred to the CRO and the CRO will arrange for a prehearing conference with the parties. The purpose of the prehearing conference is for the CRO to explain what will occur for during the full hearing process, to schedule a date for the full hearing, and to address any preliminary matters or motions. Following the prehearing conference, the CRO shall schedule the hearing and notify the respondent with the date, time, and location of the hearing. The director of SRR shall also ((inform the council and)) notify the ((complainant/victim)) complainant of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The ((conduct review officer)) CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

~~((2))~~ (4) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the conduct review officer in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The conduct review officer shall exclude evidence

that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The conduct review officer may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the conduct review officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent ((has)) and complainant have the right to view all material presented during the course of the hearing, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

~~((3))~~ (5) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

~~((4))~~ (6) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The ~~((conduct review officer))~~ CRO, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

~~((5))~~ (7) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

~~((6))~~ (8) Witnesses.

(a) The complainant, ~~((victim,))~~ respondent, investigator, and ~~((hearing authority))~~ CRO may present witnesses at ~~((council review))~~ full hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. ~~((For purposes of a council hearing,))~~ An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The ~~((hearing authority))~~ CRO may exclude witnesses from the hearing room when they are not testifying. The ~~((hearing authority))~~ CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

~~((7))~~ (9) Questioning:

(a) The complainant, the respondent, and their advisors may ask questions of each other or of any witnesses, except cross-examination questions for another party must be submitted in writing to the CRO. The CRO may ask such questions, but is not required to do so. The CRO may preclude any questions which he/she considers inappropriate, irrelevant, immaterial or unduly repetitious or may require that all questions be submitted to the CRO rather than allowing the parties to directly question witnesses. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The CRO ~~((and any members of the council))~~ may ask their own questions of any witness called before them.

~~((8))~~ (10) The ~~((hearing authority))~~ CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, ~~((written statement))~~ video conferencing, or other means, as determined appropriate, subject to subsection (2) of this section.

~~((9))~~ (11) Deliberations and sanctions. Following the hearing, the ~~((council shall meet in closed session and, within seven days, determine by majority vote))~~ CRO will determine whether, by a preponderance of the evidence, the respondent violated the student conduct code. If the ~~((council))~~ CRO determines the respondent violated the student conduct code, the ~~((council))~~ CRO shall then decide what sanctions shall be imposed. ~~((Sanctions shall be decided by majority vote and in closed session.))~~ The CRO may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. The ~~((council))~~ CRO's shall issue a decision including ~~((its))~~ his/her findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the ~~((council's))~~ CRO's decision. The findings shall be based exclusively on the evidence provided at the hearing. Such decisions should be issued within seven business days from the date of the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

~~((10))~~ (12) Notification~~((The council chair shall forward the council decision to the director of SRR))~~ to the respondent. The director of SRR shall serve the respondent with a ~~((brief written statement setting forth the council's))~~ copy of the decision and notice of the right to appeal.

(13) Notification to the complainant. In cases of sexual misconduct, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f)).

(d) Information regarding the discipline of the respondent will not be released unless:

~~((a))~~ (i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

~~((b))~~ (ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by the respondent or the complainant. ~~((In cases of sexual misconduct, the victim may also file an appeal.))~~ Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the ~~((charges))~~ notice of allegations and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(2) Filing: Appeals may be filed following a ~~((summary))~~ brief hearing ~~((conduct review hearing or sexual misconduct))~~ or full hearing, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ten calendar days from service of the ~~((council's))~~ CRO's decision following a ~~((council))~~ full hearing or ~~((the CRO's decision following a sexual misconduct hearing, and))~~ within twenty-one calendar days from service of a decision from a ~~((summary))~~ brief hearing ~~((from service of the decision))~~ conducted by the CRO or student disciplinary council;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.

(3) Appeal authorities:

(a) For ~~((summary))~~ brief hearings heard by the ~~((conduct review officer))~~ CRO, appeals are determined by the student disciplinary council.

(b) For ~~((student disciplinary council hearings))~~ brief hearings heard by the student disciplinary council, appeals are determined by the ~~((vice president for student affairs))~~ dean of students.

(c) For ~~((sexual misconduct))~~ full hearings, appeals are determined by the vice president for student affairs.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the respondent, and, in cases of sexual misconduct, notify the complainant ~~((and victim))~~, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the

student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-140 Interim restriction. In situations where there is cause to believe that a student or a student organization poses an immediate danger to the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the ~~((charges))~~ allegations to the conduct review officer, who will process such ~~((charges))~~ allegations in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

(i) The health, safety or welfare of any part of the university community or public at large;

(ii) The student's own physical safety and well-being; or

(iii) Any property of the university community; or

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community.

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be placed on a student.

(4) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) The date, time, and location for an emergency appeal hearing with the vice president for student affairs.

(5) In cases alleging sexual misconduct, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant.

(6) Emergency appeal hearing.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal hearing with the vice president for student affairs, or designee, within ten business days after the interim suspension is served. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within ten business days after service of the interim restriction.

(b) The vice president for student affairs, or designee, will conduct an emergency appeals hearing with the student or student organization subject to the interim restriction. The student may appear at the hearing telephonically and may be represented by counsel.

(c) In cases alleging sexual misconduct, if an interim restriction is imposed, the student, the student organization, and the complainant may appeal the interim restriction using the process outlined in this subsection. Also, in such cases, if an appeal is filed, all parties shall be given notice of the appeal and shall be provided the opportunity to participate in the appeal proceeding.

(d) The vice president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The respondent and the complainant, if he/she has the right to be present under (b) of this subsection, may have an advisor present at the meeting.

(e) During the emergency appeal hearing, the vice president for student affairs will review available materials and statements. After the meeting, the vice president for student affairs may uphold, modify, or terminate the interim restriction action.

(f) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

(g) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy.

(2) Acts of social misconduct.

(a) Abuse. Physical abuse, verbal abuse, and/or other conduct which threatens or endangers the health or safety of any person.

(b) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) ~~((Objectively))~~ Hostile or offensive; and

(v) Creates an intimidating and/or threatening environment ~~((which produces a risk of psychological and/or physical harm))~~ that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

(c) Domestic violence and ~~((relationship))~~ dating violence.

(i) Domestic violence means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(B) Sexual assault of one family or household member by another; or

(C) Stalking of one family or household member by another family or household member.

(ii) ~~((Relationship))~~ Dating violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the ~~((victim))~~ complainant. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(d) ~~((Harassment, gender-based harassment, and sexual harassment.~~

~~((i))~~ Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities. Harassment based on someone's actual or perceived membership in a protected class, as defined by university policy, is also discrimination.

~~((ii))~~ Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

~~((iii))~~ (e) Sexual and gender-based harassment. Sexual harassment is defined by the Office of Civil Rights as unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code ~~((and Title IX))~~ when it is sufficiently severe ~~((,))~~ or pervasive ~~((, or persistent))~~ such that it

denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether ~~((any of the above listed types of harassment are))~~ conduct is severe ~~((,))~~ or pervasive ~~((, or persistent))~~, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the ~~((victim))~~ complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

~~((e))~~ Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code when it is sufficiently severe or pervasive, such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

~~((f))~~ Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code is prohibited and is a separate violation of this code.

~~((f))~~ (g) Sexual misconduct. Sexual misconduct includes, but is not limited to ~~((, sexual violence; indecent liberties; indecent exposure; sexual exhibitionism; sex-based cyber harassment; prostitution or the solicitation of a prostitute; peeping or other voyeurism; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity. Sexual violence is sexual intercourse or sexual contact with a person without his or her consent or when the person is incapable of giving))~~:

(i) Nonconsensual sexual activity. Nonconsensual sexual activity is sexual contact or sexual intercourse without consent. Sexual contact is intentional contact with a person's intimate body parts without their consent. Intimate body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks. Nonconsensual sexual intercourse is penetration, no matter how slight, of the vagina, or anus, with any body part or object, without consent; or, oral penetration by a sex organ of another person without consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when ~~((the victim))~~ one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

~~((g))~~ (ii) Other forms of sexual misconduct. Other forms of sexual misconduct include indecent liberties; indecent exposure; sexual exhibitionism; sex-based cyber harassment; prostitution or the solicitation of a prostitute; peeping or other voyeurism; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(h) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

~~((h))~~ (i) Unauthorized use of electronic or other devices: Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft of, damage to, or misuse of another person's or entity's property.

(4) Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

(5) Failure to comply.

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(10) Hazing. Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

- (a) Endangers the mental or physical health or safety of any student or other person;
- (b) Destroys or removes public or private property; or
- (c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, or handbook provisions.

(13) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other responsibilities:

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

(16) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group

to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-121-123 Sexual misconduct hearing procedures.

WSR 18-22-042

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed October 30, 2018, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-14-094.

Title of Rule and Other Identifying Information: New chapter 182-02 WAC, Definitions.

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than December 12, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 11, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by December 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA plans to create a new chapter for definitions that apply to all of Title 182 WAC. The first definition in this section will be "Health care authority." This chapter is not intended to change or eliminate any existing definitions but will provide a central location for commonly used terms.

Reasons Supporting Proposal: Title 182 WAC regulates various programs such as the public employees benefits board, medicaid, and health technology assessment. These rules for medicaid, nonmedicaid, public health and state employee benefit programs use different terms to refer to HCA. A new WAC chapter that contains general definitions for terms used throughout Title 182 WAC will assist the public with navigating HCA rules.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

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

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

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

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

October 30, 2018
Wendy Barcus
Rules Coordinator

Chapter 182-02 WAC

GENERAL DEFINITIONS

NEW SECTION

WAC 182-02-005 Definitions. Chapter 182-02 WAC contains definitions of words and phrases used in rules throughout Title 182 WAC. When a term is not defined in this chapter, the definition found in another chapter of Title 182, or applicable state or applicable federal law will apply. For general terms not defined in this chapter, or in another chapter under Title 182 WAC, or state or federal law, the definitions in the *Webster's New World Dictionary*, Fifth Edition (2016), apply. If a definition in this chapter conflicts with a definition in another chapter of Title 182 WAC, the definition in the specific WAC prevails.

NEW SECTION

WAC 182-02-045 General definitions—H. "Health care authority (HCA)" means the state agency established under chapter 41.05 RCW. In Title 182 WAC, the following terms mean the health care authority: "Agency," "authority" (unless the context clearly requires otherwise), "behavioral health administration," "HCA," "medicaid agency," "single state agency," "single state medicaid agency," and "single state behavioral health agency."

WSR 18-22-047

WITHDRAWAL OF PROPOSED RULES LIQUOR AND CANNABIS BOARD

(By the Code Reviser's Office)

[Filed October 30, 2018, 3:43 p.m.]

WAC 314-55-102, proposed by the liquor and cannabis board in WSR 18-09-118, appearing in issue 18-09 of the Washington State Register, which was distributed on May 2, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-22-052

PROPOSED RULES

BIG BEND

COMMUNITY COLLEGE

[Filed October 31, 2018, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-042.

Title of Rule and Other Identifying Information: WAC 132R-136-080.

Hearing Location(s): On December 17, 2018, at 2:00 p.m., at 7662 Chanute Street N.E., ATEC Building, Hardin Community Room, Moses Lake, WA.

Date of Intended Adoption: December 18, 2018.

Submit Written Comments to: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA 98837, email melindad@bigbend.edu, fax 509-762-6355, by December 11, 2018.

Assistance for Persons with Disabilities: Contact Loralynn Allen, phone 509-793-2027, fax 509-762-6355, email lora@bigbend.edu, by December 11, 2018.

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

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Big Bend Community College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Matt Killebrew, Administration Building, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2003.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

October 31, 2018
Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-136-080 Posting of materials. The college encourages free expression. Use of college facilities as pro-

vided herein, however, does not accord users the opportunity to post commercial solicitations, advertising or promotional materials without permission.

Permission for the posting of materials and literature on college property is not required in designated public posting areas on campus. The college has designated one bulletin board that is accessible during business hours to all employees and students, upon which any person who is lawfully on campus may post materials without prior approval. The location of this board is outside of the inside entrance to the campus bookstore and is labeled "Community Bulletin Board". Permission for the posting of materials or literature in the various restricted areas ((provided, therefore,)) shall be obtained from the ((vice president of student services or his/her designee)) office of communications. Permission to post materials or literature does not accord users immunity from legal action ((which)) that may occur from posting said material. Permission will be granted for a limited time period and the materials must be removed at the end of the approved period. It is understood that the office of communications shall not approve or disapprove of the content of the material.

~~((ASB campaign rules govern special poster and sign locations for ASB elections. Information on these special policies, restricted areas and regulations is available in the office of student programs.))~~

Posting of posters, signs and other publicity or promotional materials is permitted only in ((locations)) specified ((above)) locations. All materials sought to be posted in restricted posting areas must have the identity of its sponsorship appearing on its face and be stamped in approval from the office of communications. Any materials not carrying this stamp, will be removed.

WSR 18-22-057

PROPOSED RULES

LIQUOR AND CANNABIS BOARD

[Filed October 31, 2018, 11:25 a.m.]

Supplemental Notice to WSR 18-17-186.

Preproposal statement of inquiry was filed as WSR 18-03-184.

Title of Rule and Other Identifying Information: WAC 314-11-015 What are my responsibilities as a liquor licensee? and 314-03-400 Curbside service.

Hearing Location(s): On December 12, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after December 26, 2018.

Submit Written Comments to: Janette Benham, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by December 12, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by December 7, 2018.

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

will allow liquor licensed grocery stores to provide curbside service to customers ordering groceries online. The rule will ensure that retailers and customers have requirements in place for this service. Other changes to the existing rule are technical and provide clarification.

Reasons Supporting Proposal: The proposed rules allow curbside service for liquor licensed grocery stores that utilize online ordering and pickup. The rules outline requirements for curbside service of grocery orders that contain alcohol.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Janette Benham, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 360-664-1760; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs or reporting requirements for licensees. The proposed rules allow grocery stores to provide curbside service to customers. Providing curbside service to customers is at the licensee's discretion.

October 31, 2018

Jane Rushford

Chair

NEW SECTION

WAC 314-03-400 Curbside service. (1) Grocery stores that have the appropriate liquor licenses may provide curbside service to customers who order groceries online and pick them up in designated pickup areas outside of the grocery store. Curbside service in a designated pickup area must be administered pursuant to all applicable RCW and WAC provisions. Drive-through service from pickup or pass-through windows is prohibited.

(2) Curbside pickup of groceries that include spirits, beer, and wine are allowed under the following conditions:

(a) Orders must include at least twenty-five dollars of nonalcohol items.

(b) Orders must be delivered by an employee of the licensee to a vehicle parked in a designated pickup area owned or controlled by the licensee as part of the licensed premises.

(c) Employees delivering orders to the customer's vehicle and completing the sale must be at least eighteen years of

age and be trained on verifying ID, recognizing signs of intoxication, and preventing youth access.

(d) If ID cannot be verified, or if the driver appears intoxicated, all alcohol will be removed from the order and the customer will not be charged for any removed products.

AMENDATORY SECTION (Amending WSR 14-02-002, filed 12/18/13, effective 1/18/14)

WAC 314-11-015 What are my responsibilities as a liquor licensee? (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC 314-29-015 through 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

~~((■))~~ • Titles 9 and 9A RCW, the criminal code laws;

~~((■))~~ • Title 69 RCW, which outlines the laws regarding controlled substances; and

~~((■-Titles))~~ • Chapters 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

(a) Be disorderly or apparently intoxicated on the licensed premises;

(b) ~~((Permit))~~ Allow any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Entertainers per WAC 314-02-010 may drink while performing under the following conditions:

(A) Alcohol service must be monitored by MAST servers;

(B) Drinks must be served in unlabeled containers;

(C) Entertainers may not advertise any alcohol brands or products;

(D) Entertainers may not promote drink specials; and

(E) If any member of the entertainment group is under twenty-one years of age, alcohol may not be consumed by any member of the group while performing.

(ii) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is

not served, so long as the licensee or employee does not become apparently intoxicated;

(iii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

(c) Engage in, or ~~((permit any employee or))~~ allow others ~~((person))~~ to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW;

(f) Engage in ~~((or permit any employee or other person to engage in))~~ the consumption of any type of marijuana, usable marijuana, or marijuana-infused products in a liquor licensed business, including outdoor service areas or any part of the property owned or controlled by the licensee;

(g) ~~((Permit))~~ Allow any person to consume any type of marijuana, usable marijuana, or marijuana-infused products in a liquor licensed business, including outdoor service areas or any part of the property owned or controlled by the licensee;

(h) Allow any person consuming, or who has consumed ~~((within))~~ on any part of the licensed premises, any type of marijuana, usable marijuana, or marijuana-infused products to remain on any part of the licensed premises; or

~~((H))~~ (i) Sell or serve liquor by means of ("drive-in" or by "curb service.") drive-through service from pickup or pass-through windows.

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time or dance with, or permit any person to spend time or dance with, any patron for direct or indirect compensation by a patron.

~~((e))~~ See WAC 314-11-050 for further guidelines on prohibited conduct.

WSR 18-22-064

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2018-01—Filed November 1, 2018, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-119.

Title of Rule and Other Identifying Information: The following chapters are being created to support the new school employees benefits board (SEBB) program: Chapter 182-30

WAC, Enrollment procedures; chapter 182-31 WAC, Eligible school employees; and chapter 182-32 WAC, Appeals practices and procedures.

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: December 12, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 11, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by December 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is developing rules to implement legislation that created the new SEBB program. The SEBB program will provide health care related benefits to all eligible school employees within school districts, educational service districts, and charter schools across the state of Washington.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: EHB 2242, chapter 13, Laws of 2017, 3rd sp. sess., and ESSB 6241, chapter 260, Laws of 2018, regular session.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Rob Parkman, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Scott Palafox, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

November 1, 2018
Wendy Barcus
Rules Coordinator

Chapter 182-30 WAC

ENROLLMENT PROCEDURES

NEW SECTION

WAC 182-30-010 Purpose. The purpose of this chapter is to establish school employees benefits board (SEBB) enrollment criteria and procedures for school employees eligible for SEBB benefits under RCW 41.05.740 (6)(d)(i). This chapter does not address where a SEBB organization has locally negotiated to offer SEBB benefits to school employees who are anticipated to work less than six hundred thirty hours in a school year as authorized in RCW 41.05.740 (6)(e).

NEW SECTION

WAC 182-30-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Annual open enrollment" means a once yearly event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, or enroll or waive enrollment in SEBB medical. School employees participating in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), and medical flexible spending arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and holidays.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of health plan coverage available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB board policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain

employment related dependent care with pretax dollars as provided in the salary reduction plan pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability or supplemental short-term disability paid for by the employee.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-060.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"Forms" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, dental, or any combination of these coverages, developed by the SEBB and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or ten percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Life insurance" for eligible school employees includes any basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the school employees benefits board (SEBB) organization, as well as supplemental life insurance and supplemental AD&D insurance offered to and paid for by school employees for themselves and their dependents.

"LTD insurance" or "long-term disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability insurance offered to and paid for by the school employee.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the

public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"School employee" means all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board established in RCW 41.05.740.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, or disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040) and eligible dependents (as described in 182-31-140).

"Short-term disability insurance" includes any basic short-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental short-term disability insurance offered to and paid for by the school employee.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment in SEBB medical. School employees eligible to participate in the salary reductions plan may enroll in or revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organization and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other

tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

NEW SECTION

WAC 182-30-040 Premium payments and premium refunds. Premiums and applicable premium surcharges are due as described in this section.

(1) **Premium payments.** School employees benefits board (SEBB) insurance coverage premiums and applicable premium surcharges become due the first of the month in which SEBB insurance coverage is effective. Premiums and applicable premium surcharges are due from the subscriber for the entire month of PEBB insurance coverage and will not be prorated during any month.

(a) For school employees who are eligible for the employer contribution, the school employee's premiums and applicable premium surcharges are due to the SEBB organization. If a school employee elects supplemental coverage, the school employee is responsible for payment of premiums starting the month the supplemental coverage begins.

(b) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the SEBB organization, subscriber, or a subscriber's legal representative to the health care authority (HCA). For subscribers not eligible for the employer contribution or school employees eligible for the employer contribution as described in WAC 182-31-110, monthly premiums or applicable premium surcharges that remain unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable surcharges. If a subscriber's monthly premiums or applicable premium surcharges remain unpaid for sixty days from the original due date, the subscriber's SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan with the subscriber or the subscriber's legal representative upon request.

(c) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA and the monthly premiums or premium surcharges remain unpaid for thirty days; or

(ii) Premium payments or applicable premium surcharges received by the HCA are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for thirty days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** SEBB premiums and applicable premium surcharges will be refunded using the following method:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the SEBB organization any excess premiums and applicable premium surcharges paid during the three month adjustment period.

(b) If a SEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-32-2010, showing proof of extraordinary circumstances beyond their control such that it was effectively impossible to submit the necessary information to accomplish an allowable enrollment change within sixty days after the event that created a change of premiums, the SEBB director, the SEBB director's designee, or the SEBB appeals unit may approve a refund of premiums and applicable premium surcharges that does not exceed twelve months of premiums.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time if approved by SEBB director or the SEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the SEBB organization, subscriber, or beneficiary.

(e) SEBB organization errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the school employee or beneficiary.

NEW SECTION

WAC 182-30-050 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge in addition to the subscriber's monthly premium, when any enrollee, thirteen years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee, thirteen years and older, enrolled in their school employees benefits board (SEBB) medical engages in tobacco use. The subscriber must attest as described in (a)(i) through (iv) of this subsection:

(i) A school employee who is newly eligible or regains eligibility for the employer contribution toward SEBB benefits must complete the required form to enroll in SEBB medical. The school employee must include their attestation on the required form. The school employee must submit the attestation to their SEBB organization. If the school employee's attestation results in a premium surcharge, it will take effect the same date as SEBB medical begins;

(ii) If there is a change in the tobacco use status of any enrollee, thirteen years and older on the subscriber's SEBB medical, the subscriber must update their attestation on the required form. A school employee must submit the form to their SEBB organization. All other subscribers must submit their updated attestation to the SEBB program;

• A change that results in a premium surcharge will begin the first day of the month following the status change. If that

day is the first of the month, the change to the surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

(iii) If a subscriber submits the required form to enroll a dependent, thirteen years and older, in SEBB medical, the subscriber must attest for their dependent on the required form. A school employee must submit the form to their SEBB organization. All other subscribers must submit their form to the SEBB program. A change that results in a premium surcharge will take effect the same date as SEBB medical begins; or

(iv) An enrollee, thirteen years and older, who elects to continue medical coverage as described in WAC 182-31-090, must provide an attestation on the required form if they have not previously attested as described in (a) of this subsection. The enrollee must submit their updated form to the SEBB program. An attestation that results in a premium surcharge will take effect the same date as SEBB medical begins.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in (a) of this subsection.

(c) The SEBB program will provide a reasonable alternative for enrollees who use tobacco products. A subscriber can avoid the tobacco use premium surcharge if the subscriber attests on the required form that all enrollees who use tobacco products enrolled in or accessed the applicable reasonable alternative offered below:

(i) An enrollee who is eighteen years and older and uses tobacco products is currently enrolled in the free tobacco cessation program through their SEBB medical.

(ii) An enrollee who is thirteen through seventeen years old and uses tobacco products accessed the information and resources aimed at teens on the Washington state department of health's web site at <https://teen.smokefree.gov>.

(iii) A subscriber may contact the SEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.

(2) A subscriber will incur a premium surcharge, in addition to the subscriber's monthly premium, if an enrolled spouse or state registered domestic partner elected not to enroll in another employer-based group medical where the spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost a school employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic and the benefits have an actuarial value of at least ninety-five percent of the actuarial value of the PEBB UMP Classic's benefits.

(a) A subscriber who enrolled a spouse or state registered domestic partner under their SEBB medical may only attest during the following times:

(i) When a subscriber becomes eligible to enroll a spouse or state registered domestic partner in SEBB medical or during the annual open enrollment. The subscriber must complete the required form to enroll their spouse or state regis-

tered domestic partner, and include their attestation on that form. The school employee must submit the form to their SEBB organization. Any other subscriber must submit the form to the SEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as SEBB medical begins;

(ii) When a special open enrollment event occurs. The subscriber must submit the required form to enroll their spouse or state registered domestic partner in SEBB medical and include their attestation on the required form. A school employee must submit the form to their SEBB organization. Any other subscriber must submit the form to the SEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as SEBB medical begins;

(iii) During the annual open enrollment. A subscriber must attest if during the month prior to the annual open enrollment the subscriber was:

- Incurring the surcharge;
- Not incurring the surcharge because the spouse's or state registered domestic partner's share of the medical premium through their employer-based group medical was more than ninety-five percent of the additional cost a school employee would be required to pay to enroll a spouse or state registered domestic partner in the PEBB UMP Classic; or

- Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or state registered domestic partner's employer-based group medical was less than ninety-five percent of the actuarial value of the PEBB UMP Classic's benefits.

A subscriber must update their attestation on the required form. A school employee must submit an updated attestation to their SEBB organization. Any other subscriber must submit the form to the SEBB program. The subscriber's attestation or any correction to a subscriber's attestation must be received no later than December 31st of the year in which the annual open enrollment occurs. If the subscriber's attestation results in a premium surcharge, being added or removed, the change to the surcharge will take effect January 1st of the following year; and

(iv) When there is a change in the spouse's or state registered domestic partner's employer-based group medical. A subscriber must update their attestation on the required form. A school employee must submit an updated attestation to their SEBB organization no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical status changes. Any other subscriber must submit an updated attestation to the SEBB program no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical status changes;

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first day of the month, the change to the premium surcharge begins on that day;

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the premium surcharge begins on that day.

(b) A premium surcharge will be applied to a subscriber who does not attest as described in (a) of this subsection.

NEW SECTION

WAC 182-30-070 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible school employees. School employees benefits board (SEBB) organizations must pay the employer contributions to the health care authority (HCA) for SEBB insurance coverage for all eligible school employees and their dependents.

(1) Employer contributions are set by the HCA, and are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer SEBB insurance coverage for school employees.

(3) Each eligible school employee of a SEBB organization on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution as described in WAC 182-31-110.

NEW SECTION

WAC 182-30-075 Subscriber requirements as part of participation in school employees benefits board (SEBB) benefits. All school employees must provide their SEBB organization with their correct mailing address and provide any updates as needed in the future. All other subscribers must provide the SEBB program with their correct mailing address and provide any updates to their mailing address if it changes.

NEW SECTION

WAC 182-30-090 When may a subscriber change health plans? Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. All other subscribers submit the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury Regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms. The forms must be received no later than sixty days after the event occurs. A school employee submits the enroll-

ment forms to their SEBB organization. All other subscribers submit the enrollment forms to the SEBB program. Subscribers must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the latter of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan;

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(i) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the sub-

subscriber or subscriber's dependent is no longer eligible for an HSA;

(j) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable;

(ii) Transplant within the last twelve months;

(iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care);

(iv) Recent major surgery still within the postoperative period of up to eight weeks; or

(v) Third trimester of pregnancy.

If the school employee is having premiums taken from payroll on a pretax basis, a health plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

NEW SECTION

WAC 182-30-100 When may a subscriber enroll or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)? A subscriber who is eligible to participate in the salary reduction plan as described in WAC 182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040.

(2) **During annual open enrollment:** An eligible subscriber may elect to enroll in or opt out of their participation under the premium payment plan during the annual open enrollment; school employees submit the required form to their school employees benefits board (SEBB) organization; all other subscribers submit the form to the health care authority (HCA). An eligible subscriber may elect to enroll or reenroll in the medical FSA, DCAP, or both during the annual open enrollment by submitting the required forms to their SEBB organization, the HCA or applicable contracted vendor. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

Note: Subscribers enrolled in a consumer-directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. Subscribers who elect both will only be enrolled in the CDHP with a HSA.

(3) **During a special open enrollment:** A subscriber who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under

the premium payment plan, medical FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury Regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required forms to their SEBB organization, all other subscribers must submit the required forms to HCA. The SEBB organization or HCA must receive the required form and evidence of the event that created the special open enrollment no later than sixty days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A subscriber may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the latter of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Subscriber acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership when the dependent is a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber's dependent no longer meets SEBB eligibility criteria because:

- Subscriber has a change in marital status;
- Subscriber's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer's health plan;

(v) The subscriber's dependent has a change in their employment status that affects their eligibility for the employer contribution toward their employer-based group health plan;

Exception: For the purposes of special open enrollment, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability;

(viii) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(ix) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare;

(xiii) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the subscriber or a subscriber's dependent is no longer eligible for a HSA;

(xiv) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or a subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable;
- Transplant within the last twelve months;
- Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care);
- Recent major surgery still within the postoperative period of up to eight weeks; or
- Third trimester of pregnancy.

(xv) Subscriber or a subscriber's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

If the subscriber is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical FSA.** A subscriber may enroll or revoke their election and make a new election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the latter of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization or the HCA. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Subscriber acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the state registered domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber's dependent no longer meets SEBB subscriber or has a change in marital status;

- Subscriber's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) Subscriber or a subscriber's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the medical FSA;

(v) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare.

(c) **DCAP.** A subscriber may enroll or revoke their election and make a new election under the DCAP when any one

of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the latter of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization or the HCA. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Subscriber acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the state registered domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber or a subscriber's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) Subscriber changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) Subscriber or a subscriber's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) Subscriber dependent care provider imposes a change in the cost of dependent care; subscriber may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the subscriber as defined in IRC 26 U.S.C. Sec. 152.

NEW SECTION

WAC 182-30-110 Which school employees benefits board (SEBB) organization is responsible to pay the employer contribution for eligible school employees changing SEBB organizations? When an eligible school employee's employment relationship terminates with a school employees benefits board (SEBB) organization at any time during the month for which a premium contribution is due and that school employee moves to another SEBB organization, the SEBB organization losing the school employee is responsible for the payment of the employer contribution for the school employee for that month. The SEBB organization the school employee is moving to is responsible for payment of the employer contribution for the school employee beginning the first day of the month following the move if the school employee is eligible.

NEW SECTION

WAC 182-30-120 Advertising or promotion of school employees benefits board (SEBB) benefit plans. (1) In order to assure equal and unbiased representation of school employees benefits board (SEBB) benefits, contracted vendors must comply with all of the following:

(a) All materials describing SEBB benefits must be prepared by or approved by the health care authority (HCA) before use.

(b) Distribution or mailing of all benefit descriptions must be performed by or under the direction of the HCA.

(c) All media announcements or advertising by a contracted vendor which includes any mention of the "school employees benefits board," "SEBB," "health care authority," "HCA," any reference to benefits for "school employees," or any group of enrollees covered by SEBB benefits, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a SEBB contracted vendor or subcontractor may result in contract termination by the authority, refusal to continue or renew a contract with the noncomplying party, or both.

Chapter 182-31 WAC

ELIGIBLE SCHOOL EMPLOYEES

NEW SECTION

WAC 182-31-010 Purpose. The purpose of this chapter is to establish school employees benefits board (SEBB) eligibility criteria for and the effective date of enrollment in SEBB approved benefits for school employees eligible for SEBB benefits under RCW 41.05.740 (6)(d)(i). This chapter does not address where a SEBB organization has locally negotiated to offer SEBB benefits to school employees who are anticipated to work less than six hundred thirty hours in a school year as authorized in RCW 41.05.740 (6)(e).

NEW SECTION

WAC 182-31-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Annual open enrollment" means a once yearly event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, or enroll or waive enrollment in SEBB medical. School employees participating in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), and medical flexible spending arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Calendar days" or "days" means all days including Saturdays, Sundays, and holidays.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of health plan coverage available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB board policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability or supplemental short-term disability paid for by the employee.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items. Documents include evidence needed to verify eligibility for SEBB benefits and complete the enrollment process.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-060.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC, who is enrolled in school employees benefits board (SEBB) benefits, and for whom applicable premium payments have been made.

"Forms" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, dental, or any combination of these coverages, developed by the school employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Life insurance" for eligible school employees includes any basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the school employees benefits board (SEBB) organization, as well as supplemental life insurance and supplemental AD&D insurance offered to and paid for by school employees for themselves and their dependents.

"LTD insurance" or "long-term disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability insurance offered to and paid for by the school employee.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan. (Chapter 41.05 RCW)

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board established in RCW 41.05.740.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, or disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040) and eligible dependents (as described in WAC 182-31-140).

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment

and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment in SEBB medical. School employees eligible to participate in the salary reductions plan may enroll in or revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

NEW SECTION

WAC 182-31-030 What are the obligations of a school employees benefits board (SEBB) organization in the application of school employee eligibility? (1) All school employees benefits board (SEBB) organizations must carry out all actions, policies, and guidance issued by the SEBB program which are necessary for the operation of benefit plans, education about benefits for school employees, claims administration, and appeals processing including those described in chapters 182-30, 182-31, and 182-32 WAC. SEBB organizations must:

(a) Use the methods provided by the SEBB program to determine eligibility and enrollment in benefits;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the SEBB program;

(c) Support SEBB program auditing of eligibility and enrollment decisions as needed; and

(d) Carry out corrective action and pay any penalties imposed by the health care authority (HCA) and established by the SEBB when the SEBB organization's eligibility determinations fail to comply with the criteria under these rules.

(2) SEBB organizations must determine school employee and their dependents eligibility for SEBB benefits and the employer contribution according to the criteria in

WAC 182-31-040 and 182-31-050. SEBB organizations must:

(a) Notify newly hired school employees of SEBB program rules and guidance for eligibility and appeal rights;

(b) Inform a school employee in writing whether or not they are eligible for SEBB benefits upon employment. The written communication must include information about the school employee's right to appeal eligibility and enrollment decisions;

(c) Routinely monitor all school employees work hours to establish eligibility and maintain the employer contribution toward SEBB insurance coverage;

(d) Identify when a previously ineligible school employee becomes eligible or a previously eligible school employee loses eligibility; and

(e) Inform a school employee in writing whether or not they are eligible for benefits and the employer contribution whenever there is a change in work patterns such that the school employee's eligibility status changes. At the same time, SEBB organizations must inform school employees of the right to appeal eligibility and enrollment decisions.

(3) SEBB organizations must determine school employee's dependents eligibility for SEBB benefits according to the criteria in WAC 182-31-140.

NEW SECTION

WAC 182-31-040 How do school employees establish eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and when does SEBB insurance coverage begin? (1) Eligibility shall be determined solely by the criteria that most closely describes the school employee's work circumstance.

(2) All hours worked by an employee in their capacity as a school employee must be included in the calculation of hours for determining eligibility.

(3) School employee eligibility criteria:

(a) A school employee is eligible for the employer contribution towards school employees benefits board (SEBB) benefits if they are anticipated to work at least six hundred thirty hours per school year. The eligibility effective date for a school employee eligible under this subsection shall be determined as follows:

(i) If the school employee's first day of work is on or after September 1st but not later than the first day of school for the current school year as established by the SEBB organization, they are eligible for the employer contribution on the first day of work; or

(ii) If the school employee's first day of work is at any other time during the school year, they are eligible for the employer contribution on that day.

(b) A school employee who is not anticipated to work at least six hundred thirty hours per school year becomes eligible for the employer contribution towards SEBB benefits on the date their work pattern is revised in such a way that they are now anticipated to work six hundred thirty hours in the school year.

(c) A school employee who is not anticipated to work at least six hundred thirty hours in the school year becomes eligible for the employer contribution towards SEBB benefits

on the date they actually worked six hundred thirty hours in the school year.

(d) A school employee may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization.

(4) When SEBB insurance coverage begins:

(a) For a school employee who establishes eligibility under subsection (3)(a)(i) of this section SEBB insurance coverage begins on the first day of work for the new school year.

(b) For a school employee who establishes eligibility under subsection (3)(a)(ii), (b), or (c) of this section SEBB insurance coverage begins on the first day of the month following the date the school employee becomes eligible for the employer contribution towards SEBB benefits.

NEW SECTION

WAC 182-31-050 When does eligibility for the employer contribution for school employees benefits board (SEBB) benefits end? (1) The employer contribution toward school employees benefits board (SEBB) benefits ends the last day of the month in which the school year ends. The employer contribution toward SEBB benefits will end earlier than the end of the school year if one of the following occurs:

(a) The SEBB organization terminates the employment relationship. In this case, eligibility for the employer contribution ends the last day of the month in which the employer-initiated termination notice is effective;

(b) The school employee terminates the employment relationship. In this case, eligibility for the employer contribution ends the last day of the month in which the school employee's resignation is effective; or

(c) The school employee's work pattern is revised such that the school employee is no longer anticipated to work six hundred thirty hours during the school year. In this case, eligibility for the employer contribution ends as of the last day of the month in which the change is effective.

(2) If the SEBB organization deducted the school employee's premium for SEBB insurance coverage after the school employee was no longer eligible for the employer contribution, SEBB insurance coverage ends the last day of the month for which school employee premiums were deducted.

NEW SECTION

WAC 182-31-060 Who is eligible to participate in the salary reduction plan? School employees are eligible to participate in the salary reduction plan provided they are eligible for school employees benefits board (SEBB) benefits as described in WAC 182-31-040 and they elect to participate within the time frames described in WAC 182-30-100.

NEW SECTION

WAC 182-31-090 When is an enrollee eligible to continue school employees benefits board (SEBB) health plan coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA) and where may school employee sur-

vivors go for additional coverage options? (1) An enrollee may continue school employees benefits board (SEBB) health plan coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) by self-paying the premium and applicable premium surcharge set by the health care authority (HCA):

Note: Based on RCW 26.60.015 SEBB policy resolution SEBB 2018-01 a school employee's state registered domestic partner and the state registered domestic partner's children may continue SEBB insurance coverage on the same terms and conditions as a legal spouse or child under COBRA.

(a) The enrollee's election must be received by the SEBB program no later than sixty days from the date the enrollee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the SEBB program, whichever is later;

(b) The enrollee's first premium payment and applicable premium surcharge are due to the HCA no later than forty-five days after the election period ends as described in (a) of this subsection. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-30-040;

(c) Enrollees who request to voluntarily terminate their COBRA coverage must do so in writing. The written termination request must be received by the SEBB program. Enrollees who terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-31-040. COBRA coverage will end on the last day of the month in which the SEBB program receives the termination request. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month; and

(d) Medical flexible spending arrangement (FSA) enrollees who on the date of the qualifying event, have a greater number of remaining benefits than remaining contribution payments for the current year, will have an opportunity to continue making contributions to their medical FSA by electing COBRA. The enrollee's first premium payment is due to the contracted vendor no later than forty-five days after the election period ends as described below. The enrollee's election must be received by the contracted vendor no later than sixty days from the date the enrollee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later.

(2) A school employee or a school employee's dependent who loses eligibility for the employer contribution toward SEBB insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.

(3) A school employee or a school employee's dependent who loses eligibility for continuation coverage described in WAC 182-31-110 but who has not used the maximum number of months allowed under COBRA may continue medical, dental, or both for the remaining difference in months.

(4) A school employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible school employee may be eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage as described in WAC 182-12-265.

NEW SECTION

WAC 182-31-110 What options are available if a school employee is approved for the federal Family and Medical Leave Act (FMLA)? (1) A school employee on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward school employees benefits board (SEBB) insurance coverage in accordance with the federal FMLA. The school employee may also continue current supplemental life and supplemental long-term disability insurance. The school employee's SEBB organization is responsible for determining if the school employee is eligible for leave under FMLA and the duration of such leave.

(2) If a school employee's monthly premium or any applicable premiums surcharge remains unpaid for sixty days from the original due date, the school employee's SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid.

(3) If a school employee exhausts the period of leave approved under FMLA, SEBB insurance coverage may be continued by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the SEBB organization.

NEW SECTION

WAC 182-31-140 Who are eligible dependents? To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-31-150.

The school employees benefits board (SEBB) program will verify the eligibility of all self-pay subscriber dependents and will request documents that provide evidence of a dependent's eligibility. The SEBB program reserves the right to review a dependent's eligibility at any time. All SEBB organizations will verify the eligibility of all school employee dependents and will request documents that provide evidence of a dependent's eligibility. Both the SEBB program and the SEBB organizations will maintain these documents. The SEBB program and SEBB organizations will not enroll dependents into a health plan if they are unable to verify a dependent's eligibility within the SEBB program enrollment timelines.

A self-pay subscriber must notify the SEBB program, in writing, when their dependent is not eligible under this section. A school employee must notify their SEBB organization, in writing, when their dependent is not eligible under this section. The notification must be received no later than sixty days after the date their dependent is no longer eligible under this section. See WAC 182-31-150(2) for the consequences of not removing an ineligible dependent from SEBB insurance coverage.

The following are eligible as dependents:

(1) Legal spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse;

(2) State registered domestic partner. State registered domestic partner as defined in RCW 26.60.020(1) and sub-

stantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090. Former state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner;

(3) Children. Children are eligible through the last day of the month in which their twenty-sixth birthday occurred except as described in (f) of this subsection. Children are defined as the subscriber's:

(a) Children of the school subscriber based on establishment of a parent-child relationship as described in RCW 26.26.101, except when parental rights have been terminated;

(b) Children of the subscriber's spouse, based on the spouse's establishment of a parent-child relationship as described in RCW 26.26.101, except when parental rights have been terminated. The stepchild's relationship to the subscriber (and eligibility as a dependent) ends on the same date the marriage with the spouse ends through divorce, annulment, dissolution, termination, or death;

(c) Children of the subscriber's state registered domestic partner, based on the state registered domestic partner's establishment of a parent-child relationship as described in RCW 26.26.101, except when parental rights have been terminated. The child's relationship to the subscriber (and eligibility as a dependent) ends on the same date the subscriber's legal relationship with the state registered domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(e) Children specified in a court order or divorce decree for whom the subscriber has a legal obligation to provide support or health care coverage;

(f) Children of any age with a developmental or physical disability that renders the child incapable of self-sustaining employment and chiefly dependent upon the subscriber for support and maintenance provided such conditions occurs before the age of twenty-six:

(i) The subscriber must provide proof of the disability and dependency within sixty days of the child's attainment of age twenty-six;

(ii) The subscriber must agree to notify the SEBB program, in writing, no later than sixty days after the date that the child is no longer eligible under this subsection;

(iii) A child with a developmental or physical disability who becomes self-supporting is not eligible under this subsection as of the last day of the month in which they become capable of self-support;

(iv) A child with a developmental or physical disability age twenty-six and older who becomes capable of self-support does not regain eligibility if they later become incapable of self-support; and

(v) The SEBB program with input from the applicable contracted vendor will periodically verify the eligibility of a dependent child with a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday, which may require renewed proof from the subscriber.

(g) Extended dependent in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or the subscriber's state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. Extended dependent child does not include a foster child unless the subscriber, the subscriber's spouse, or the subscriber's state registered domestic partner has assumed a legal obligation for total or partial support in anticipation of adoption.

NEW SECTION

WAC 182-31-150 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in school employees benefits board (SEBB) benefits. A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled in a medical plan to enroll their dependent. Subscribers must satisfy the enrollment requirements as described in subsection (5) of this section and may enroll eligible dependents at the following times:

(a) When the subscriber becomes eligible and enrolls in SEBB benefits. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date, except if the subscriber enrolls a newborn child in supplemental dependent life insurance. The newborn child's dependent life insurance coverage will be effective on the date the child becomes fourteen days old;

(b) During the annual open enrollment. SEBB health plan coverage begins January 1st of the following year; or

(c) During special open enrollment. Subscribers may enroll dependents during a special open enrollment as described in subsections (3) and (5)(f) of this section.

(2) Removing dependents from a subscriber's health plan coverage.

(a) A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent fails to meet the eligibility criteria as described in WAC 182-31-140. Subscribers must notify their SEBB organization when a dependent is no longer eligible. Consequences for not submitting notice within sixty days of the last day of the month the dependent loses eligibility for health plan coverage may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the SEBB organization for the dependent's health plan coverage after the dependent lost eligibility.

(b) School employees have the opportunity to remove eligible dependents:

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (5)(f) of this section.

(c) Enrollees with SEBB continuation coverage as described in WAC 182-31-090 may remove dependents from their SEBB insurance coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the SEBB program. The dependent will be removed from the subscriber's SEBB insurance coverage prospectively. SEBB insurance coverage will end on the last day of the month in which the written notice is received by the SEBB program. If the written notice is received on the first day of the month, coverage will end on the last day of the previous month.

(3) Special open enrollment.

(a) Subscribers may enroll their eligible dependents or remove them outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury Regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

(i) Health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) Enrollment of an extended dependent or a dependent with a disability will be the first day of the month following eligibility certification.

(iii) The dependent will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end as follows:

- For the newly born child, health plan coverage will begin the date of birth;

- For a newly adopted child health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

- For a spouse or state registered domestic partner of a subscriber, health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from health plan coverage the last day of the month in which the event occurred;

A newly born child must be at least fourteen days old before supplemental dependent life insurance coverage purchased by the employee becomes effective.

Any one of the following events may create a special open enrollment:

(b) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership on a state registry when the dependent is a tax dependent of the subscriber;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(c) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(d) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

(f) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(g) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(h) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(i) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(j) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or a state CHIP.

(4) For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(5) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection. A school employee must submit the required forms to their SEBB organization, all other subscribers must submit the required forms to the SEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the relevant time frames.

(a) If a subscriber wants to enroll their eligible dependents when the subscriber becomes eligible to enroll in SEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the relevant time frame.

(b) If a subscriber wants to enroll eligible dependents during the SEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the SEBB program by submitting the required form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required form must be received no later than sixty days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the required forms must be received no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-31-140 (3)(f). To recertify an enrolled child with a disability, the required forms must be received by the SEBB program or the contracted vendor by the child's scheduled SEBB coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, required forms must be received no later than sixty days after the event that creates the special open enrollment.

NEW SECTION

WAC 182-31-160 National Medical Support Notice (NMSN). When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(1) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under subsection (3) of this section. School employees submit the required forms to their school employees benefits board (SEBB) organization. All other subscribers submit the required forms to the SEBB program;

(2) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the SEBB organization or the SEBB program may make enrollment or health plan coverage changes according to subsection (3) of this section upon request of:

(a) The child's other parent; or

(b) Child support enforcement program.

(3) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

(a) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

(b) A school employee who has waived SEBB medical as approved by the SEBB will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

(c) The subscriber's selected health plan will be changed if directed by the NMSN;

(d) If the dependent is already enrolled under another SEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN; or

(e) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(4) Changes to health plan coverage or enrollment as described in subsection (3)(a) through (c) of this section will begin the first day of the month following receipt of the NMSN. If the NMSN is received on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in subsection (3)(d) of this section the last day of the month the NMSN is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(5) The subscriber may be eligible to make changes to their health plan enrollment and salary reduction elections related to the NMSN as described in WAC 182-30-090 (1) and (2) or 182-31-150(3).

Chapter 182-32 WAC

APPEALS PRACTICES AND PROCEDURES

PART I

GENERAL PROVISIONS

NEW SECTION

WAC 182-32-010 Purpose. This chapter describes the general rules and procedures that apply to the health care authority's brief adjudicative proceedings and formal administrative hearings for the school employees benefits board (SEBB) program.

NEW SECTION

WAC 182-32-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Appellant" means a person who requests a review by the SEBB appeals unit or a formal administrative hearing about the action of the SEBB organization, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494.

"Business days" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and holidays.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term contracted vendor includes subcontractors of the HCA and subcontractors of any person, per-

sons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, either a school employees benefits board (SEBB) organization, contracted vendor, or the SEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to SEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability or supplemental short-term disability paid for by the employee.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items. Documents include evidence needed to verify eligibility for SEBB benefits and complete the enrollment process.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-060.

"Employer-paid coverage" means SEBB insurance coverage for which an employer contribution is made by a SEBB organization for school employees eligible in WAC 182-31-060.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, review officer, or hearing officer. A document is considered filed when it is received by the health care authority or its designee.

"Final order" means an order that is the final health care authority decision.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.479.

"HCA hearing representative" means a person who is authorized to represent the SEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical, dental, or any combination of these coverages, developed by the school employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or

• When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Life insurance" for eligible school employees includes any basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the school employees benefits board (SEBB) organization, as well as supplemental life insurance and supplemental AD&D insurance offered to and paid for by school employees for themselves and their dependents.

"LTD insurance" or "long-term disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability insurance offered to and paid for by the school employee.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

• The spouse's or state registered domestic partner's share of the medical premiums is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

• The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Review officer or officers" means one or more delegates from the director that consider appeals relating to the administration of SEBB benefits by the SEBB program.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program (DCAP), medical flexible spending arrangement (FSA), or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefit board.

"SEBB" means the school employees benefits board established in RCW 41.05.740.

"SEBB benefits" means one or more insurance coverages or other employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040), and eligible dependents (as described in WAC 182-31-140).

"State registered domestic partner," has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

NEW SECTION

WAC 182-32-055 Mailing address changes. (1) During the appeal process, if the appellant's mailing address changes, the appellant must notify the school employees benefits board (SEBB) appeals unit as soon as possible.

(2) If the appellant does not notify the SEBB appeals unit of a change in the appellant's mailing address and the SEBB appeals unit continues to serve notices and other important documents to the appellant's last known mailing address, the documents will be deemed served on the appellant.

(3) This requirement to provide notice of an address change is in addition to WAC 182-30-075 that require a subscriber to update their address with the SEBB appeals unit.

NEW SECTION

WAC 182-32-058 Service or serve. (1) When the rules in this chapter or in other school employees benefits board (SEBB) program rules or statutes require a party to serve copies of documents on other parties, a party must send copies of the documents to all other parties or their representatives as

described in this chapter. In this section, requirements for service or delivery by a party apply also when service is required by the presiding officer or review officer or officers, or hearing officer.

(2) Unless otherwise stated in applicable law, documents may be sent only as identified in this chapter to accomplish service. A party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail sent via the United States Postal Service or Washington state consolidated mail services;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party must serve all other parties or their representatives whenever the party files a motion, pleading, brief, or other document with the presiding officer, review officer or officers, or hearing officer's office, or when required by law.

(4) Service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States Postal Service;

(c) Mail is properly addressed, and deposited in the Washington state consolidated mail services;

(d) Fax produces proof of transmission;

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

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

(5) A party may prove service by providing any of the following:

(a) A signed affidavit or certificate of mailing;

(b) The certified mail receipt signed by the person who received the parcel;

(c) A signed receipt from the person who accepted the commercial delivery service or legal messenger service parcel;

(d) Proof of fax transmission.

(6) Service cannot be made by electronic mail unless mutually agreed to in advance and in writing by the parties.

(7) If the document is a subpoena, follow the compliance procedure as described in WAC 182-32-3130.

NEW SECTION

WAC 182-32-064 Applicable rules and laws. A presiding officer, review officer or officers, or hearing officer must first apply the applicable school employees benefits board (SEBB) program rules adopted in the Washington Administrative Code (WAC). If no SEBB program rule applies, the presiding officer, review officer or officers, or hearing officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-32-130, and court decisions.

NEW SECTION

WAC 182-32-066 Burden of proof, standard of proof, and presumptions. (1) The burden of proof is a

party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer, review officer or officers, or hearing officer that a position is correct based on the standard of proof.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a brief adjudicative proceeding or formal administrative hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and school employees benefits board (SEBB) organizations are presumed to have properly performed their duties and acted as described in the law, unless substantial evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

NEW SECTION

WAC 182-32-120 Computation of time. (1) In computing any period of time prescribed by this chapter, the day of the event from which the time begins to run is not included. (For example, if an initial order is served on Friday and the party has twenty-one days to request a review, start counting the days with Saturday.)

(2) Except as provided in subsection (3) of this section, the last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, in which case the period extends to the end of the next business day.

(3) When the period of time prescribed or allowed is less than ten days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(4) The deadline is 5:00 p.m. on the last day of the computed period.

NEW SECTION

WAC 182-32-130 Index of significant decisions. (1) A final decision may be relied upon, used, or cited as precedent by a party if the final order has been indexed in the authority's index of significant decisions in accordance with RCW 34.05.473 (1)(b).

(2) An index of significant decisions is available to the public on the health care authority's (HCA) web site. As decisions are indexed they will be available on the web site.

(3) A final decision published in the index of significant decisions may be removed from the index when:

(a) A published decision entered by the court of appeals or the supreme court reverses an indexed final decision; or

(b) HCA determines that the indexed final decision is no longer precedential due to changes in statute, rule, or policy.

PART II

BRIEF ADJUDICATIVE PROCEEDINGS

NEW SECTION

WAC 182-32-2000 Brief adjudicative proceedings. Pursuant to RCW 34.05.482, the authority will use brief adjudicative proceedings for issues identified in this chapter when

doing so would not violate law, or when protection of the public interest does not require the authority to give notice and an opportunity to participate to persons other than the parties, or the issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479 which govern formal administrative hearings.

NEW SECTION

WAC 182-32-2005 Record—Brief adjudicative proceeding. The record in a brief adjudicative proceeding consists of any documents regarding the matter, considered or prepared by the presiding officer for the brief adjudicative proceeding or by the review officer or officers for any review. The authority's record does not have to constitute the exclusive basis for agency action, unless otherwise required by law.

NEW SECTION

WAC 182-32-2010 Appealing a decision regarding eligibility, enrollment, premium payments, premium surcharges, or the administration of school employees benefits board (SEBB) benefits. (1) Any current or former school employee of a school employees benefits board (SEBB) organization or their dependent aggrieved by a decision made by the SEBB organization with regard to SEBB eligibility, enrollment, or premium surcharges may appeal that decision to the SEBB organization by the process outlined in WAC 182-32-2020.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to SEBB insurance coverage, as described in SEBB rules and policies. Enrollment decisions address the application for SEBB benefits as described in SEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any subscriber or dependent aggrieved by a decision made by the SEBB program with regard to SEBB eligibility, enrollment, premium payments, or premium surcharges may appeal that decision to the SEBB appeals unit by the process described in WAC 182-32-2030.

(3) Any enrollee aggrieved by a decision regarding the administration of a health plan, life insurance, disability insurance, or property and casualty insurance may appeal that decision by following the appeal provisions of those plans, with the exception of:

- (a) Enrollment decisions;
- (b) Premium payment decisions other than life insurance premium payment decisions; and
- (c) Eligibility decisions.

(4) Any school employee aggrieved by a decision regarding the administration of a benefit offered under the salary reduction plan may appeal that decision by the process described in WAC 182-32-2050.

NEW SECTION

WAC 182-32-2020 Appealing a decision made by a school employees benefits board (SEBB) organization

about eligibility, premium surcharge, or enrollment in benefits. (1) An eligibility, premium surcharge, or enrollment decision made by a school employees benefits board (SEBB) organization may be appealed by submitting a written request for administrative review to the SEBB organization. The SEBB organization must receive the request for administrative review no later than thirty days after the date of the denial notice. The contents of the request for administrative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the request for administrative review, the SEBB organization shall perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization shall render a written decision within thirty days of receiving the written request for administrative review. The written decision shall be sent to the school employee or school employee's dependent who submitted the request for administrative review and must include description of the appeal rights. The SEBB organization shall also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within thirty days of receiving the written request for administrative review, the request for administrative review may be considered denied and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(c) The SEBB organization may reverse eligibility, premium surcharge, or enrollment decisions based only on circumstances that arose due to delays caused by the SEBB organization or errors made by the SEBB organization.

(2) Any current or former school employee or school employee's dependent who disagrees with the SEBB organization's decision in response to a request for administrative review, as described in subsection (1) of this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the SEBB organization's written decision on the request for administrative review. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will then have two business days to respond to the request and provide the requested documentation and information. The SEBB organization will also send a copy of the documentation and information to the employee, former employee, or the employee's dependent.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal the SEBB organization's written decision within thirty days by following the process in subsection (2) of this section, the SEBB organization's prior decision becomes the health care authority's final decision.

NEW SECTION

WAC 182-32-2030 Appealing a school employees benefits board (SEBB) program decision regarding eligibility, enrollment, premium payments, and premium surcharges. (1) A decision made by the school employees benefits board (SEBB) program regarding eligibility, enrollment, premium payments, or premium surcharges may be appealed by submitting a request to the SEBB appeals unit for a brief adjudicative proceeding to be conducted by the authority.

(2) The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(3) The request for a brief adjudicative proceeding from a current or former school employee or school employee's dependent must be received by the SEBB appeals unit no later than thirty days after the date of the denial notice.

(4) The request for a brief adjudicative proceeding from a self-pay enrollee or dependent of self-pay enrollee must be received by the SEBB appeals unit no later than sixty days after the date of the denial notice.

(5) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(6) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(7) Failing to timely request a brief adjudicative proceeding to appeal a decision made under this section within applicable time frames described in subsections (3) and (4) of this section, will result in the prior decision becoming the authority's final decision without further action.

NEW SECTION

WAC 182-32-2050 How can a school employee appeal a decision regarding the administration of benefits offered under the salary reduction plan? (1) Any school employee who disagrees with a decision that denies eligibility for, or enrollment in, a benefit offered under the salary reduction plan may appeal that decision by submitting a written request for administrative review to their school employees benefits board (SEBB) organization. The SEBB organization must receive the written request for administrative review no later than thirty days after the date of the decision resulting in denial. The contents of the written request for administrative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the written request for administrative review, the SEBB organization shall perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization shall render a written decision within thirty days of receiving the written request for administrative review. The written decision shall be sent to

the school employee who submitted the written request for review and must include a description of appeal rights. The SEBB organization shall also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within thirty days of receiving the written request for administrative review, the request for administrative review may be considered denied and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(2) Any school employee who disagrees with the SEBB organization's decision in response to a written request for administrative review, as described in this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the SEBB organization's written decision on the request for administrative review. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will then have two business days to respond to the request. The SEBB organization will also send a copy of the documentation and information to the school employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the SEBB organization's prior written decision becomes the authority's final decision without further action by the authority.

(3) Any school employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the HCA contracted vendor by following the appeal process of that contracted vendor.

(a) Any school employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the medical FSA and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the SEBB appeals unit. The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the contracted vendor's appeal decision. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the contracted vendor's prior written decision becomes the health care authority (HCA) final decision.

(4) Any school employee aggrieved by a decision regarding the administration of the premium payment plan offered under the salary reduction plan may request a brief adjudicative proceeding to be conducted by the HCA by submitting a written request to the SEBB appeals unit for a brief adjudicative proceeding.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the denial notice by the SEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the notice of appeal has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the SEBB program's written decision becomes the authority's final decision.

NEW SECTION

WAC 182-32-2070 What should a written request for administrative review and a request for brief adjudicative proceeding contain? A written request for administrative review of the school employees benefits board (SEBB) organization's decision and a request for brief adjudicative proceeding should contain:

(1) The name and mailing address of the party requesting an administrative review or the brief adjudicative proceeding;

(2) The name and mailing address of the appealing party's representative, if any;

(3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;

(4) A statement identifying the specific portion of the decision being appealed and clarifying what is believed to be unlawful or in error;

(5) A statement of facts in support of the appealing party's position;

(6) Any information or documentation that the appealing party would like considered;

(7) The type of relief sought; and

(8) The signature of the appealing party or the appealing party's representative.

NEW SECTION

WAC 182-32-2080 Who can appeal or represent a party in a brief adjudicative proceeding? (1) The appellant may act as their own representative or may choose to be represented by another person, except employees of the health care authority (HCA) or HCA's authorized agents.

(2) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the non-attorney representative must provide the school employees benefits board (SEBB) appeals unit and other parties with a signed, written consent permitting release to the nonattorney representative of the appellant's personal health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state representing the appellant must file a written notice of appearance containing the attorney's name, address, and telephone number with the presiding officer's office and serve all parties with the notice. In cases involving confidential information, the attorney must provide the SEBB appeals unit and other parties with a signed, written consent permitting release to the attorney of the appellant's personal health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the presiding officer or review officer or officer's office and serve all parties with the notice.

NEW SECTION

WAC 182-32-2085 Continuances. The presiding officer, review officer or officers may grant in their sole discretion, a request for a continuance on motion of the appellant, the authority, or on its own motion. The continuance may be up to thirty calendar days.

NEW SECTION

WAC 182-32-2090 Initial order. Unless a continuance has been granted, within ten days after the school employees benefits board (SEBB) appeals unit receives a request for a brief adjudicative proceeding, the presiding officer shall render a written initial order that addresses the issue or issues raised by the appellant in their appeal. The presiding officer shall serve a copy of the initial order on all parties and the initial order shall contain information on how the appellant may request review of the initial order.

NEW SECTION

WAC 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding.

(1) An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization decision, SEBB program decision, or a decision made by SEBB program contracted vendor, may request review of the initial order by the authority. The appellant must file a written request for review of the initial order or make an oral request for review of the initial order with the SEBB appeals unit within twenty-one days after service of the initial order. The written request for review of the initial order must be provided using the contact information included in the initial order. If the appellant fails to request review of the initial order within twenty-one days, the order becomes the final order without further action by the authority.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more review officers designated by the director of the authority.

(3) If the appellant have not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own motion, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

NEW SECTION

WAC 182-32-2105 Withdrawing the request for a brief adjudicative proceeding or review of an initial order. (1) The appellant may withdraw the request for a brief adjudicative proceeding or review of an initial order for any reason, and at any time, by contacting the school employees benefits board (SEBB) appeals unit. The SEBB appeals unit will present the withdrawal request to the presiding officer or review officer or officers.

(2) The request for withdrawal must be made in writing.

(3) After a withdrawal request is received, the presiding officer or review officer or officers must enter and serve a written order dismissing the appeal.

(4) If an appellant withdraws a request for a brief adjudicative proceeding or review of an initial order, the appellant may not reinstate the request for a brief adjudicative proceeding or review of an initial order unless time remains on their original appeal period.

NEW SECTION

WAC 182-32-2110 Final order. (1) A final order issued by the review officer or officers will be issued in writing and include a brief statement of the reasons for the decision.

(2) The final order must be rendered and served within twenty days of the date of the initial order or of the date the request for review of the initial order was received by the SEBB appeals unit, whichever is later.

(3) The final order will include a notice that reconsideration and judicial review may be available.

(4) A request for review of the initial order is deemed denied if the authority does not issue a final order within twenty days after the request for review of the initial order is filed.

NEW SECTION

WAC 182-32-2120 Request for reconsideration. (1) A request for reconsideration asks the review officer or officers to reconsider the final order because the party believes the review officer or officers made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the review officer or officers who entered the final order.

(4) If a party files a request for reconsideration:

(a) The review officer or officers must receive the request for reconsideration on or before the tenth business day after the service date of the final order;

(b) The party filing the request must send copies of the request to all other parties; and

(c) Within five business days of receiving a request for reconsideration, the review officer or officers must serve to all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(a) Responses to a request for reconsideration must be received by the review officer or officers no later than seven business days after the service date of the review officer or officers' notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the review officer or officers may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) Unless the request for reconsideration is denied as untimely filed under subsection (4)(a) of this section, the same review officer or officers who entered the final order, if reasonably available, will also consider the request as well as any responses received.

(8) The decision on the request for reconsideration must be in the form of a written order denying the request, granting the request in whole or in part and issuing a new written final order, or granting the petition and setting the matter for further hearing.

(9) If the review officer or officers do not send an order on the request for reconsideration within twenty calendar days of the date of the notice described in subsection (4)(c) of this section, the request is deemed denied.

(10) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a petition for reconsideration is not required before requesting judicial review.

(11) An order denying a request for reconsideration is not subject to judicial review.

(12) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not with reasonable diligence have discovered and produced at the hearing or before the ruling on a dispositive motion.

NEW SECTION

WAC 182-32-2130 Judicial review of final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The appellant may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The school employees benefits board (SEBB) program may not request judicial review.

(3) The appellant should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

NEW SECTION

WAC 182-32-2140 Presiding officer—Designation and authority. The designation of a presiding officer shall be consistent with the requirements of RCW 34.05.485 and the presiding officer shall not have personally participated in the decision made by the school employees benefits board (SEBB) organization or SEBB program.

(1) The presiding officer will decide the issue based on the information provided by the parties during the presiding officer's review of the appeal.

(2) A presiding officer is limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(3) A presiding officer may not decide that a rule is invalid or unenforceable.

(4) In addition to the record, the presiding officer may employ the authority's expertise as a basis for the decision.

NEW SECTION

WAC 182-32-2150 Review officer or officers—Designation and authority. (1) The designation of a review officer or officers shall be consistent with the requirements of RCW 34.05.491 and the review officer or officers shall not have personally participated in the decision made by the school employees benefits board (SEBB) organization or SEBB program.

(2) The review officer or officers shall review the initial order and the record to determine if the initial order was correctly decided.

(3) The review officer or officers will issue a final order that will either:

- (a) Affirm the initial order in whole or in part; or
- (b) Reverse the initial order in whole or in part; or
- (c) Refer the matter for a formal administrative hearing;

or

- (d) Remand to the presiding officer in whole or in part.

(4) A review officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A review officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the review officer or officers may employ the authority expertise as a basis for the decision.

NEW SECTION

WAC 182-32-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing. (1) The presiding officer or the review officer or officers, in their sole discretion, may convert a brief adjudicative proceeding

to a formal administrative hearing at any time on motion by the subscriber or enrollee or their representative, the authority, or on the presiding officer or review officer or officers' own motion.

(2) The presiding or review officer or officers must convert the brief adjudicative proceeding to a formal administrative hearing when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the authority to give notice and an opportunity to participate to persons other than the parties, or when the issues and interests involved in the controversy warrant the use of the procedures or RCW 34.05.413 through 34.05.479 that govern formal administrative hearings.

(3) When a brief adjudicative proceeding is converted to a formal administrative hearing, the director may become the hearing officer or may designate a replacement hearing officer to conduct the formal administrative hearing upon notice to the subscriber or enrollee and the authority.

(4) When a brief adjudicative proceeding is converted to a formal administrative hearing, WAC 182-32-010 through 182-32-130 and WAC 182-32-3000 through 182-32-3200 apply to the formal administrative hearing.

PART III

FORMAL ADMINISTRATIVE HEARINGS

NEW SECTION

WAC 182-32-3000 Formal administrative hearings.

(1) When a brief adjudicative proceeding is converted to a formal administrative hearing consistent with WAC 182-32-3160, the director designates a hearing officer to conduct the formal administrative hearing.

(2) Formal administrative hearings are conducted consistent with the Administrative Procedure Act, RCW 34.05.413 through 34.05.479.

(3) Part III describes the general rules and procedures that apply to school employees benefits board (SEBB) benefits formal administrative hearings.

(a) This Part III supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules of procedure in chapter 10-08 WAC. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the authority in SEBB benefits formal administrative hearings. Other procedural rules adopted in chapters 182-30, 182-31, and 182-32 WAC are supplementary to the model rules of procedure.

(b) In the case of a conflict between the model rules of procedure and this Part III, the procedural rules adopted in this Part III shall govern.

(c) If there is a conflict between this Part III and specific SEBB program rules, the specific SEBB program rules prevail. SEBB program rules are found in chapters 182-30 and 182-31 WAC.

(d) Nothing in this Part III is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other

laws or rules determine if a hearing right exists, including the APA and program rules or laws.

NEW SECTION

WAC 182-32-3005 Record—Formal administrative hearings. The record in a formal administrative hearing consists of the official documentation of the hearing process. The record includes, but is not limited to, recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

NEW SECTION

WAC 182-32-3010 Requirements to appear and represent a party in the formal administrative hearing process.

(1) All parties must provide the hearing officer and all other parties with their name, address, and telephone number.

(2) The appellant may act as their own representative or have another person represent them, except employees of the health care authority (HCA) or HCA's authorized agents.

(3) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the hearing officer and all other parties with the representative's name, address, and telephone number. In cases involving confidential information, the non-attorney representative must provide the HCA hearing representative with a signed, written consent permitting release to the nonattorney representative of personal health information protected by state or federal law.

(4) An attorney admitted to practice law in Washington state, who wishes to represent the appellant, must file a written notice of appearance containing the attorney's name, address, and telephone number with the hearing officer's office and serve all parties with the notice. In cases involving confidential information, the attorney representative must provide the HCA hearing representative with a signed, written consent permitting release to the attorney representative of the appellant's personal health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the hearing officer's office and serve all parties with the notice.

NEW SECTION

WAC 182-32-3015 Hearing officers—Assignment, motions of prejudice, and disqualification.

(1) **Assignment:** A hearing officer will be assigned at least five business days before a hearing. A party may ask which hearing officer is assigned to a hearing by contacting the hearing officer's office listed on the notice of hearing. If requested by a party, the hearing officer's office must send the name of the assigned hearing officer to all parties, by electronic mail or in writing, at least five business days before the scheduled hearing date.

(2) **Motion of prejudice:** Any party requesting a different hearing officer may file a written motion of prejudice against the hearing officer assigned to the matter before the hearing officer rules on a discretionary issue in the case, admits evidence, or takes testimony.

(a) A motion of prejudice must include a declaration stating that a party does not believe the hearing officer can hear the case fairly. Service of copies of the motion must also be made to all parties listed on the notice of hearing.

(b) Any party's first motion of prejudice will be automatically granted. Any subsequent motion of prejudice made by a party may be granted or denied at the discretion of the hearing officer no later than seven days after receiving the motion.

(c) A party may make an oral motion of prejudice at the beginning of a hearing before the hearing officer rules on a discretionary issue in the matter, admits evidence, or takes testimony if:

(i) The hearing officer was not assigned at least five business days before the date of the hearing; or

(ii) The hearing officer was changed within five business days of the date of the hearing.

(3) **Disqualification:** A hearing officer may be disqualified from presiding over a hearing for bias, prejudice, conflict of interest, or ex parte contact with a party to the hearing.

(a) Any party may file a petition to disqualify a hearing officer as described in RCW 34.05.425. A petition to disqualify must be in writing and service promptly made to all parties and the hearing officer upon discovering facts of possible grounds for disqualification.

(b) The hearing officer whose disqualification is requested will determine whether to grant or deny the petition in a written order, stating facts and reasons for the determination. The officer must serve the order no later than seven days after receiving the petition for disqualification.

NEW SECTION

WAC 182-32-3030 Authority of the hearing officer.

(1) A hearing officer must hear and decide the issues de novo (anew) based on the evidence and oral or written arguments presented during a formal administrative hearing and admitted into the record.

(2) A hearing officer has no inherent or common law powers, and is limited to those powers granted by the state constitution, statutes, or rules.

(3) A hearing officer may not decide that a rule is invalid or unenforceable. If the validity of a rule is raised during a formal administrative hearing, the hearing officer may allow argument only to preserve the record for judicial review.

NEW SECTION

WAC 182-32-3080 Time requirements for service of notices made by the hearing officer.

(1) The hearing officer or their designee must serve a notice of a formal administrative hearing to all parties and their representatives at least twenty-one calendar days before the hearing date. The parties may agree to, but the hearing officer cannot impose, a shorter notice period.

(2) If a prehearing conference or dispositive motion hearing is scheduled, the hearing officer must serve a notice of the prehearing conference or dispositive motion hearing to the parties and their representatives at least seven business days before the date of the prehearing conference or dispositive motion hearing except:

(a) The hearing officer may change any scheduled formal administrative hearing into a prehearing conference or dispositive motion hearing and provide less than seven business days' notice of the prehearing conference or dispositive motion hearing; and

(b) The hearing officer may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether to grant a continuance.

(3) The hearing officer must reschedule a formal administrative hearing if necessary to comply with the notice requirements in this chapter.

NEW SECTION

WAC 182-32-3090 Formal administrative hearing location. (1) A hearing officer must be present at all hearings. Hearings may be held either in person or telephonically.

(a) A telephonic hearing is where all parties and the hearing officer are present by telephone.

(b) An in-person hearing is where the appellant appears face-to-face with the hearing officer. The other parties can choose to appear either in person or by telephone, but cannot be ordered to appear in person.

(2) Whether a hearing is held in person or telephonically, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(3) If a hearing is originally scheduled to be held in-person, the appellant may ask the hearing officer to change the in-person hearing to a telephonic hearing. Once a telephonic hearing begins, the hearing officer may stop, reschedule, and change the telephonic hearing to an in-person hearing if any party makes such a request.

NEW SECTION

WAC 182-32-3100 Rescheduling and continuances for formal administrative hearings. (1) Any party may request the hearing officer to reschedule a formal administrative hearing if a rule requires notice of a hearing and the amount of notice required was not provided.

(a) The hearing officer must reschedule the formal administrative hearing under circumstances identified in this subsection if requested by any party.

(b) The parties may agree to shorten the amount of notice required by any rule.

(2) Any party may request a continuance of a formal administrative hearing either orally or in writing.

(a) In each formal administrative hearing, the hearing officer must grant each party's first request for a continuance. The continuance may be up to thirty calendar days.

(b) The hearing officer may grant each party up to one additional continuance of up to thirty calendar days because of extraordinary circumstances established at a proceeding.

(c) After granting a continuance, the hearing officer or their designee must:

(i) Immediately telephone all other parties to inform them the hearing was continued; and

(ii) Serve an order of continuance on the parties no later than fourteen days before the new hearing date. All orders of continuance must provide a new deadline for filing documents with the hearing officer. The new filing deadline can

be no less than ten calendar days prior to the new formal administrative hearing date. If the continuance is granted pursuant to (b) of this subsection, then the order of continuance must also include findings of fact that state with specificity the extraordinary circumstances for which the hearing officer granted the continuance.

(3) Regardless of whether a party has been granted a continuance as described in subsection (1) of this section, the hearing officer must grant a continuance if a new material issue is raised during the formal administrative hearing and a party requests a continuance.

NEW SECTION

WAC 182-32-3110 Prehearing conferences. (1) A prehearing conference is a formal proceeding conducted on the record by a hearing officer to prepare for a formal administrative hearing.

(a) The hearing officer must record a prehearing conference using audio recording equipment.

(b) The hearing officer may conduct a prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties.

(2) Any party can request a prehearing conference. The hearing officer must grant each party's first request for a prehearing conference if it is filed with the hearing officer at least seven business days before the next scheduled hearing date. The hearing officer may grant requests for additional prehearing conferences.

(3) The appellant must attend or participate in any scheduled prehearing conference. If the appellant does not attend or participate in a scheduled prehearing conference, the hearing officer will enter an order of default dismissing the matter.

(4) During a prehearing conference the parties and the hearing officer may:

(a) Identify the issue or issues to be decided;

(b) Agree to the date, time, and place of any requested or necessary hearing or hearings;

(c) Identify accommodation and safety issues; or

(d) Establish a schedule for:

(i) The exchange and filing of briefs;

(ii) Providing a list of proposed witnesses;

(iii) Providing exhibit lists; and

(iv) Providing proposed exhibits before the hearing.

(5) After the prehearing conference ends, the hearing officer must enter a written order that recites the action taken at the prehearing conference, a case schedule outlining hearing dates and deadlines for exchanging witness lists and exhibits, and any other agreements reached by the parties.

(6) The hearing officer must serve the prehearing order to the parties at least fourteen calendar days before the next scheduled hearing.

(7) A party may object to the prehearing order by filing an objection with the hearing officer in writing no later than ten days after the service date of the order. The hearing officer must serve a written ruling on the objection.

(8) If no objection is made to the prehearing order, the order determines how the case will be conducted by the hearing officer, including whether a hearing will be in person or

held by telephone conference, unless the hearing officer enters an amended prehearing conference order.

NEW SECTION

WAC 182-32-3120 Dispositive motions. (1) A dispositive motion could dispose of one or all the issues in a formal administrative hearing, such as a motion to dismiss or motion for summary judgment.

(2) To request a dispositive motion hearing a party must file a written dispositive motion with the hearing officer and serve a copy of the motion to all other parties. The hearing officer may also set a dispositive motion hearing, and request briefing from the parties, to address any possible dispositive issues the hearing officer believes must be addressed before the hearing.

(3) The deadline to file a timely dispositive motion shall be ten calendar days before the scheduled hearing.

(4) Upon receiving a dispositive motion, a hearing officer:

(a) Must convert the scheduled hearing to a dispositive motion hearing when:

(i) The dispositive motion is timely filed with the hearing officer at least ten calendar days before the date of the hearing; and

(ii) The party filing the dispositive motion has not previously filed a dispositive motion.

(b) May schedule a dispositive motion hearing in all instances other than described in (a) of this subsection.

(5) The hearing officer may conduct the dispositive motion hearing in person or by telephone conference. For dispositive motion hearings scheduled to be held in person, the health care authority (HCA) hearing representative may choose to attend and participate in person or by telephone conference call.

(6) The party requesting the dispositive motion hearing must attend and participate in the dispositive motion hearing in person or by telephone. If the party requesting the motion hearing does not attend and participate in the dispositive motion hearing, the hearing officer will enter an order of default.

(7) During a dispositive motion hearing, the hearing officer can only consider the filed dispositive motions, any response to the motions, evidence submitted to support or oppose the motions, and argument on the motions. Prior to rescheduling any necessary hearings, the hearing officer must serve a written order on the dispositive motions.

(8) The hearing officer must serve the written order on the dispositive motions to all parties no later than eighteen calendar days after the dispositive motion hearing is held. Orders on dispositive motions are subject to motions for reconsideration or petitions for judicial review as described in WAC 182-32-2120 and 182-32-2130.

NEW SECTION

WAC 182-32-3130 Subpoenas. (1) Hearing officers, the health care authority (HCA) hearing representative, and attorneys for the parties may prepare subpoenas as described in Washington state civil rule 45, unless otherwise prohibited

by law. Any party may request the hearing officer prepare a subpoena on their behalf.

(2) The hearing officer may schedule a prehearing conference to decide whether to issue a subpoena.

(3) If a party requests the hearing officer prepare a subpoena on its behalf, the party is responsible for:

(a) Service of the subpoena; and

(b) Any costs associated with:

(i) Compliance with the subpoena; and

(ii) Witness fees as described in RCW 34.05.446(7).

(4) Service of a subpoena must be made by a person who is at least eighteen years old and not a party to the hearing. Service of the subpoena is complete when the person serving the subpoena:

(a) Gives the person or entity named in the subpoena a copy of the subpoena; or

(b) Leaves a copy of the subpoena with a person over the age of eighteen at the residence or place of business of the person or entity named in the subpoena.

(5) To prove service of a subpoena on a witness, the person serving the subpoena must file with the hearing officer's office a signed, written, and dated statement that includes:

(a) The name of the person to whom service of the subpoena occurred;

(b) The date of the service of the subpoena occurred;

(c) The address where the service of the subpoena occurred; and

(d) The name, age, and address of the person who provided service of the subpoena.

(6) A party may request the hearing officer quash (set aside) or change a subpoena request at any time before the deadline given in the subpoena.

(7) A hearing officer may quash (set aside) or change a subpoena if it is unreasonable.

NEW SECTION

WAC 182-32-3140 Orders of dismissal—Reinstating a formal administrative hearing after an order of dismissal.

(1) An order of dismissal is an order from the hearing officer ending the matter. The order is entered because the party who made the appeal withdrew from the proceeding, the appellant is no longer aggrieved, the hearing officer granted a dispositive motion dismissing the matter, or the hearing officer entered an order of default because the party who made the appeal failed to attend or refused to participate in a prehearing conference or the formal administrative hearing.

(2) The order of dismissal becomes a final order if no party files a request to vacate the order as described in subsections (3) through (7) of this section.

(3) If the hearing officer enters and serves an order dismissing the formal administrative hearing, the appellant may file a written request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, the hearing officer must schedule and serve notice of a prehearing conference as described in WAC 182-32-3080. At the prehearing conference, the party asking that the order of dismissal be vacated has the burden to show good cause

according to subsection (8) of this section for an order of dismissal to be vacated and the matter to be reinstated.

(4) The request to vacate an order of dismissal must be filed with the hearing officer and the other parties. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated.

(5) The request to vacate an order of dismissal must be filed with the hearing officer no later than twenty-one calendar days after the date the order of dismissal was entered. If no request is received within that deadline, the dismissal order becomes a final order and the final order will stand.

(6) If the hearing officer finds good cause, as described in subsection (8) of this section, for the order of dismissal to be vacated, the hearing officer must enter and serve a written order to the parties setting forth the findings of fact, conclusions of law, and reinstatement of the matter.

(7) If the order of dismissal is vacated, the hearing officer will conduct a formal administrative hearing at which the parties may present argument and evidence about issues raised in the original appeal. The formal administrative hearing may occur immediately following the prehearing conference on the request to vacate only if agreed to by the parties and the hearing officer, otherwise a formal administrative hearing date must be scheduled by the hearing officer.

(8) Good cause is a substantial reason or legal justification for failing to appear, act, or respond to an action using the provisions of superior court civil rule 60 as a guideline. This good cause exception applies only to this chapter. This good cause exception does not apply to any other chapter or chapters in Title 182 WAC.

NEW SECTION

WAC 182-32-3160 Withdrawing a formal administrative hearing. (1) The appellant may withdraw a formal administrative hearing for any reason, and at any time, by contacting the health care authority (HCA) hearing representative who will coordinate the withdrawal with the hearing officer.

(2) The request for withdrawal must generally be made in writing. An oral withdrawal by the appellant is permitted during a formal administrative hearing when both the hearing officer and HCA hearing representative are present.

(3) After a withdrawal request is received, the hearing officer must cancel any scheduled hearings and enter and serve a written order dismissing the case.

NEW SECTION

WAC 182-32-3170 Final order deadline—Required information. (1) Within ninety days after the formal administrative hearing record is closed, the hearing officer shall serve a final order that shall be the final decision of the authority. The hearing officer shall serve a copy of the final order to all parties.

(2) The hearing officer must include the following information in the written final order:

(a) Identify the order as a final order of the school employees benefits board (SEBB) program;

(b) List the name and docket number of the case and the names of all parties and representatives;

(c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;

(d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;

(e) State the law that applies to the dispute;

(f) Apply the law to the facts of the case in the conclusions of law;

(g) Discuss the reasons for the decision based on the facts and the law;

(h) State the result and remedy ordered; and

(i) Include any other information required by law or program rules.

NEW SECTION

WAC 182-32-3180 Request for reconsideration and response—Process. (1) A request for reconsideration asks the hearing officer to reconsider the final order because the party believes the hearing officer made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the hearing officer who entered the final order.

(4) If a party files a request for reconsideration:

(a) The hearing officer must receive the request for reconsideration on or before the tenth business day after the service date of the final order;

(b) The party filing the request must serve copies of the request on to all other parties; and

(c) Within five business days of receiving a request for reconsideration, the hearing officer must serve to all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(a) Responses to a request for reconsideration must be received by the hearing officer no later than seven business days after the service date of the hearing officer's notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the hearing officer may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not with reasonable diligence have discovered and produced at the hearing or before the ruling on a dispositive motion.

NEW SECTION

WAC 182-32-3190 Decisions on requests for reconsideration. (1) Unless the request for reconsideration is denied as untimely filed under WAC 182-32-3180, the same hearing officer who entered the final order, if reasonably available, will also dispose of the request as well as any responses received.

(2) The decision on the request for reconsideration must be in the form of a written order denying or granting the request in whole or in part and issuing a new written final order.

(3) If the hearing officer does not send an order on the request for reconsideration within twenty calendar days of the date of the notice described in WAC 182-32-2120, the request is deemed denied.

(4) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a request for reconsideration is not required before requesting judicial review.

(5) An order denying a request for reconsideration is not subject to judicial review.

NEW SECTION

WAC 182-32-3200 Judicial review of final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The appellant may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The school employees benefits board (SEBB) program may not request judicial review.

(3) The appellant should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

WSR 18-22-071**PROPOSED RULES****DEPARTMENT OF HEALTH**

(Board of Optometry)

[Filed November 1, 2018, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-05-086.

Title of Rule and Other Identifying Information: WAC 246-851-580 and 246-851-590, drug list and guidelines, the board of optometry (board) is proposing to add the drug category "adjuvant analgesics" to its list of approved oral drugs.

Hearing Location(s): On December 14, 2018, at 10:00 a.m., at the Department of Health, Kent Regional Office, Creekside Two at Center Point, Room 307, 20425 72nd Avenue South, Kent, WA 98032.

Date of Intended Adoption: December 14, 2018.

Submit Written Comments to: Lorelei Walker, Program Manager, Department of Health, Board of Optometry, P.O. Box 47852, Olympia, WA 98504-7852, email <https://>

fortress.wa.gov/doh/policyreview, fax 360-236-2901, by December 7, 2018.

Assistance for Persons with Disabilities: Contact Lorelei Walker, phone 360-236-4947, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov, by December 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing to update the drug list in WAC 246-851-580 and drug guidelines in WAC 246-851-590 to add adjuvant analgesics to the list of approved drugs for optometric use. These drugs were originally classified as antiepileptic medications, but are now more commonly prescribed to enhance treatment of pain. Adding adjuvant analgesics to the optometry drug list will give optometrists additional, safer pain treatments for addressing painful eye conditions, such as herpes zoster.

Reasons Supporting Proposal: Optometrists are currently authorized to prescribe hydrocodone combination products, which are potentially addictive opioids. Adjuvant analgesics by themselves do not carry the same risks for addiction.

Statutory Authority for Adoption: RCW 18.54.070(2).

Statute Being Implemented: RCW 18.53.010(4).

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

Name of Proponent: Department of health, board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, Department of Health, Board of Optometry, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. The proposed rule applies to credentialed providers and does not impose requirements on businesses.

November 1, 2018

Dale Heaston, OD, Chair
Board of Optometry

AMENDATORY SECTION (Amending WSR 16-16-017, filed 7/21/16, effective 8/21/16)

WAC 246-851-580 Drug list. Pursuant to RCW 18.53.010(4), the optometry board adopts the following drug formulary of oral Schedule II hydrocodone combination products, Schedule III through V controlled substances, and legend drugs for diagnostic and therapeutic purposes in the practice of optometry. No licensed optometrist may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. This section includes the approved oral drug formulary. Optometrists must consult WAC 246-851-590 for specific guidelines on these drugs or drug categories.

- (1) Approved nonscheduled oral drugs include:
- (a) Antibiotic agents excluding those listed in WAC 246-851-590(1).
 - (b) Antiviral agents.
 - (c) Antifungal agents listed under WAC 246-851-590(2).
 - (d) Antihistamine agents.
 - (e) Decongestant agents.
 - (f) Dry eye agents.
 - (g) Anti-emetic agents listed under WAC 246-851-590(3).
 - (h) Diuretic agents listed under WAC 246-851-590(4).
 - (i) Nonsteroidal anti-inflammatory agents excluding those listed in WAC 246-851-590(5).
 - (j) Analgesics and adjuvant analgesics.
- (2) Approved controlled substances limited to Schedule II hydrocodone combination products and Schedules III, IV, and V.
- (a) Schedule II hydrocodone combination products.
 - (b) Schedule III controlled substances.
 - (c) Schedule IV controlled substances.
 - (d) Schedule IV anti-anxiety/sedative agents.
 - (e) Schedule V controlled substances.
- (3) Approved injectable substances.
- Administration of epinephrine by injection for the treatment of anaphylactic shock.

AMENDATORY SECTION (Amending WSR 16-16-017, filed 7/21/16, effective 8/21/16)

WAC 246-851-590 Guidelines for the use of oral Schedule II hydrocodone combination products and Schedule III through V controlled substances and legend drugs. Nothing in these guidelines should be construed to restrict the recommendation of over-the-counter medications, vitamins, or supplements, nor restrict the ordering of any radiologic or laboratory testing necessary to the diagnosis of any eye related disease that is within the scope of practice of optometry.

- (1) All oral forms and dosages of antibiotic agents will be available for use excluding: Vancomycin.
- (2) Antifungal agents used in eye care shall fall into the following categories:
- (a) All oral forms and dosages of polyene antifungals.
 - (b) All oral forms and dosages of imidazole antifungals.
 - (c) All oral forms and dosages of triazole antifungals.
- (3) Anti-emetic agents used in eye care shall be the following medications:
- (a) All oral forms and dosages of prochlorperazine.
 - (b) All oral forms and dosages of metoclopramide.
 - (c) All oral forms and dosages of promethazine.
- (4) Diuretic agents used in eye care shall fall into the following categories:
- (a) All oral forms and dosages of carbonic anhydrase inhibitors.
 - (b) All oral forms and dosages of osmotic diuretics. Osmotic diuretics shall be used only in the case of acute angle closure glaucoma administered in-office, outpatient, and/or ambulatory procedures only.

(5) All oral forms and dosages of nonsteroidal anti-inflammatory agents will be available for use excluding: Ketorolac tromethamine.

(6) Benzodiazepines prescribed, as anti-anxiety agents, shall be used for in-office, outpatient, and/or ambulatory procedures. This family of medications will be utilized as one dosage unit per prescription.

(7) Schedule II controlled substance will only include hydrocodone combination products.

(8) Schedules III and IV controlled substances will have a maximum quantity count of thirty dosage units per prescription.

(9) Specific dosage for use and appropriate duration of treatment of oral medications listed in WAC 246-851-580(1) will be consistent with ~~((guidelines established by the))~~ Food and Drug Administration on- and off-label indications.

(10) Notation of purpose shall be included on all prescriptions.

(11) An optometrist may not:

(a) Use, prescribe, dispense, or administer oral corticosteroids; or

(b) Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

(c) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist. If treatment exceeding the limitation is indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

(12) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the human eye and the adnexa that are within the scope of practice of optometry. The prescription or administration of drugs for any other purpose is not authorized.

(13) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance with the exception of Schedule II hydrocodone combination products.

WSR 18-22-072

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed November 1, 2018, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-054.

Title of Rule and Other Identifying Information: WAC 458-40-610 Timber excise tax—Definitions, 458-40-640 Timber excise tax—Stumpage value area (map), and 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions.

Hearing Location(s): On December 12, 2018, at 10:00 a.m., at Conference Room 114C, 6400 Linderson Way S.W., Tumwater, WA 98501. Copies of draft rules are available for

viewing and printing on our web site dor.wa.gov. Call-in option can be provided upon request no later than three days before the hearing date.

Date of Intended Adoption: December 13, 2018.

Submit Written Comments to: Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, email BrentonM@dor.wa.gov, by December 12, 2018.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5717 or 360-725-7514, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To remove haul zones from the determination of stumpage valuation and include two new stumpage value areas.

Reasons Supporting Proposal: This proposal provides the revised stumpage value area map and updates other forest tax rules to include two new stumpage value areas and remove haul zones from existing language.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton M. Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brenton M. Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606, email BrentonM@dor.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Only large businesses are required to use the values contained in the rules, small businesses have other statutory authority for their tax reporting obligations.

November 1, 2018

Erin T. Lopez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-065, filed 6/29/12, effective 7/1/12)

WAC 458-40-610 Timber excise tax—Definitions. (1) **Introduction.** The purpose of WAC 458-40-610 through 458-40-680 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-680. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictio-*

nary of Forestry, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (14) of this section.

(8) **Forest-derived biomass.** Forest-derived biomass consists of tree limbs, tops, needles, leaves, and other woody debris that are residues from such activities as timber harvesting, forest thinning, fire suppression, or forest health. Forest-derived biomass does not include scalable timber products or firewood (defined in WAC 458-40-650).

(9) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, (~~(hauling distance zone,)~~) harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(10) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another govern-

mental entity as described above, acquiring title to or a possessory interest in such timber.

((11)) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting merchantable timber from the land and delivering it to the buyer. The term includes the costs of piling logging residue on site, and costs to abate extreme fire hazard when required by the department of natural resources. Harvesting and marketing costs do not include the costs of other consideration (for example, reforestation, permanent road construction), treatment to timber or land that is not a necessary part of a commercial harvest (for example, precommercial thinning, brush clearing, land grading, stump removal), costs associated with maintaining the option of land conversion (for example, county fees, attorney fees, specialized site assessment or evaluation fees), or any other costs not directly and exclusively associated with the harvesting and marketing of merchantable timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, or when harvesting and marketing costs ~~(can not)~~ **cannot** be separated from other costs, the deduction for harvesting and marketing costs is thirty-five percent of the gross receipts from the sale of the logs.

~~((12)) **Hauling distance zone.** An area with specified boundaries as shown on the statewide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.~~

((13)) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

((14)) **(13) Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than fifty percent of the gross scale; and meeting the following minimum requirements:

- (a) Minimum gross diameter—two inches.
- (b) Minimum gross length—twelve feet.
- (c) Minimum volume—ten board feet net scale.
- (d) Minimum recovery requirements—one hundred percent of adjusted gross scale in firm useable chips.

((15)) **(14) Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

((16)) **(15) MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

((17)) **(16) Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

((18)) **(17) Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of

permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

~~((19))~~ **(18) Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

~~((20))~~ **(19) Private timber.** All timber harvested from privately owned lands.

~~((21))~~ **(20) Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

~~((22))~~ **(21) Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

~~((23))~~ **(22) Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

~~((24))~~ **(23) Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding two million board feet in a calendar year.

~~((25))~~ **(24) Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs excluding redcedar harvested in stumpage value area 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed twenty feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value area 6, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles (Designation: D 25)* of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions (ANSI 05.1)* of the American National Standards Institute.

~~((26))~~ **(25) Stumpage.** Timber, having commercial value, as it exists before logging.

~~((27))~~ **(26) Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

~~((28))~~ **(27) Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

~~((29))~~ **(28) Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within twenty-four months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than twenty-four months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed

or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

~~((30))~~ **(29) Thinning.** Timber removed from a harvest unit located in stumpage value area 1, 2, 3, 4, 5, or ~~((5))~~ 9:

(a) When the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest; and

(b) The harvester leaves a minimum of one hundred undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

AMENDATORY SECTION (Amending WSR 12-14-065, filed 6/29/12, effective 7/1/12)

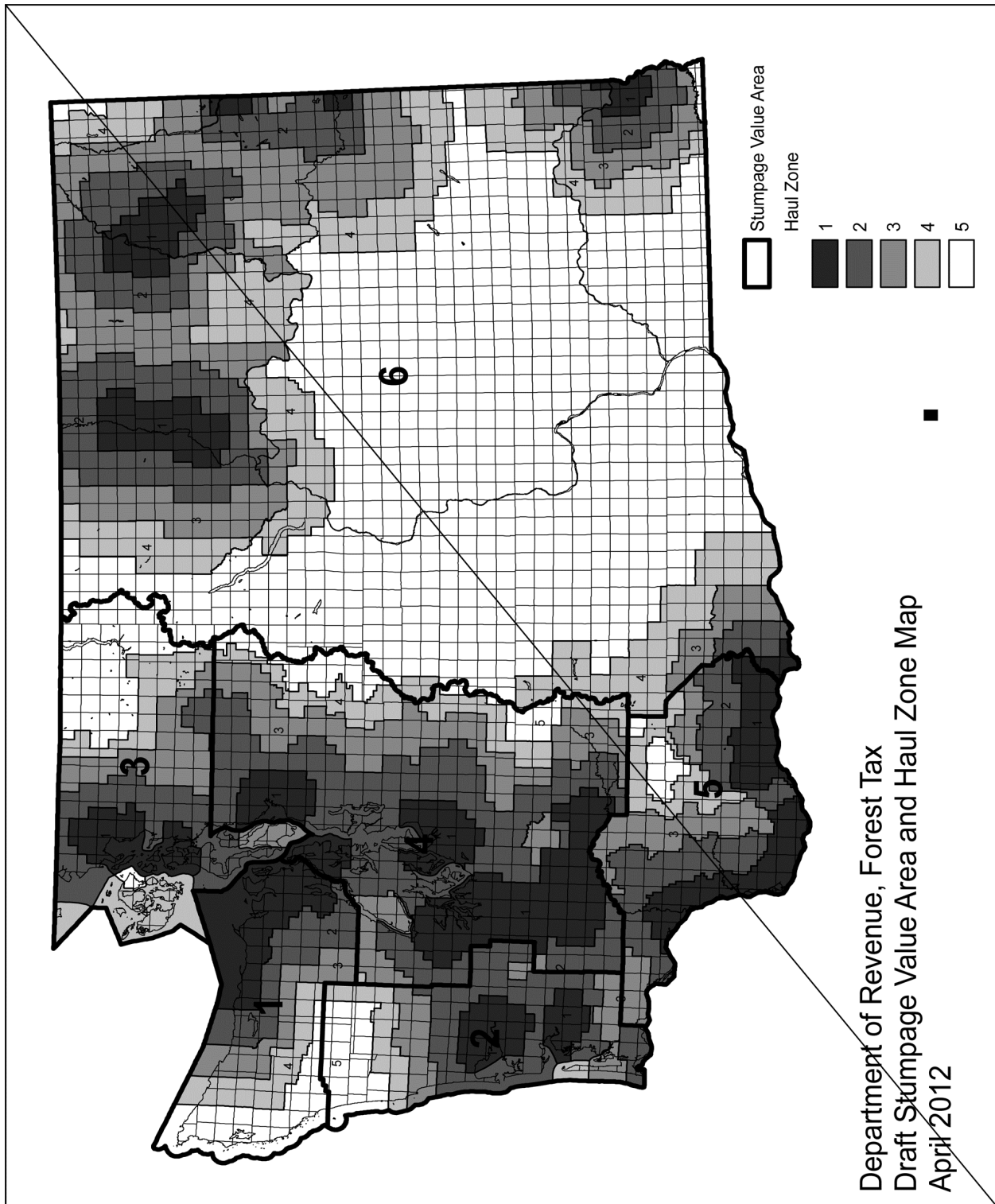
WAC 458-40-640 Timber excise tax—Stumpage value area (map). The stumpage value area ~~((and hauling distance zone))~~ map contained in this rule must be used to determine the proper stumpage value table ~~((and haul zone))~~ to be used in calculating the taxable stumpage value of timber harvested from private land.

WAC 458-40-640 Stumpage value area ~~((and hauling zone))~~—Map

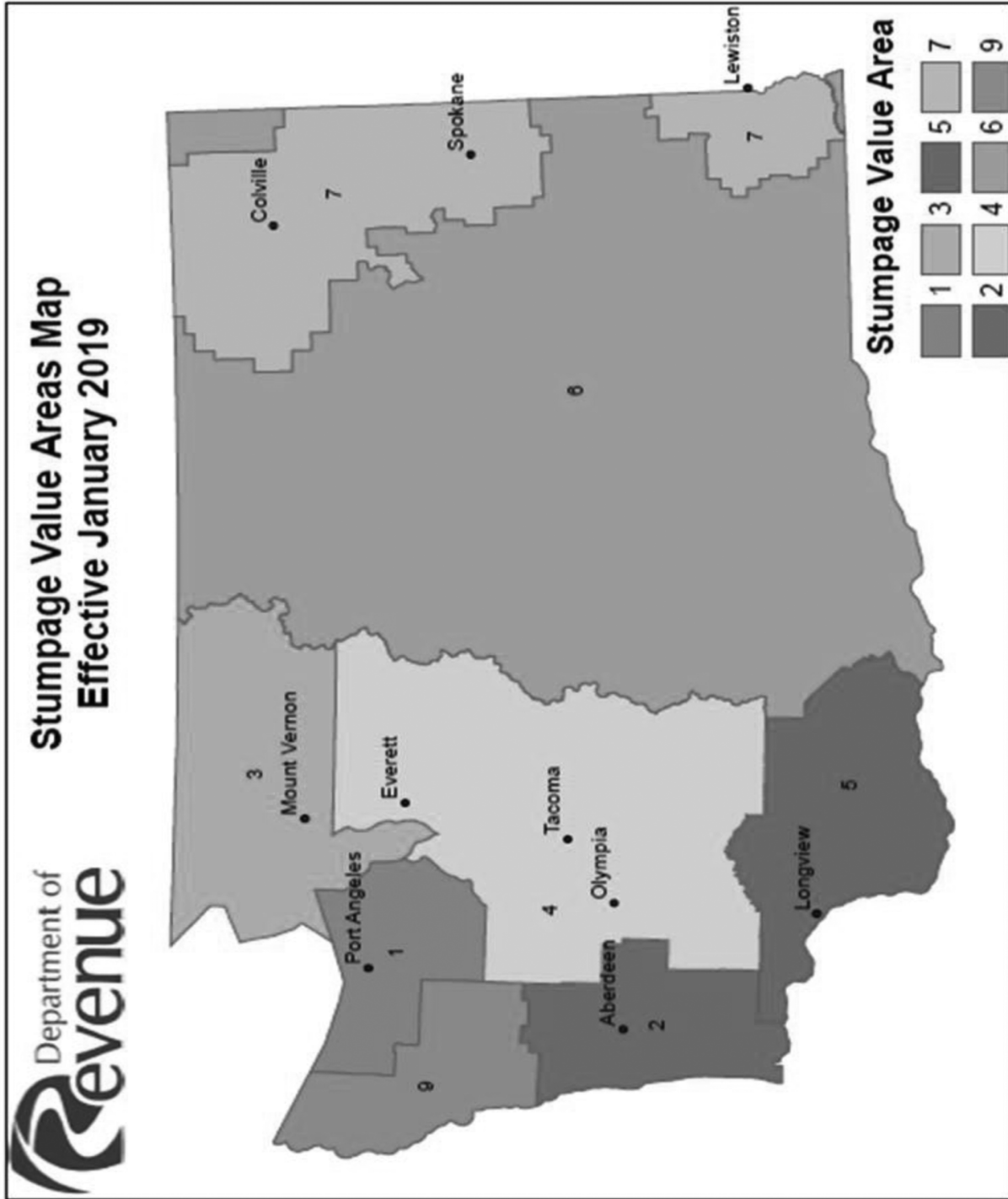
Harvesters may obtain a larger scale map by writing to the Washington State Department of Revenue, Special Programs Division, Forest Tax Section, Post Office Box 47472, Olympia, Washington 98504-7472; or by calling 1-800-548-8829.

Forest Tax Stumpage Value Area (SVA) ((and Haul Zone)) Map

((



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AMENDATORY SECTION (Amending WSR 12-14-065, filed 6/29/12, effective 7/1/12)

WAC 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions. (1) **Introduction.** The acceptable log scaling and grading standard for stumpage value

areas 1, 2, 3, 4, ~~5~~, and ~~(5)~~ 9 is the Scribner Decimal C log rule as described in the most current edition of the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group. The acceptable log scaling standard for stumpage value areas 6 and 7 is the Scribner Decimal C log rule described in the most current

edition of the "Eastside Log Scaling Handbook" as published by the Northwest Log Rules Advisory Group, except that timber harvested in stumpage value areas 6 and 7 must be scaled using the current regional taper rules at the point of origin.

(2) **Special services scaling.** Special services scaling as described in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group may not be used for tax reporting purposes without prior written approval of the department of revenue.

(3) **Sample scaling.** Sample scaling may not be used for tax reporting purposes without prior written approval of the department of revenue. To be approved, sample scaling must be in accordance with the following guidelines:

(a) Sample selection, scaling, and grading must be conducted on a continuous basis as the unit is harvested.

(b) The sample must be taken in such a manner to assure random, unbiased sample selection in accordance with accepted statistical tests of sampling.

(c) The sample used to determine total volume, species, and quality of timber harvested for a given reporting period must have been taken during that period.

(d) Sample frequency must be large enough to meet board foot variation accuracy limits of plus or minus two and five-tenths percent standard error at the ninety-five percent confidence level.

(e) Harvesters, or a purchaser with an approved sample scaling method, must maintain sufficient supporting documentation to allow the department of revenue to verify source data, and test statistical reliability of sample scale systems.

(f) Exceptions: Sampling designs and accuracy standards other than those described herein may only be used with the prior written approval of the department of revenue.

(4) **Conversions to Scribner Decimal C Scale.** The following definitions, tables, and conversion factors must be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods other than those listed are not to be used for tax reporting purposes without prior written approval of the department of revenue. Harvesters who wish to use a method of conversion other than those listed below must obtain written approval from the department of revenue before harvesting. Purchasers may obtain written approval of a sample scaling method from the department of revenue. The department will maintain a list of purchasers with an approved sample scaling method. A harvester may obtain this list and a summary of the approved method for specific purchasers from the department of revenue. If a harvester has not obtained approval of a sample scaling method before harvesting, the harvester may use a purchaser's approved sample scaling method. If the harvester, or purchaser, fails to use an approved sample scaling method or other method of conversion approved by these rules to set the purchase price, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold.

(a) **Weight measurement.** If the sole unit of measure used to set the purchase price for logs from harvest units was weight, and the harvester does not use an approved method of sample scaling to determine volume for the stumpage value

tables, the following tables must be used for converting to Scribner Decimal C, if the harvest volume per species meets the definition listed in the table. If weight is the sole measure used for a harvest unit and the harvest volume per species does not meet the definition listed in the table below, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 1, 2, 3, 4, 5, & ((6)) 9) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)	
Species	Quality code
	1
Douglas-fir ¹	7.50
Western Hemlock ²	8.25
Western Redcedar ³	7.0
Red Alder ⁴	7.80
Chipwood	9.0

¹ Includes Douglas-fir, Western Larch, Western White Pine and Sitka Spruce. Only for volume including less than 25% No. 2 sawmill or better log grades.

² Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, Lodgepole Pine and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir." Only for volume including less than 25% No. 2 sawmill or better log grades.

³ Includes Alaska-cedar.

⁴ Maple, Black Cottonwood and other hardwoods. Only for volume including less than 40% No. 3 sawmill or better log grades.

(Stumpage Value Areas 6 & 7) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)	
Species	Quality code
	1
Ponderosa Pine ¹	6.50
Douglas-fir ²	5.50
Lodgepole Pine	6.0
Western Hemlock ³	5.50
Englemann Spruce	4.50
Western Redcedar ⁴	4.50
Chipwood	9.0
Small Logs	6.50

¹ Only for volume with 10 or more logs 16 feet long per thousand board feet Scribner scale.

² Includes Western Larch.

³Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁴Includes Alaska-cedar.

(b) **Cord measurement.** For the purposes of converting cords into Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and ((~~5~~) 9) logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 400 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 330 board feet per cord.

(ii) In stumpage value areas 6 and 7 logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 470 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 390 board feet per cord.

(iii) A cord of Western Redcedar shake or shingle blocks must be converted to Scribner volume using 600 board feet per cord.

(iv) Firewood must be converted at a rate of 3 tons per cord.

(c) **Cants or lumber from portable mills.** To convert from lumber tally to Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and ((~~5~~) 9) multiply the lumber tally for the individual species by 75%, and round to the nearest one thousand board feet (MBF); or

(ii) In stumpage value areas 6 and 7 multiply the lumber tally for the individual species by 88%, and round to the nearest one thousand board feet (MBF).

(d) **Log scale conversion.** Timber harvested in stumpage value areas 1, 2, 3, 4, 5, and ((~~5~~) 9) and which has been scaled by methods and procedures published in the "Eastside Log Scaling Handbook" must have the volumes reported reduced by eighteen percent. Timber harvested in stumpage value areas 6 and 7 and which has been scaled by methods and procedures published in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest log rules advisory group, must have the volumes reported increased by eighteen percent.

(e) **Timber pole and piling volume tables.** Harvesters of poles must use the following tables to determine the Scribner board foot volume for each pole length and class:

Total Scribner Board Foot Volume Stumpage Value Areas 1, 2, 3, 4, <u>5</u> , and ((5) <u>9</u>)																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							50	50	40	40	30	30	20	20	20	80	70
25							60	60	50	50	40	40	30	30	30	100	90
30							110	70	60	60	50	50	40	40		130	110
35					160	160	130	100	80	80	60	60	50			130	110
40			240	200	180	180	150	120	120	90	70	60				150	120
45	380	340	340	280	230	230	190	150	120	120	90	90				150	120
50	430	370	370	300	260	260	210	160	140	140	100					160	140
55	470	410	410	330	280	280	230	180	150	150						180	150
60	540	470	470	410	340	340	290	220	190	190						190	160
65	610	520	520	420	380	380	320	260	210	210						210	180
70	650	560	560	480	400	400	350	270	230	230						230	190
75	700	600	600	520	520	520	440	290	250							230	200
80	820	700	700	600	600	540	440	360	290							250	210
85	910	800	800	660	660	660	570	490	360							260	210
90	1080	930	930	820	820	690	590	490	400							260	220
95	1170	1000	1000	870	870	750	640	540								290	240
100	1190	1030	1030	900	900	760	660	550								310	250
105	1310	1160	1160	1000	1000	860	740	610								330	270
110	1370	1220	1220	1050	1050	910	780	650								380	300
115	1440	1280	1280	1100	1100	960	860	680								400	310
120	1660	1460	1460	1300	1300	1140	970	820								500	400
125	1840	1600	1600	1410	1410	1250	1080	930									
130	1920	1680	1680	1490	1490	1310	1120	970									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

Total Scribner Board Foot Volume Stumpage Value Areas 6 and 7																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							70	60	50	50	30	30	20	20	20	90	70
25							80	70	50	50	40	40	30	30	20	100	80
30							110	90	60	60	50	50	50	40		130	110
35					190	160	140	100	100	70	60	60	50			140	100
40				240	240	200	170	120	110	100	70	70				140	100
45	390	330	330	270	270	220	180	150	110	110	80	70				150	110
50	460	390	390	340	340	280	240	190	150	150	120					190	150
55	510	430	430	370	360	300	250	190	150	150						190	150
60	610	530	530	440	440	380	310	240	200	200						240	200
65	650	570	570	490	480	410	350	280	220	220						240	200
70	750	650	650	550	470	470	410	320	260	260						260	210
75	810	700	700	600	600	500	440	340	270							270	220
80	960	830	830	710	710	610	510	420	340							220	220
85	1020	870	870	760	760	640	550	450	360							300	240
90	1110	970	970	840	840	720	620	500	420							280	280
95	1160	1010	1010	870	870	740	640	510								360	280
100	1380	1210	1210	1060	1060	910	780	650								360	280
105	1430	1250	1250	1100	1100	940	820	690								400	300
110	1580	1390	1390	1220	1220	1070	920	770								460	340
115	1660	1470	1470	1280	1280	970	810	680								470	360
120	1880	1680	1680	1480	1480	1290	1130	950								560	450
125	1910	1690	1690	1490	1490	1140	970	810									
130	2170	1920	1920	1710	1710	1510	1320	1140									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

WSR 18-22-077
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed November 2, 2018, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-054.

Title of Rule and Other Identifying Information: Child birth center, repealing.

Hearing Location(s): On December 12, 2018, at 2:00 p.m., at 106 11th Avenue S.W., Room 4015, Olympia, WA 98504.

Date of Intended Adoption: December 14, 2018.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E. [Avenue S.W.], Olympia, WA 98507 [98504], email wsprules@wsp.wa.gov, by November 27, 2018.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by November 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal is to repeal this WAC chapter. This chapter will be combined with chapter 212-12 WAC (WSR 16-12-053).

Statutory Authority for Adoption: RCW 18.46.110.

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

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, 106 11th Street S.E. [Avenue S.W.], Olympia, WA 98507 [98504], 360-596-4017; Implementation and Enforcement: State Fire Marshall, Olympia, Washington, 360-596-3906.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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

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

November 1, 2018
John R. Batiste
Chief

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 212-44-001	Purpose.
WAC 212-44-005	Definitions.
WAC 212-44-010	Applicability.
WAC 212-44-015	Compliance.
WAC 212-44-020	Inspection.
WAC 212-44-025	Approval.
WAC 212-44-030	Right of appeal.
WAC 212-44-035	Local codes.
WAC 212-44-040	Standards.
WAC 212-44-045	Construction requirements.
WAC 212-44-050	Modernization or renovation.
WAC 212-44-055	Additions.
WAC 212-44-065	Design, operation.
WAC 212-44-067	Exiting.
WAC 212-44-069	Vertical openings.
WAC 212-44-072	Fire extinguishers.
WAC 212-44-073	Lighting.
WAC 212-44-077	Protection from hazards.
WAC 212-44-080	Fire alarm.
WAC 212-44-090	Fire and evacuation plan.
WAC 212-44-100	Equipment maintenance.
WAC 212-44-105	Severability.

WSR 18-22-081
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed November 2, 2018, 3:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-053.

Title of Rule and Other Identifying Information: Fire marshal standards.

Hearing Location(s): On December 12, 2018, at 2:00 p.m., at 106 11th Avenue S.W., Olympia, WA 98504.

Date of Intended Adoption: December 14, 2018.

Submit Written Comments to: Kimberly Mathis, Rules Coordinator, 106 11th Street S.E. [Avenue S.W.], Olympia, WA 98507 [98504], email wsprules@wsp.wa.gov, by December 11, 2018.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, email wsprules@wsp.wa.gov, by December 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is a need to update chapter 212-12 WAC updates are to provide clarity and consistency in terms used throughout the chapter and cleanup existing language.

Reasons Supporting Proposal: Updates are to provide clarity and consistency in terms used throughout the chapter and cleanup existing language.

Statutory Authority for Adoption: RCW 18.20.130, 18.46.110, 18.51.140, 43.43.939, 70.41.080, 70.97.210, 71.12.485, 74.15.050; chapter 43.44 RCW.

Statute Being Implemented: RCW 18.20.130, 18.46.110, 18.51.140, 43.43.939, 70.41.080, 70.97.210, 71.12.485, 74.15.050; chapter 43.44 RCW.

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

Name of Proponent: Washington state patrol, state fire marshal, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017, Implementation and Enforcement: State fire marshal, Olympia, Washington, 360-596-3906.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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

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

November 1, 2018
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 13-18-066, filed 9/3/13, effective 10/4/13)

WAC 212-12-005 Definitions. Unless otherwise provided in this section, definitions in the Washington State Building Code, chapter 19.27 RCW, and 42 C.F.R. Ch. IV § 483.70, National Fire Protection Association, standard 101 "*Life Safety Code*" (~~(2000 edition, as)~~ currently adopted edition by ~~((CMS-))~~ Centers for Medicare/Medicaid Services ~~((CMS))~~ (CMS) shall apply to this chapter. The following definitions will also apply to this chapter:

(1) "State director of fire protection" means the director of fire protection within the Washington state patrol, the state fire marshal, or authorized deputy or designee.

(2) "New facility" means any facility that is being occupied for the first time, vacated for more than one hundred eighty days and reoccupied, closed for more than one hundred eighty days and reopened, or for which the license has expired, will be considered a new facility and must meet the current codes and standards as adopted. Except for ~~((boarding homes))~~ assisted living facilities which may be vacated for

more than one hundred eighty days if approved by the director of fire protection and the department of social and health services.

(3) "Before and after school program" means a program licensed by the department of ~~((early learning))~~ children, youth, and families that provides early learning experiences for children five years of age through twelve years of age who are attending kindergarten or elementary school.

(4) "Birthing center" or "childbirth center" means any health facility, not part of a hospital or in a hospital that provides facilities and staff to support a birth service to low-risk maternity clients.

(5) "Birth service" means the prenatal, intrapartum, and postpartum care provided for low-risk maternity clients, including newborn care during transition and stabilization.

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

WAC 212-12-010 Adoption of codes and standards.

The following administrative codes and regulations are hereby adopted by reference as if set forth fully herein:

(1) Chapter 51-50 WAC, State Building Code adoption and amendment of the International Building Code.

(2) Chapter 51-51 WAC, State Building Code adoption and amendment of the International Residential Code.

(3) Chapter 51-52 WAC, State Building Code adoption and amendment of the International Mechanical Code.

(4) Chapter 51-54A WAC, State Building Code adoption and amendment of the International Fire Code.

(5) Chapter 51-56 WAC, State Building Code adoption and amendment of the Uniform Plumbing Code.

(6) ~~((Chapter 51-57 WAC, State Building Code adoption and amendment of Appendix A, B and Appendix I of the Uniform Plumbing Code.~~

~~(7))~~ 42 C.F.R. Ch. IV § 483.70, National Fire Protection Association, standard 101, "Life Safety Code," ~~((2000 edition))~~ currently adopted edition by ((CMS-))Centers for Medicare/Medicaid Services((s)) (CMS) for application in ambulatory surgical centers, hospice, nursing homes and hospitals.

AMENDATORY SECTION (Amending WSR 13-18-066, filed 9/3/13, effective 10/4/13)

WAC 212-12-015 Applicability. The provisions of this chapter apply to all facilities for which the director of fire protection is responsible for fire protection and enforcement including:

Adult rehabilitation center.

Alcoholism hospital.

Alcoholism intensive inpatient treatment services.

Alcoholism treatment facility.

~~((Psychiatric hospital.))~~

Assisted living facility.

Before and after school program~~((s)).~~

~~((Boarding home.))~~

Birthing center.

Child care ~~((occupancies))~~ occupancy.

Group care facility.

Group care ~~((facilities))~~ facility for severely and multiply handicapped children.

Hospital.

Hospice.

Nursing home.

~~((Transient accommodation.))~~

Psychiatric hospital.

Residential treatment facility.

Public buildings.

Enhanced services ~~((facilities))~~ facility.

Examination of premises.

Standard of safety.

Schools—Standards for fire prevention and safety—Plan review and construction inspection.

Removal of fire hazards—Appeal of order—Penalty.

~~((Reports and investigations of fire—Police powers.~~

~~Statistical information and reports.~~

~~Examination of witnesses.~~

~~Criminal prosecution.))~~

Record of fires.

~~((Premises with guard animals—Registration, posting—Acts permitted firefighters—Liability for injury to firefighters.~~

~~Hazardous liquid and gas pipeline accidents—Preparedness of local first responders.))~~

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

WAC 212-12-020 Additional ~~((boarding home))~~ assisted living facility requirements. (1) ~~((Boarding home))~~ Assisted living resident evacuation capability levels.

(a) Evacuation capability is the ability of the resident of a ~~((boarding home))~~ assisted living facility licensed by the department of social and health services under chapter 18.20 RCW to respond to an emergency situation and either evacuate the ~~((boarding home))~~ assisted living facility or move to a point of safety.

(b) Residents shall be classified by the assisted living administration in one of the following evacuation levels:

(i) Level I - Persons physically and cognitively capable of walking or traversing a normal pathway to safety, including the ascent and descent of stairs, and capable of self-preservation, without the physical assistance of another person.

(ii) Level II - Persons physically and cognitively capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another person.

(iii) Level III - Persons physically or cognitively unable to walk or traverse a normal path to safety without the physical assistance of another person.

(2) Residents with evacuation capabilities of Level II or Level III must reside on the grade level floor unless the ~~((boarding home))~~ assisted living facility receives written approval by the director of fire protection to house these residents on other floor levels.

(3) The ~~((boarding home))~~ assisted living facility must not admit or retain more than two residents with evacuation capabilities of Level II or Level III unless:

(a) The ~~((boarding home))~~ assisted living facility receives written approval by the director of fire protection to care for more than two residents with evacuation capabilities of Level II or Level III;

(b) The ~~((boarding home))~~ assisted living facility is divided into at least two smoke barrier compartments on each floor; and

(c) The ~~((boarding home))~~ assisted living facility has an operational automatic sprinkler system throughout the facility, unless the ~~((boarding home))~~ assisted living facility was initially licensed prior to July 1, 2007, and is licensed for six or fewer residents.

NEW SECTION

WAC 212-12-023 Additional childbirth centers. All facilities licensed by department of health must comply with the provisions of this regulation:

(1) Exiting.

(a) Not less than two exits shall be accessible from every part of each floor being used for birth services or uses incidental thereto, including floor levels below the street floor.

(b) Exits shall be remote from each other and shall be arranged to minimize the possibility that both may be blocked by any emergency.

(2) Lighting.

(a) Illumination of the means of egress shall be continuous during the time that conditions of occupancy require that the means of egress be available for use.

(b) Automatic emergency lighting shall be provided and so arranged as to provide the required illumination automatically in the event of any interruption of normal lighting, such as the failure of public utility or other outside electrical power supply, opening of a circuit breaker or fuse, or any manual act(s) including accidental opening of a switch controlling normal lighting facilities.

(c) Electric battery-operated emergency lights shall use only reliable types of storage batteries, provided with suitable facilities for maintenance in properly charged condition. Electric storage batteries used in such lights or units shall be approved for their intended use and shall comply with the National Electrical Code, NFPA 70.

(3) **Fire alarm.** Every childbirth center shall have an electrically supervised manual fire alarm system. Operation of any fire alarm activating device shall automatically, without delay, accomplish general alarm indication and sound an audible alarm throughout the building or affected portion thereof.

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

WAC 212-12-030 Right of appeal for state cited facilities. The following procedure will apply to appeals of orders, decisions or citations made by the state fire marshal's office and it does not apply to CMS federal surveys:

(1) Administrative appeal (step 1) - A facility will have an opportunity to dispute cited deficiencies with a chief deputy state fire marshal. The purpose of this informal process is to give the facility an opportunity to refute cited deficiencies after an inspection. A written request with an explanation of

the specific deficiencies that are being disputed ~~((shall))~~ must be submitted within ten days of receipt of the correction notice. All submittals ~~((shall))~~ must be sent to WSP-Fire Protection Bureau, P.O. Box ~~((42600))~~ 42642, Olympia, WA ~~((98504-2600))~~ 98504-2642 or via email at FIREMARSH@wsp.wa.gov. If a facility is successful in demonstrating that a deficiency should not have been cited, the chief deputy state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #2 in the administrative appeal process.

(2) Administrative appeal (step 2) - If a facility is not satisfied with the decision made during the administrative appeal (step 1), they may appeal the decision in writing within seven days of receipt of the written decision to the prevention division assistant state fire marshal. If a facility is successful in demonstrating that a deficiency should not have been cited, the assistant state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #3 in the administrative appeal process.

(3) Administrative appeal (step 3) - If a facility is not satisfied with the decision made during the administrative appeal (step 2), they may appeal the decision in writing within seven days of receipt of the written decision to the director of fire protection. If a facility is successful in demonstrating that a deficiency should not have been cited, the director of fire protection will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged.

(4) This is a final agency action.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

WAC 212-12-035 Special requirements. In addition to the fire and life safety standards listed in WAC ~~((212-12-030))~~ 212-12-010, the following shall apply:

(1) In nursing homes, fire alarm system annunciators shall be provided where the system serves more than one floor, one fire or smoke division, or one building. They shall be located at each main nurses' station on each floor, fire or smoke division, and/or building.

(2) In all Group ~~((E-3))~~ E, I, ~~((LC))~~ R2 Occupancies inspected by the state fire marshal's office, annual certification of fire alarm systems shall be performed by the holder of a current low-voltage electrical contractors specialty license issued by the department of labor and industries.

(3) Every story, and basements of Group ~~((LC))~~ R2 Occupancies inspected by the state fire marshal's office shall have not less than two exits.

Exception: Basements used exclusively for the service of the building may have one exit. For the purpose of this exception, storage rooms, laundry rooms, maintenance offices, and similar uses shall not be considered as providing service to the building.

(4) In all Groups ~~(E-3)~~ E, I, and ~~(LC)~~ R2 Occupancies inspected by the state fire marshal's office, emergency lighting for means of egress shall be provided. Emergency systems shall activate automatically in a power failure and be supplied from storage batteries or an on-site generator set. The system shall be installed in accordance with the requirements of the Electrical Code.

WSR 18-22-105
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 6, 2018, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-099.

Title of Rule and Other Identifying Information: Chapter 392-151 WAC, Traffic safety—School safety patrol.

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 Washington Street S.E., Olympia, WA 98501. Those planning to testify during the hearing should arrive by 10:00 a.m.

Date of Intended Adoption: December 14, 2018.

Submit Written Comments to: Glenn Gorton, Director, OSPI, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, email glenn.gorton@k12.wa.us, by December 11, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by December 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 392-151 WAC implements RCW 46.61.385 and provides safety operation of school patrols. OSPI is revising this chapter to bring the school safety patrol up-to-date with current safety standards.

Reasons Supporting Proposal: The revisions proposed will update the language to current practices to conform to changes with procedures and training over the last few years.

Statutory Authority for Adoption: RCW 46.61.380.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Glenn Gorton, OSPI, Olympia, Washington, 360-725-6121; and Enforcement: Lisa Dawn-Fisher, OSPI, Olympia, Washington, 360-725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

November 5, 2018
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-003 Authority. The authority for this chapter is RCW 46.61.385 which authorizes the appointment and operation of school patrols by any public or private school subject to the conditions, procedures, and considerations required by this chapter. RCW 28A.160.160(5) requires walking routes for elementary schools, and such supplemental conditions, procedures, and considerations as any such school may impose which are in the best interest of student safety.

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-010 Function of a school patrol. The ~~((purpose and))~~ function of a school patrol ~~((are))~~ is to assist and aid members of the student body in the safe and proper crossing of ~~((streets, highways, and roads))~~ roadways adjacent to the school ~~((and other crossing areas approved by the local safety advisory committee)).~~

Student school patrol members assigned to work at a location with an adult school patrol member shall assist and act at the direction of such adult member of the patrol. A school patrol is to look for and utilize natural gaps in traffic as much as possible when allowing students to cross a ~~((street, highway, or road))~~ roadway.

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-015 Administration and support. The superintendent or chief administrative officer of the school district shall ~~((assume the leadership and))~~ be ultimately responsible for determining school patrol policy and operations. The principal of each school shall provide leadership in developing ~~((good relationships among teachers, student body, and members of))~~ the school patrol ~~((in matters of selecting, instructing, and giving immediate supervision to school patrol members and carrying out administrative details. Administration of the actual)),~~ Daily operation of a school patrol may be delegated to a school employee or a safety committee. ~~((The approval, understanding, support, and encouragement of school administrators, local traffic~~

control agencies, teachers, parents, and students is essential in providing an effective school safety patrol.))

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-020 Liability. ~~((The fear of potential liability for injuries sustained by pupils, employees, or patrols is present in the minds of school board members and school administrators.))~~ Both a school district and its ~~((individual))~~ employees or agents are potentially liable for damages sustained by students or others as the result of negligence. ~~((Examples of actions or inactions possibly giving rise to an award of damages by a court include: The failure to properly supervise students while they are in the custody of school employees or agents; the failure to properly instruct students in the procedures necessary to safeguard themselves while participating in school activities which may otherwise cause them injury; the failure to select and assign competent employees or agents to safeguard students where necessary; and, in general, the failure to take reasonable precautions to safeguard students in the custody of the school against foreseeable dangers.~~

The following suggested procedures may assist schools and employees or agents reduce the potential liability in connection with the operation of a school patrol:

~~(1) Establish reasonable rules and regulations regarding~~ Any school district operating a school patrol shall adopt policies and procedures to reduce the potential liability and ensure student safety, including:

~~(1) The supervision and control of the school patrols by a school employee.~~

~~(2) ((Establish a policy which limits))~~ Limiting the selection of student patrol members to students who are preferably ages ten or older and who possess appropriate physical and mental abilities.

~~(3) ((Establish a policy which authorizes))~~ Authorizing any parent to have his or her child excluded from service on the safety patrol.

~~(4) ((Establish a policy which requires))~~ Requiring school boards to provide insurance for members of the school patrol and for all supervisory officials involved in the program.

~~(5) ((Establish a policy which sets))~~ Setting forth specific physical and other criteria for selecting school patrol members and providing adequate training.

~~(6) Observing patrollers during inclement weather, hours of semidarkness and emergencies.~~

In addition, schools should periodically conduct a complete review of the entire school patrol program, including the following:

(a) The selection of supervisors.

~~((The selection of student and adult members of the patrol~~

~~((e)))~~ The training of both supervisors and patrol members.

~~((d)))~~ (c) The determination of the streets which are to be used and ~~((those which are))~~ not ~~((to be))~~ used.

~~((e)))~~ (d) The equipment needed.

~~((f)))~~ The time schedule when the patrol will be on duty

~~((g) The special precautions to be observed in))~~ (e) Procedures for emergencies, inclement weather and ~~((during))~~ hours of semidarkness.

AMENDATORY SECTION (Amending WSR 96-22-057, filed 11/1/96, effective 12/2/96)

WAC 392-151-025 Route plans. Suggested route plans shall be developed for each elementary school that has students who walk to and from school. It shall recommend school routes based on considerations of traffic patterns, existing traffic controls, and other crossing protection aids such as school patrols. These route plans shall limit the number of school crossings so that students move through the crossings in groups ~~((, allowing only one entrance exit from each block to and from school))~~. The walking route ~~((to school))~~ plan shall be distributed to all students ~~((with instructions that it be taken home and discussed with the parents))~~.

AMENDATORY SECTION (Amending WSR 96-22-057, filed 11/1/96, effective 12/2/96)

WAC 392-151-030 Controlled crossings. ~~((“School patrol controlled” crosswalks are defined as any crosswalk which is attended by a student or adult guard, and which is not controlled by a traffic signal or stop sign.))~~ (1) School patrol controlled crossings shall not be operated unless proper traffic control devices are in place as depicted in Washington state department of transportation, Sign Fabrication Manual and Manual on Uniform Traffic Control Devices, as now or hereafter amended. As a minimum, these shall consist of:

~~((1))~~ (a) School crossing warning signs S1-1 and S2-1.

~~((2))~~ (b) Marked crosswalks.

~~((3))~~ (c) School speed limit sign.

~~((“School patrol assisted” crosswalks are defined as any crosswalk which is attended by a student or adult crossing guard and controlled by a stop sign, traffic signal or law enforcement officer. When crossings are controlled by stop signs, the S2-1 may be omitted. When crossings are controlled by a traffic signal or by a stop sign, the use of the school speed limit sign may be necessary following an engineering study.))~~

(2) Contact shall be made by school authorities with the governmental agency having jurisdiction over the street or highway in question in order to secure the necessary signs. ((The state department of transportation shall be contacted concerning all state highways outside of incorporated towns and cities and on those state highways within the incorporated limits of towns and cities with a population of 22,500 or less. On state highways within the incorporated limits of cities with a population of 22,500 or more, the city public works department shall be contacted.

~~The county highway department shall be contacted regarding all county roads. On city and town streets, which are not state highways, within the incorporated limits of cities and towns, the city or town street or public works department shall be contacted.~~

~~When school officials and/or the safety advisory committee determines that vehicular traffic volumes are such that~~

adequate safe gaps in the traffic flow do not occur in reasonable frequent intervals to allow safe crossings by students, this condition, as well as any other related traffic issues, shall be evaluated cooperatively with the traffic engineering authorities having jurisdiction in order that necessary studies can be conducted for the purpose of developing possible alternative measures.)

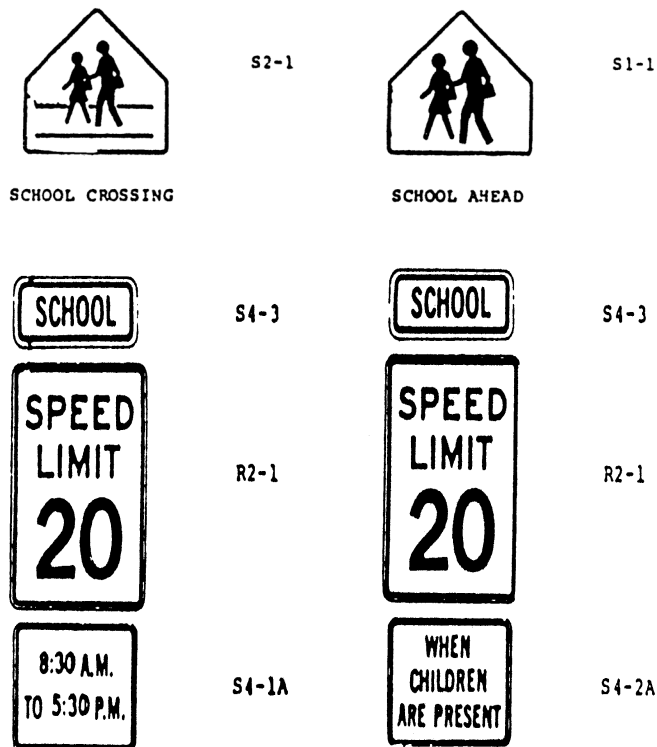
(3) Where conditions are such that a patrol member cannot be seen at least as far away as the safe stopping distance for the legal speed at the location, one of the following procedures shall be carried out:

((1)) (a) Select a safer location for the crossing at which the patrol is to serve.

((2)) (b) Cooperatively evaluate the condition with traffic authorities having jurisdiction for the purpose of developing possible alternative measures.

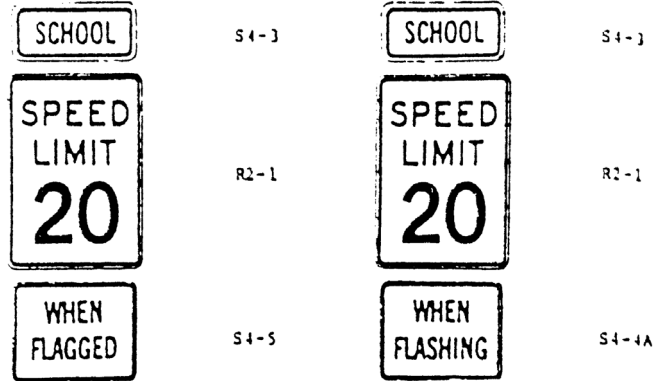
AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-035 School crossing warning and speed limit signs.



Note: The Washington state department of transportation defines when children are present as:

1. School children are occupying or walking within the marked crosswalk.
2. School children are occupying or waiting at the curb or on the shoulder of the roadway and are about to cross the roadway by way of the marked crosswalk.
3. School children are present or walking along the roadway, either on the adjacent sidewalk or, in the absence of sidewalks, on the shoulder within the posted school speed limit zone which extends three hundred feet in either direction from the marked crosswalk.



AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-040 Organization, instruction, and supervision. The ~~((building))~~ school principal or a member of the staff appointed by the principal shall supervise the school patrol. Criteria for the selection of a school patrol supervisor shall include:

- ~~((a))~~ (1) Interest in safety.
- ~~((b))~~ (2) Ability to organize, lead and discipline.
- ~~((c))~~ Ability to lead
- ~~((d))~~ Ability to discipline
- ~~((e))~~ Attitude toward work
- ~~((f))~~ Efficiency on job
- ~~((g))~~ (3) Ability to recognize individual differences.
- ~~((h))~~ Ability to hold respect of pupils
- ~~((i))~~ (4) Dependability.

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-045 Duties of patrol supervisor. Duties of a school patrol supervisor shall include:

- (1) Being knowledgeable in all areas of the school patrol.
- (2) Selection of school patrol members according to school policy.
- (3) Instruction and training of all school patrol members and officers in their respective duties.
- (4) ~~((Supervision of the work of the school patrol in such manner as to develop the greatest initiative, leadership, and effectiveness on the part of each patrol officer and member.~~
- ~~((5))~~ Hold regular meetings of the school patrol for the purpose of instruction in safety practices~~((;))~~ and discussions concerning infractions of rules~~((, and stimulating and inspiring the members in the performance of their duties.~~
- (6) Serve as advisor to the school safety advisory committee.

~~An officer of the state patrol, sheriff's office, or local police department shall be requested to assist in the instruction of school patrol members in the performance of their duties and thereafter make visits to street and highway crossings where school patrol members are stationed).~~

(5) Instruction in traffic rules and regulations shall be given to all children attending the school. Written rules and

regulations shall be distributed to parents/guardians and students.

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-050 Selection, appointment and suspension of patrol members. Student school patrol members shall be selected from the upper grade levels and preferably not below age ten. Qualities such as leadership and reliability shall be considered in the selection of any patrol member. ~~((School patrol service shall be voluntary.))~~

Written approval of a parent or guardian shall be secured in the case of student patrol members. Each prospective patrol member shall be given a vision and hearing examination. ~~((After selection, each school patrol member candidate shall be formally appointed by the principal.))~~ The parent(s) or guardian(s) of a student patrol member shall be notified in writing or via a personal interview of the student's suspension from duty as a school patrol member.

~~((New patrol members may be selected thirty days before the school term terminates. Additional patrol members may be recruited in the fall of each year and, thereafter, as necessary to fill open positions.))~~ New members shall work with trained school patrol members for a long enough period to learn their duties.

~~((A captain of the school patrol may be selected. Instructions shall be given each new school patrol member so that he or she can begin effective duty at a specific post the morning the next school term commences.))~~

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-055 Utilization of adult patrol members. Schools ~~((possess the authority to))~~ may appoint adults as members of a school patrol. The following criteria may be used to determine at which locations adult patrol members shall be stationed:

(1) When there is a lack of adequate gaps due to a high volume of traffic.

~~((2) ((When 85 percent of the traffic speed exceeds the speed limit by 5 miles an hour.~~

~~((3))~~ (3) When there is a restricted sight distance.

~~((4))~~ (3) When the location or distance from the school building is such that poor supervision of students would otherwise result.

~~((5))~~ (4) When there is a high volume of turning traffic over a crosswalk.

~~((6))~~ (5) When the location has been determined by either school or law enforcement authorities to be beyond the capability of a student to make rational decisions concerning safety.

~~((7) When there is an excessive volume of pedestrian traffic over a highway.~~

(8) When any of the above criteria exists and there is a lack of an alternate school route plan.))

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-060 Good character references for adult patrol members. Prior to any assignment, good character references ~~((shall be obtained on every adult who is being considered as a school patrol member. Good moral character is defined in WAC 180-75-081. In addition, a))~~ and a Washington state patrol criminal history request shall be obtained on each ~~((new))~~ adult candidate.

AMENDATORY SECTION (Amending Order 7-75, filed 12/22/75)

WAC 392-151-070 Size of patrol and officers needed. The number of members on a school patrol shall be determined by factors such as: ~~((Street and highway))~~ Roadway conditions, number of intersections, volume of vehicular traffic, school enrollment, and number of arrival and school dismissal times. ~~((If there are several dismissal times, the size of the patrol shall be increased and the groups rotated so that no one member shall be absent too long from his or her classes. The supervisor may request assistance from the traffic safety unit of the police department in planning school patrol posts. Engineering studies may be requested from the traffic engineer's office by the police unit, the principal, or the school safety committee.))~~

Each school patrol may have a patrol captain and one or more lieutenants and sergeants. The captain shall be a patrol member who possesses qualities of leadership and shall be selected by the supervisor of the patrol on a trial basis or elected by the members subject to the supervisor's approval.

~~((Officers and members should normally serve for at least one full school year. However, a plan for periodic relief may be provided for and implemented at the discretion of school authorities. This may be done by organizing groups to rotate weekly or several weeks at a time or by rotating dismissal times.))~~

Some of the duties of the school safety patrol officers are:

- (1) Assigning school patrol members to their posts.
- (2) Supervising the operations of the school patrol.
- (3) Keeping school patrol records~~((, including attendance)).~~
- (4) Being responsible for the procedure at each crossing.
- (5) Making sure each school patrol member wears his or her equipment while on duty.
- (6) Arranging for a substitute in case of absence of a regular school patrol member.
- (7) Manning ~~((the))~~ a post in case of an emergency.

AMENDATORY SECTION (Amending Order 7-75, filed 12/22/75)

WAC 392-151-075 Hours on duty. ~~((The hours that patrol members are on duty shall be determined by the needs of the school area from an accident prevention standpoint and the time schedule of the school being served. The schedule of each student patrol member shall be so planned as to make it unnecessary for the student to miss regular school work for lengthy periods.))~~ Parents or guardians shall be informed of

the amount of time students are scheduled to serve on patrols and how much class time may be missed due to patrol duty.

When a patrol member has been assigned to a particular crossing, the member shall be on duty at all times students are normally crossing (~~(streets or highways)~~) roadways in going to and from school. (~~Members shall be at their posts 10 to 15 minutes before the first class in the morning and 10 to 15 minutes before school begins in the afternoon.~~

~~At dismissal times, arrangements shall be made for student patrol members to leave their classes 2 or 3 minutes before the dismissal bell. Patrol members shall remain on duty until the patrol captain or patrol supervisor gives the dismissal signal.~~)

AMENDATORY SECTION (Amending Order 7-75, filed 12/22/75)

WAC 392-151-085 General duties of patrol members. Each school patrol member shall adhere to the following duties and rules:

- (1) Report to the crossing on time and remain during the prescribed period or until properly relieved.
- (2) Perform duties as outlined.
- (3) Wear standard uniform at all times while on duty.
- (4) ~~(Be polite at all times.~~
- ~~(5))~~ (5) Attend strictly to the task and do not permit attention to be diverted while on duty.
- ~~((6))~~ (5) Direct students(;) to cross during a safe gap in traffic. Do not direct vehicular traffic.
- ~~((7))~~ (6) Know the procedures to follow in case of an accident or emergency.
- ~~((8))~~ (7) Notify the designated person in advance of anticipated absence.

AMENDATORY SECTION (Amending WSR 80-09-015, filed 7/9/80)

WAC 392-151-090 Standard uniforms. The standard uniform for school patrol members shall ~~(be)~~ include a badge, high-visibility reflective vest, flag that meets the American National Standards Institute (ANSI) and International Safety Equipment Association (ISEA) standards for high-visibility safety apparel and accessories and/or (rain-coat and shall be worn only during a patrol function) rain-coat/poncho that is recommended by the Washington traffic safety commission for school patrol use. A helmet or hat may be used as part of the standard uniform.

~~((The helmet when used shall be fluorescent orange, white, red, or yellow.))~~ For additional visibility during hours of darkness, reflective tape may be added to the uniform.

~~((The school patrol vest shall be fluorescent orange with reflective white bands.~~

~~The raincoat shall be fluorescent orange, red, or yellow.))~~

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-105 Instruction of patrol members. Each school patrol member shall be thoroughly trained in his or her duties before being permitted to take assigned posts.

Instruction shall include the fundamentals of patrol operation - Where and how to stand when on duty, how to handle the patrol flag, and what constitutes a sufficient gap in vehicular traffic to permit safe crossing by students. Emphasis shall be placed on special hazards and the need for constant alertness. (~~Types of training which shall be given members are:~~

~~(1) On the job training for at least one week under the direction of an experienced patrol member or for a longer period to learn their duties.~~

~~(2) Personal instruction by the patrol supervisor, a police officer, or a designated school district safety official.~~

~~(3) Reading and understanding written instructions which the school has compiled for the specific purpose of instructing new members.))~~

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-135 Operation at an intersection with traffic signal. At an intersection with a traffic signal, the light shall govern school patrol operation and the movement of students.

~~((When the light turns green in the direction the students are to cross, the patrol members shall be certain that all approaching cars are stopping for their red light. When the patrol members are sure that traffic does not constitute a hazard, the patrol members shall follow the basic crossing procedure.~~

~~Before the red signal comes back on, patrol members shall stop all stragglers. Patrol members shall know the length of time the green is on and be able to estimate the correct moment to stop the flow of pedestrians.~~

~~When the signal is a pedestrian-actuated light, it shall be controlled by the "sender" patrol member. The "WALK" phase of this type of light is shorter than the green phase of the regular traffic light so that small compact groups of pedestrians may be allowed to cross at one time.))~~

AMENDATORY SECTION (Amending WSR 91-15-016, filed 7/10/91, effective 8/10/91)

WAC 392-151-140 Violation reports and (~~accidents~~) emergencies. Moving motor vehicle violations at school crossings shall be reported to the appropriate law enforcement agency. School patrol members shall report all incidents which occur on or near their crossings which appear to involve unsafe practices on the part of anyone. Such reports shall be made to the patrol supervisor.

If the incident involves a driver violation, the license number of the car shall be written down immediately. Reports shall be reviewed by the patrol supervisor and principal. When the principal feels that a particular violation has occurred which requires follow-up by the police department, a violation report shall be filled out.

In the event of an injury accident or emergency at their post, patrol members shall observe the following directions:

(1) If the accident was caused by a vehicle, obtain license number, time of violation, and whether male or female driver.

(2) Never leave the crossing. Dispatch messengers to the school office stating location, nature, and seriousness of accident.

- (3) Keep all students back away from the curb.
- (4) Obtain name and address of victim and witnesses.
- (5) Make a report to the patrol supervisor.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-151-017 Safety advisory committee—Selection.
 WAC 392-151-065 Adult patrol members—Knowledge—
 Training of students—Introduction.
 WAC 392-151-080 The patrol captain.
 WAC 392-151-095 Equipment.
 WAC 392-151-100 Care of equipment—Dismissal.
 WAC 392-151-110 Installing school patrol members.
 WAC 392-151-115 Patrol operation—Assignment and
 inspection.
 WAC 392-151-125 Operation with school patrol members.
 WAC 392-151-130 Operation with an adult patrol member
 or police officer or traffic signal.

WSR 18-22-109
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD
 [Filed November 6, 2018, 9:36 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 136-12-020, 136-12-030, 136-12-045, 136-12-060, 136-12-070, 136-12-080, 136-14-010, 136-14-020, 136-14-030 and 136-14-040; and adding a new section WAC 136-15-055 Modification of program.

Hearing Location(s): On January 24, 2019, at 2:00 p.m., at 2404 Chandler Court S.W., Olympia, WA 98504.

Date of Intended Adoption: January 24, 2019.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, email karen@crab.wa.gov, fax 360-350-6094, by January 20, 2019.

Assistance for Persons with Disabilities: Contact Karen Pendleton, phone 360-753-5989, fax 360-350-6094, TTY 800-883-6384, email karen@crab.wa.gov, by January 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The county road administration board finds that amending the aforementioned WAC and adding a new section will better clarify this chapter.

Reasons Supporting Proposal: Housekeeping changes.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Drew Woods, Olympia, 360-753-5989; and Enforcement: John Koster, Olympia, 360-753-5989.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

November 6, 2018

John M. Koster
 Executive Director

AMENDATORY SECTION (Amending WSR 17-11-037, filed 5/11/17, effective 6/11/17)

WAC 136-12-020 Procedure during vacancy or change. When a vacancy or change occurs in the office of county engineer (~~(due to resignation, retirement, death or for any other)~~) for any reason, the county legislative authority shall take immediate steps to find a replacement (~~(either by promotion from within the organization if a competent and eligible person is available, or by advertisement for, and interview of, qualified applicants)~~). The county legislative authority or county executive shall (~~(in writing)~~), by electronic email or official letter, within five (~~(working)~~) business days, notify the county road administration board of the vacancy or change, the effective date of the vacancy or change and of the procedure to be followed during the period of vacancy. The notice to the county road administration board shall state that the legislative authority or county executive has reviewed the requirements within (~~(this)~~) chapter 136-12 WAC.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-12-030 Acting county engineer. If for any reason(~~(;)~~) it is impossible to employ a new county engineer immediately, the county legislative authority shall designate, by resolution, an acting county engineer for an interim period(~~(;)~~) not to exceed six months(~~(;)~~) except as provided in WAC 136-12-060. A copy of such resolution shall be forwarded to the county road administration board within five business days of the effective date of the vacancy.

If the acting county engineer is not a licensed professional civil engineer, the legislative authority shall designate a licensed professional civil engineer to perform all professional civil engineering (~~(services)~~) functions during the interim period as required by chapter 18.43 RCW, and the unlicensed acting county engineer shall perform only those functions of the office not requiring a professional civil engineer's license.

AMENDATORY SECTION (Amending WSR 17-11-037, filed 5/11/17, effective 6/11/17)

WAC 136-12-045 Notification of hiring. When final arrangements for the employment of a new county engineer have been made, the county legislative authority or the county executive shall, within five ~~((working))~~ business days, notify the county road administration board in writing and shall include the following information: Name of new county engineer, Washington professional civil engineer registration number, start date, and contact information, including an email address when available. In addition, the notification shall include a copy of the organization chart detailing the responsibilities of the county engineer if there is an adopted change, WAC 136-50-051, and a copy of the appointment resolution, letter of appointment, or copy of the meeting minutes of the legislative authority recording the appointment.

AMENDATORY SECTION (Amending WSR 17-11-037, filed 5/11/17, effective 6/11/17)

WAC 136-12-060 Failure to comply. In the case of vacancy or change, if ~~((notification is not received within the time frame established in WAC 136-12-045, the matter of the vacancy))~~ a county fails to comply with any portion of chapter 136-12 WAC, the matter will be considered at the next regular meeting of the county road administration board. The county road administration board may ~~((require that all construction by county forces projects be shut down and/or that all distribution of gas tax funds to the county cease))~~ take any action regarding county forces construction, the county's motor vehicle fuel tax distribution, county arterial preservation program eligibility or rural arterial program eligibility it deems appropriate: Provided however, that it may continue to grant reasonable extensions in the event the affected county can give adequate proof or demonstrate at the next regularly scheduled board meeting that a diligent effort has been made to secure the services of a qualified professional civil engineer.

AMENDATORY SECTION (Amending WSR 02-18-018, filed 8/22/02, effective 9/22/02)

WAC 136-12-070 County engineer in counties that choose to employ a part-time county engineer or a contract county engineer. When the county legislative authority chooses to employ a county engineer on a part-time basis the terms of such employment shall be set forth in a contract adopted by resolution of the legislative authority. Such contract shall specify, but need not be limited to: Statement of legal responsibility, salary or wage arrangements, meetings with the legislative authority, travel expenses and relationship with regular employees. A copy of such resolution and contract shall be forwarded to the office of the county road administration board within five business days of adoption.

When the legislative authority chooses to contract with another county for services such contract shall be approved by resolution of both legislative authorities. Such contract shall specify, but need not be limited to: Statement of legal responsibility, salary or wage arrangements, meetings with the legislative authority, travel expenses and relationship

with regular employees. A copy of the contract and both resolutions shall be forwarded to the office of the county road administration board within five business days of adoption by both counties. Any such contract shall be in accordance with the procedures of the Interlocal Cooperation Act, chapter 39.34 RCW.

AMENDATORY SECTION (Amending WSR 02-18-018, filed 8/22/02, effective 9/22/02)

WAC 136-12-080 ~~((Assistant county engineer))~~ Supervision of nonengineering county engineer duties in counties with a part-time county engineer or a contract county engineer. When a legislative authority of a county chooses to employ a ~~((licensed professional civil))~~ county engineer on a part-time basis or contract with another county for the services of its ~~((licensed professional civil))~~ county engineer, it shall designate by resolution a full-time employee ~~((as assistant county engineer. In such cases, the designated assistant county engineer shall))~~ to perform the day-to-day supervision of the ~~((road department under the))~~ county engineer duties not requiring a professional civil engineering license in accordance with policies established by the legislative authority.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-14-010 Purpose and authority. The requirement to develop and adopt both long range and short range programs as a prerequisite to road construction is established in RCW 36.79.080, 36.81.121 and 36.81.130. Numerous studies have shown that road construction needs far exceed available revenue. Priority programming is the development and application of techniques designed to rank any array of potential projects in order of importance to serve as a guide in assisting a county legislative authority in the formulation of road programs and distribution of limited resources. Priority programming procedures for counties must be adaptable to a wide variety of situations.

AMENDATORY SECTION (Amending WSR 90-07-075, filed 3/21/90, effective 4/21/90)

WAC 136-14-020 Application. Priority programming techniques shall be applied in the ranking of all potential projects on the ~~((arterial))~~ road system of each county. They may be applied to all ~~((arterial))~~ road and bridge projects combined in a single group, or may be applied to individual functional classes of ~~((arterials))~~ roads and further subdivided into rural and urban systems if desired. Priority programming will not be required, but is recommended, for the local access road system. However, bridges on the local access road system must be included in priority programming.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-14-030 Process. Each county engineer will be required to develop a priority programming process tailored to meet the overall roadway system development policy

determined by his or her county legislative authority. Items to be included and considered in the technique for roads shall include, but need not be limited to the following:

- (1) Traffic volumes;
- (2) Roadway condition;
- (3) Geometrics;
- (4) Safety and accident history; and
- (5) Matters of significant local importance.

The manner in which these various items are treated may vary from county to county.

Bridge priorities shall be established in accordance with WAC 136-20-060. ~~((Accident records may be considered where their use will make a legitimate contribution.))~~ A description of the priority programming technique to be used shall be submitted by each county engineer to the county road administration board.

The county road administration board, upon request, will provide assistance to counties in the development, evaluation or modification of their priority programming process in order to meet the requirements of this rule.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-14-040 Application of process. The priority programming process for roads shall be applied by the county engineer to all potential arterial, collector and bridge projects in the county, and to local access road projects if directed by the legislative authority. The resulting priority array shall be updated not later than ~~((June 1st of each odd-numbered year))~~ the first Monday in October and shall be consulted together with bridge priorities by the county legislative authority and county engineer during the preparation of the proposed six-year transportation program as described in chapter 136-15 WAC.

NEW SECTION

WAC 136-15-055 Modification of program. The adopted six-year program may not be revised except by a majority vote of the members of the legislative authority who are present when the vote is taken. Such revisions shall be by resolution of the legislative authority and only after a public hearing thereon. A copy of such resolution shall be forwarded to the county road administration board as part of the annual certification for that calendar year.

**WSR 18-22-110
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD**

[Filed November 6, 2018, 9:36 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Amending WAC 136-130-020 RAP priorities by project type and

136-161-080 Limitations on allocations of RATA funds to counties.

Hearing Location(s): On January 24, 2019, at 2:00 p.m., at 2404 Chandler Court S.W., Olympia, WA 98504.

Date of Intended Adoption: January 24, 2019.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, email karen@crab.wa.gov, fax 360-350-6094, by January 20, 2019.

Assistance for Persons with Disabilities: Contact Karen Pendleton, phone 360-753-5989, fax 360-350-6094, TTY 800-883-6384, email karen@crab.wa.gov, by January 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The county road administration board finds that amending WAC 136-130-020 will better define priorities by project type for the rural arterial program and amending WAC 136-161-080 will better define project eligibility for RATA funding.

Reasons Supporting Proposal: Housekeeping changes.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Randy Hart, Olympia, 360-753-5989; and Enforcement: John Koster, Olympia, 360-753-5989.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

November 6, 2018

John M. Koster

Executive Director

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-130-020 Priorities by project type. The county road administration board has determined that the interests of the counties in the several regions will be best served by encouraging development of distinct project priority rating systems for each region.

There shall be five project types eligible for RATA funding, with each having separate rating systems for project ranking and selection. The five project types include:

(1) Reconstruction - Emphasis on alignment and grade changes on fifty percent or more of the project length, and may include additional travel lanes and right of way costs.

(2) 3R - Resurfacing, restoration, and rehabilitation - Primary focus on extending the service life of existing facility involving less than fifty percent vertical or horizontal changes, and on safety improvements. Right of way costs are

eligible for RATA reimbursement as a part of this project type.

(3) 2R - Resurfacing and restoration - Primary focus on restoration of the pavement structure on the existing vertical and horizontal alignment and spot safety improvements. Minor widening costs are allowed as a part of this project type. Right of way costs are not eligible for RATA reimbursement in this project type.

(4) Intersection - 3R or reconstruction work limited to the vicinity of an existing intersection, and may include additional travel lanes and right of way costs.

(5) Bridge and drainage structures - Replacement or major rehabilitation of an existing bridge or other drainage structure, and may include additional travel lanes and right of way costs. ~~((The county road administration board has determined that the interests of the counties in the several regions will be best served by encouraging development of a distinct project priority rating systems for each region.))~~

(a) All National Bridge Inventory (NBI) listed structures are eligible for replacement or rehabilitation. Rehabilitation is the major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects.

(b) All non-NBI structures are eligible for replacement of the existing structure.

In consultation with the individual regions, the executive director shall approve the various forms and procedures necessary to allocate available RATA funding, consistent with RCW 36.79.080.

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-161-080 Limitations on allocations of RATA funds to counties. For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: No maximum project RATA contribution; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; maximum RATA contribution to each county for 2R projects is seven hundred fifty thousand dollars; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

- (a) Asotin County ten percent
- (b) Benton County fourteen percent
- (c) Columbia County eleven percent
- (d) Franklin County thirteen percent

- (e) Garfield County ten percent
- (f) Kittitas County thirteen percent
- (g) Klickitat County fourteen percent
- (h) Walla Walla County fourteen percent
- (i) Yakima County twenty percent

(6) The county limits for all eligible and applying counties in each region will be adjusted to include by equal share the funding limit of any ineligible or nonapplying county.

(7) Projects must have a total estimated cost of two hundred fifty thousand dollars or greater to be eligible for RATA funding.

WSR 18-22-113

PROPOSED RULES

SECRETARY OF STATE

[Filed November 6, 2018, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-038.

Title of Rule and Other Identifying Information: Permanent adoption of changes to WAC 434-215-012, 434-215-015, 434-215-025, 434-215-120, 434-215-180, 434-230-045, 434-230-085, 434-235-020, 434-250-030, 434-250-110, 434-261-005, 434-261-050, 434-261-070, 434-261-100, 434-262-020, 434-262-030, 434-262-132, 434-262-160; and new WAC 434-261-114, 434-261-115, 434-261-116, 434-261-117, 434-261-118 and 434-261-119, necessary to update and clarify procedures, and to implement recent legislative changes.

Hearing Location(s): On December 14, 2018, at 3:00 p.m., at 520 Union Avenue, Olympia, 98504.

Date of Intended Adoption: December 17, 2018.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, email sheryl.moss@sos.wa.gov, fax 360-664-4169, by December 13, 2018.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-902-4146, fax 360-664-4169, email Sheryl.moss@sos.wa.gov, by December 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New WAC are proposed to implement risk-limiting election audits as required by HB [ESHB] 2406. Additional WAC amendments cover declarations of candidacy, filing fee petitions, political party preference, ballot format for candidates, military and overseas voter registrations, special absentee ballots, preprocessing of ballots, definitions for duplication and resolution of ballots and procedures, clarification procedures regarding ballot signatures, clarification of SB 6058 regarding write-in candidates.

Reasons Supporting Proposal: Passage of legislation addressing the following topics: ESHB 2406 ensuring the integrity of elections through strengthening election security practices around auditing and equipment and SB 6058 related to write-in voting require additional rules and the modification of existing rules to reflect updates in statute. Additional

amendments are proposed to clarify candidate filing procedures, ballot format related to candidates, ballot processing, and military and overseas voter registration.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.24.091, 29A.24.-311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, 29A.60.235.

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

Name of Proponent: Mark Neary, assistant secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

November 6, 2018

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 16-13-063, filed 6/13/16, effective 7/14/16)

WAC 434-215-012 Declaration of candidacy. Declarations of candidacy filed either in person or by mail shall be in substantially the following form:

((

Washington State Declaration of Candidacy

candidate information <i>as registered to vote</i>	first name	middle	last
	residential address		city / zip
	date of birth	email address	phone number
campaign contact information <i>for publication</i>	campaign phone		campaign email
	mailing address (if different from residential address)		city / zip
	campaign website		
ballot information	jurisdiction	office name	position number
	exact name I would like printed on the ballot		
	political party I prefer to be printed on the ballot, if filing for partisan office:		
	<input type="radio"/> (Prefers <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Party) <input type="radio"/> (States No Party Preference)		
filing fee	<input type="radio"/> The office has no filing fee <input type="radio"/> A filing fee of \$ _____ accompanies the declaration of candidacy <input type="radio"/> I lack sufficient funds and submit a filing fee petition in lieu of the filing fee under RCW 29A.24.091		
	oath		
	<p>I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.</p> <p>I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.</p> <p>sign here [] date here []</p>		
for office use only	submission date		voter registration number
	office code		fee

12/20/15

))

Washington State Declaration of Candidacy

candidate information
as registered to vote

first name	middle	last
residential address		city / zip
date of birth	email address	phone number

campaign contact information
for publication

campaign phone	campaign email
mailing address (if different from residential address)	city / zip
campaign website	

ballot information

jurisdiction	office name	position number
exact name I would like printed on the ballot		
political party I prefer to be printed on the ballot, if filing for partisan office:		
<input type="radio"/> (Prefers <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Party)		
<input type="radio"/> (States No Party Preference)		

filing fee

- The office has no filing fee
- A filing fee of \$ _____ accompanies the declaration of candidacy
- I lack sufficient funds and submit a filing fee petition in lieu of the filing fee under RCW 29A.24.091

oath

I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.

I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.

sign here	date here
-----------	-----------

for office use only

	submission date	voter registration number
	office code	fee

10/2018

The filing officer must provide a paper or electronic copy of the filed declaration of candidacy to the candidate and to the public disclosure commission.

AMENDATORY SECTION (Amending WSR 16-13-063, filed 6/13/16, effective 7/14/16)

WAC 434-215-015 Write-in declaration of candidacy. Declarations of candidacy filed either in person or by mail shall be in substantially the following form:

((

Washington State Declaration of Write-in Candidacy

candidate information <i>as registered to vote</i>	first name	middle	last
	residential address		city / zip
	date of birth	email address	phone number
campaign contact information <i>for publication</i>	campaign phone		campaign email
	mailing address (if different from residential address)		city / zip
	campaign website		
office information	I am a write-in candidate for: <input type="radio"/> Primary <input type="radio"/> General		
	jurisdiction	office	position number
ballot information <i>if qualifying</i>	exact name I would like printed on the ballot if I qualify		
	political party I prefer to be printed on the ballot, if filing for partisan office:		
	<input type="radio"/> (Prefers <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Party) <input type="radio"/> (States No Party Preference)		
filing fee	<input type="radio"/> The office has no filing fee		
	<input type="radio"/> A filing fee of \$ _____ accompanies the declaration of candidacy		
	<input type="radio"/> I lack sufficient funds and submit a filing fee petition in lieu of the filing fee under RCW 29A.24.091		
oath	I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.		
	I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.		
for office use only	sign here	date here	
	submission date	voter registration number	
	office code	fee	

12/2015

))

Washington State Declaration of Write-in Candidacy

candidate information <i>as registered to vote</i>	first name	middle	last
	residential address		city / zip
	date of birth	email address	phone number

campaign contact information <i>for publication</i>	campaign phone	campaign email
	mailing address (if different from residential address)	city / zip
	campaign website	

ballot information <i>if qualifying</i>	I am a write-in candidate for: <input type="radio"/> Primary <input type="radio"/> General		
	jurisdiction	office name	position number
	exact name I would like printed on the ballot if I qualify		
	political party I prefer to be printed on the ballot, if filing for partisan office:		
	<input type="radio"/> (Prefers <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Party) <input type="radio"/> (States No Party Preference)		

filing fee	<input type="radio"/> The office has no filing fee if filed 19+ days before election day
	<input type="radio"/> A filing fee of \$ _____ accompanies the declaration of candidacy (up to 18 days before election day.)
	<input type="radio"/> I lack sufficient funds and submit a filing fee petition in lieu of the filing fee under RCW 29A.24.091

oath	I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.	
	I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.	
	sign here	date here

for office use only	submission date	voter registration number
	office code	fee

10/2018

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-215-180 Write-in candidates. A candidate desiring to file as a write-in candidate must file the write-in declaration of candidacy no later than ~~((eighteen days before election day, the deadline in RCW 29A.40.070 that ballots~~

~~must be mailed))~~ 8:00 p.m. on election day. If a write-in declaration of candidacy is filed with the filing officer after the close of the regular candidate filing period per RCW 29A.24.050 and more than eighteen days before a primary or election, no filing fee is required.

Candidates filing a write-in declaration of candidacy on or after the eighteenth day before a primary or election must pay a filing fee at the time of filing the declaration. Offices with a fixed annual salary of more than one thousand dollars must pay a filing fee equal to one percent of the annual salary at the time of the regular filing period as per RCW 29A.24.-050. For all other offices, a filing fee of twenty-five dollars is required.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-215-025 Filing fee petitions. (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) A candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically.

(3) A candidate submitting a filing fee petition must submit all signatures when filing the declaration of candidacy. The candidate cannot supplement the signatures at a later date.

(4) The filing officer shall verify the candidate has submitted sufficient number of valid signatures equal to the filing fee. The first valid signature of a voter counts toward the number of signatures required. Duplicate signatures are invalid.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-215-120 Political party preference by candidate for partisan office. (1) On a declaration of candidacy, a candidate for partisan congressional, state, or county office may state his or her preference for a political party, or not state a preference. The candidate may use up to ~~(sixteen)~~ eighteen characters for the name of the political party. A candidate's party preference, or the fact that the candidate states no preference, must be printed with the candidate's name on the ballot and in any voters' pamphlets printed by the office of the secretary of state or a county auditor's office.

(2) If a candidate does not indicate a party that he or she prefers, then the candidate has stated no party preference and is listed as such on the ballot and in any voters' pamphlets.

(3) The filing officer may not print on the ballots, in a voters' pamphlet, or other election materials a political party name that is obscene. If the name of the political party provided by the candidate would be considered obscene, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited to remove the obscenity, or rejected and replaced with "states no party preference."

(4) A candidate's preference may not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. If the name of the political party provided by the candidate implies that the candidate is nominated or endorsed by a political party, or that a political party approves of or associates with that candidate, the filing officer may petition the superior court pur-

suant to RCW 29A.68.011 for a judicial determination that the party name be edited, or rejected and replaced with "states no party preference."

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-230-045 Candidate format. (1) For each office or position, the names of all candidates shall be listed together. If the office is on the primary election ballot, no candidates skip the primary and advance directly to the general election.

(2)(a) On the primary election ballot, candidates shall be listed in the order determined by lot.

(b) On the general election ballot, the candidate who received the highest number of votes in the primary shall be listed first, and the candidate who received the second highest number of votes in the primary shall be listed second. If the two candidates who received the most votes in the primary received exactly the same number of votes, the order in which their names are listed on the general election ballot shall be determined by lot.

(c) The political party that each candidate prefers is irrelevant to the order in which the candidates appear on the ballot.

(3) Candidate names shall be printed in a type style and point size that can be read easily. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include, but are not limited to, printing a smaller point size or different type style.

(4) For partisan office:

(a) If the candidate stated his or her preference for a political party on the declaration of candidacy, that preference shall be printed below or to the right of the candidate's name, with parentheses and the first letter of each word or abbreviation capitalized. Acronyms shall be printed in all capital letters with or without periods. For example:

John Smith
(Prefers Example Party)
John Smith (Prefers ABC Party)

(b) If the candidate did not state his or her preference for a political party, that information shall be printed below or to the right of the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith
(States No Party Preference)

(c) The party preference line for each candidate may be in smaller point size or indented.

(d) The same party preference information shall be printed on both primary and general election ballots.

(5) If the office is nonpartisan, only the candidate's name shall appear. Neither "nonpartisan" nor "NP" shall be printed with each candidate's name.

(6) The law does not allow nominations or endorsements by interest groups, political action committees, political par-

ties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-230-085 Candidate who qualifies for more than one office.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-235-020 Voter registration. (1) A service or overseas voter may register to vote by providing:

- (a) A voter registration application issued by the state of Washington;
- (b) A federal post card application issued by the federal voting assistance program;
- (c) A federal write-in absentee ballot issued by the federal voting assistance program;
- (d) A national mail voter registration form issued by the election assistance commission; or
- (e) A ballot with a valid signature on the ballot declaration.

(2) Pursuant to RCW 29A.40.010 and 29A.40.091, a service or overseas voter does not have to be registered in order to request a ballot. Consequently, a service or overseas voter who is not already registered in Washington may request a ballot and register after the registration deadlines of RCW 29A.08.140 have passed. A service or overseas voter who is already registered to vote in Washington may not transfer or update a registration after the deadlines in RCW 29A.08.140 have passed.

(a) If the voter is not currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system as a service or overseas voter.

(b) A service or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application.

(i) If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office.

(ii) After the election or primary, the county auditor must place the voter on inactive status and send the voter a confirmation notice to obtain the voter's correct residential address.

(d) A service or overseas voter is not required to provide a driver's license number, Social Security number or other form of identification as required by RCW 29A.08.107.

(3) The county auditor must offer a service or overseas voter the option of receiving blank ballots by email or postal mail. This requirement is satisfied if the service or overseas voter registers on an application that offers electronic ballot delivery as an option, or if the voter expresses a preference when registering, updating a registration, or requesting a ballot. The county auditor must attempt to contact the voter by phone, email, postal mail, or other means. If the voter does not indicate a preference or does not respond, the county auditor must send ballots by postal mail.

(4) The county auditor shall keep the voter on service or overseas status until the county auditor receives verification the voter no longer qualifies as a service or overseas voter under WAC 434-235-010.

(5) Status as a service or overseas voter is voter registration information and may only be disclosed if listed as public information in RCW 29A.08.710.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-030 Special absentee ballots. (1) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. The form must include:

- (a) A space for the voter to print his or her name and address where registered to vote;
- (b) A postal or mailing address;
- (c) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington;
- (d) A checkbox indicating that the voter will be unable to vote and return a regular ballot by normal delivery within the period provided for regular ballots; and
- (e) A checkbox requesting that a regular ballot be forwarded as soon as possible.

(2) The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time (~~and then processed~~) for processing. When regular mail ballots are available, a signed request for a special absentee ballot is not required.

(3) Upon receipt of a special absentee ballot request, a regular ballot is mailed if available. If regular ballots are not available, the county auditor shall immediately send a special absentee ballot containing the known offices and measures scheduled to appear on the ballot; space for the voter to write in the name of any eligible candidate for each office and vote on any measure; and a list of any known candidates (~~who have filed~~) and issues referred to the ballot.

(4) If a regular ballot is returned, the special ballot is not counted.

(5) Write-in votes on special ballots are counted in the same manner as other valid write-in votes for declared candidates.

AMENDATORY SECTION (Amending WSR 18-10-003, filed 4/19/18, effective 5/20/18)

WAC 434-250-110 Processing ballots. (1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to:

- (a) Verification of the signature and postmark on the ballot declaration;
- (b) Removal of the security envelope or sleeve from the return envelope;
- (c) Removal of the ballot from the security envelope;
- (d) Manual inspection for damage, write-in votes, and incorrect or incomplete marks;
- (e) Duplication of (~~damaged and write-in~~) ballots;
- (f) Digital scanning and resolution of ballots ((on a digital scan voting system)) by batch where tabulation does not take place; and
- (g) Other preparation of ballots for final processing.

(2) "Final processing" means the reading of ballots by an optical scan voting system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

(4) Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of ballots.

(5) Initial processing of voted ballots may begin as soon as voted ballots are received. Initial processing includes digital scanning and resolution of ballots where tabulation does not take place. All ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(6) Final processing of voted ballots, which may include scanning ballots on an optical scan voting system, may begin after 7:00 a.m. on the day of the election. Final processing may begin after 7:00 a.m. the day before the election if the county auditor follows a security plan that has been submitted by the county auditor and approved by the secretary of state to prevent tabulation until after 8:00 p.m. on the day of the election.

(7) Tabulation may begin after 8:00 p.m. on the day of the election.

(8) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all over-votes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed as part of the initial processing;

(2) (~~"(Duplicating ballots)~~) Ballot duplication" is the process of making a true copy of valid votes from (~~ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way~~) a physically damaged ballot or a ballot that is unreadable or uncountable by the tabulation system onto a paper or electronic blank ballot to ensure the ballot may be correctly tabulated by the tabulation system. The original ballot may not be altered. Teams of two or more people working together must duplicate ballots according to voter intent as per WAC 434-261-086. A log of duplicated ballots must be signed by the two or more people who duplicated the ballots;

(3) "Ballot resolution" is the process of making changes on a voted electronic ballot image to ensure the ballot is tabulated according to the voter's intent. The changes must reflect the voter intent as per WAC 434-261-086 and the original ballot may not be altered. Changes must be made by teams of two or more people working together. A log of resolved ballots must be signed by the two or more people resolving the ballots;

(4) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(~~(4))~~ (5) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. (~~Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of voter intent.~~) Unreadable ballots may subsequently be counted as provided by these administrative rules;

(~~(5))~~ (6) "Valid signature" on a ballot declaration for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) A mark witnessed by two people.

~~((6))~~ (7) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one(~~(=~~

~~(7))~~);

(8) "Undervote" is no selections made for a race or measure(~~(=~~

~~(8))~~);

(9) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures(~~(=~~

~~(9))~~);

(10) "Seal log" is a log documenting each time a numbered seal is attached or removed from a ballot container. The log must include the seal number, date, and identifying information of persons attaching or removing the seal. Following certification of the election, the seal log must include documentation as to why the seal was removed from a ballot container.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-261-100 Ballot duplication procedures. (1)

If a ballot is damaged, unreadable, uncountable, or unable to be resolved by the tabulation system, a team of two or more people working together must duplicate ballots to reflect the voter's intent according to WAC 434-261-086. A different team of two or more people working together must audit every duplicated ballot to verify the ballots were duplicated correctly. The voter's original ballot may not be altered. The county auditor shall tabulate the duplicate ballot.

If voter intent is not clear, the ballot must be referred to the canvassing board. When duplicating ballots, the county auditor shall take the following steps to create and maintain an audit trail of the action taken:

(a) Each original ballot and duplicate ballot must be assigned the same unique control number, with the number being marked upon the face of each ballot, to ensure that each duplicate ballot may be tied back to the original ballot;

(b) A log must be kept of the ballots duplicated, which must at least include:

(i) The control number of each original ballot and the corresponding duplicate ballot;

(ii) The initials of at least two people who participated in the duplication of each ballot; and

(iii) The total number of ballots duplicated.

Original and duplicate ballots must be kept in secure storage at all times, except during duplication, inspection by the canvassing board, or tabulation.

(2) Written procedures shall be established detailing the situations in which ballots may be duplicated. These procedures shall be included as a part of the county canvassing board manual.

~~((2))~~ (3) If a county uses an automated duplication program, only votes appearing in a human-readable form on the original ballot may be duplicated onto a machine-readable

ballot. The human-readable votes on the original ballot must be compared to the votes printed on the duplicated ballot to ensure that the votes are duplicated accurately. If a human-readable version of any races or ballot pages of the original ballot are not returned or available, votes in those races may not be duplicated or counted.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-261-050 Unsigned ballot declaration or mismatched signatures. (1) If a voter neglects to sign a ballot declaration, signs with a mark and fails to have two witnesses attest to the signature, or signs but the signature on the ballot declaration does not match the signature on the voter registration record, the county auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign, or signs with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the declaration no later than the day before certification of the primary or election; or

(b) Sign a copy of the declaration, or mark the declaration in front of two witnesses, and return it to the county auditor no later than the day before certification of the primary or election.

(3) If the signature on the declaration does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the registration form becomes the signature in the voter registration record for the current election and future elections; or

(b) Sign a signature update form that includes both the ballot declaration required by WAC 434-230-015 and the voter registration oath required by RCW 29A.08.230, and return it to the county auditor no later than the day before certification of the primary or election. The signature on the signature update form must match the signature on the returned ballot declaration. The signature provided on the signature update form becomes the signature in the voter registration record for the current election and future elections.

(4)(a) If the signature on the declaration does not match the signature on the registration record because the last name is different, the ballot may be counted as long as the first name and handwriting are clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the county auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(b) If the signature on the ballot declaration does not match the signature on the registration record because the voter signed with a middle name, nickname, or initials, the ballot may be counted as long as the last name and handwriting are clearly the same.

(5) If the name on the signature does not match the printed name, and the signature on the ballot declaration does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the ballot declaration if:

(a) The voter who signed the declaration can be identified;

(b) The signature on the declaration matches the signature on the voter registration record; and

(c) The voter who signed the declaration has not returned another ballot.

The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote.

(6) Disposition of other ballot signature circumstances:

(a) Ballot signed by a voter's signature stamp. The county auditor shall accept the signature stamp if it is accompanied by the signatures of two witnesses. Without the witness signatures, the county auditor shall process the ballot in the same manner as an unsigned ballot.

(b) Ballot declaration signed by a different voter and that voter has already submitted a ballot. If the county auditor receives a ballot where the ballot declaration is signed with the signature of a person who has previously submitted a ballot, the county auditor shall refer the ballot to the canvassing board for rejection. If the ballot was identified by staff on or before election day, the county auditor must attempt to contact the voter to whom the ballot was issued by phone, email, or if time allows, by mail and provide the voter a replacement ballot.

(7) If it is determined that the signature on a ballot declaration does not match the signature on the registration record and, prior to 8:00 p.m. on election day, the registered voter asserts that the signature on the ballot declaration is not his or her signature, the voter may be provided the opportunity to vote a replacement ballot.

~~((7))~~ (8) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

~~((8))~~ (9) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter subsequently submitted a signature to cure the missing or mismatched signature. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-261-070 Manual inspection of ballots. (1) All voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot is readable by the vote tabulating system. The county

auditor must ensure that write-in votes are tabulated (~~correctly~~) according to RCW 29A.60.021, consistent with the voter's intent. Ballots must be inspected for overvotes, undervotes, and write-in votes prior to tabulation. This manual inspection is a required part of processing ballots.

(2) The state of Washington is a voter intent state. When a voter's choice or intention can be determined, that vote shall be counted. If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks that differ from those specified in the voting instructions, such ballots may be duplicated or resolved, if necessary, and counted according to the statewide standards on what is a vote, as provided in WAC 434-261-086. The county canvassing board may authorize the county auditor to duplicate ballots that may be unreadable or uncountable by the tabulating system. Write-in votes without a readable mark in the target area must be (~~duplicated or resolved~~) processed according to the statewide standards on what is a vote found in WAC 434-261-086. The county canvassing board shall make the final determination of voter intent for ballots not addressed in the statewide standards on what is a vote.

POST-ELECTION DAY RISK-LIMITING AUDITS

NEW SECTION

WAC 434-261-114 Definitions. As used in this rule, unless stated otherwise:

(1) "Ballot manifest" means a report that describes in detail how the ballots are organized and stored, including identification of each batch of ballots by the voting system batch number, as well as the number of ballots in each batch.

(2) "Ballot polling audit" means a type of risk-limiting audit in which the audit board examines and reports to the secretary of state voter markings for a particular race on ballots selected randomly until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

(3) "Cast vote record" or "CVR" means record of all votes produced by a single voter in electronic form.

(4) "Comparison audit" means a type of risk-limiting audit in which the audit board examines and reports to the secretary of state voter markings on randomly selected ballots, then compares them to the voting system's tabulation as reflected in the corresponding cast vote records.

(5) "Hash" is a number generated from a string of text. The hash must be generated by a formula in such a way that it is extremely unlikely that some other text will produce the same hash value.

(6) "Reported tabulation outcome" means the presumed winning and losing candidates or voting choices of a ballot contest as reflected in preliminary results.

(7) "Risk limit" means the largest statistical probability that an incorrect reported tabulation outcome is not detected and corrected in a risk-limiting audit.

(8) "Risk-limiting audit" or "RLA" means a post-election audit of votes on paper ballots and voter-verifiable paper audit trail (VVPAT) records that makes use of statistical principles and methods, is designed to limit the risk of certifying

an incorrect election outcome, and is conducted in accordance with RCW 29A.60.185. Ballot polling audits and comparison audits are two types of risk-limiting audits.

(9) "RLA tabulation" means the tabulation of all randomly selected ballots cast by voters registered in the county, and any accepted provisional ballots that the county opts to include.

(10) "RLA tool" means the software and user interfaces provided by the secretary of state in order to compare the randomly selected ballots to the cast vote record for the RLAs.

(11) "Target contest" means a contest selected by the secretary of state or county auditor for a risk-limiting audit.

NEW SECTION

WAC 434-261-115 Post-election audits. The county auditor must conduct one of the types of audits listed in RCW 29A.60.185. The county auditor may choose a risk-limiting audit, one of the options available under RCW 29A.60.185 and this rule.

(1) If choosing a risk-limiting audit, counties that use a voting system capable of exporting CVRs must conduct a comparison audit.

(2) If choosing a risk-limiting audit, counties that use a voting system incapable of exporting CVRs must conduct a ballot polling audit.

NEW SECTION

WAC 434-261-116 Preparing for a risk-limiting audit. (1) No later than thirty days before the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in RLAs for that election. The secretary of state may establish different risk limits for comparison audits and ballot polling audits, and for audits of statewide and county contests. In comparison audits, the risk limit will not exceed five percent for statewide contests, and ten percent for county contests.

(2) No later than eighteen days before the primary or election, the county auditor must appoint an audit board to conduct the risk-limiting audit. Observers nominated by the major political party county chairpersons in accordance with RCW 29A.60.170 may be present during the audit. Members of the canvassing board may serve as members of the audit board. The county auditor or members of their staff may assist the audit board in conducting the audit. All observers are allowed in accordance with RCW 29A.60.170 and WAC 434-261-020.

(3) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(a) In the case of centrally counted paper ballots, the ballot manifest must uniquely identify for each tabulated ballot the scanner on which the ballot is scanned, the ballot batch of which the ballot is a part, the number of ballots in the batch, and the storage container in which the ballot batch is stored after tabulation. The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(b) In the case of electronic ballots cast on direct recording electronic voting devices (DREs), the ballot manifest must uniquely identify the device on which the ballot was cast or tabulated, the number of ballots cast or tabulated on the device, and the storage container or location in which each paper ballot or VVPAT is stored. The county must maintain and document uninterrupted chain-of-custody for each DRE and VVPAT. Ballots cast on each DRE and VVPAT must constitute a single batch.

(4) No later than the sixth day after election day, the county must pause or finish tabulating all ballots cast by voters registered in the county received through that day. The county may, but is not required to, include in the RLA tabulation any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately after completing the RLA tabulation, and to the extent permitted by its voting system, the county must also generate and preserve:

(a) A summary results report, showing overvotes, undervotes, and valid write-in votes;

(b) A results file export suitable for uploading to the secretary of state's election night reporting system; and

(c) A CVR export, if conducting a comparison audit.

(5) Counties conducting a comparison audit must verify that:

(a) The number of individual CVRs in its CVR export equals the aggregate number of ballots reflected in the county's ballot manifest as of the sixth day after election day; and

(b) The vote totals for all choices in all ballot contests in the CVR export equals the vote totals in the summary results report for the RLA tabulation.

After verifying the accuracy of the CVR export, the county must apply a hash value to the CVR export file using the hash value utility provided by the secretary of state.

(6) Comparison audit uploads. No later than 5:00 p.m. on the sixth day after election day, each county conducting a comparison audit must upload:

(a) Its verified and hashed ballot manifest, and the ballot manifest's hash value, to the secretary of state's office;

(b) Its verified and hashed CVR export, and the CVR export's hash value, to the secretary of state's office; and

(c) Its RLA tabulation results export to the secretary of state's election night reporting system.

(7) Ballot polling audit uploads. No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit or upload:

(a) Its verified and hashed ballot manifest, and the ballot manifest's hash value, to the secretary of state's office;

(b) Its cumulative tabulation report, to the secretary of state's office; and

(c) Its RLA tabulation results export to the secretary of state's election night reporting system.

(8) The secretary of state will convene a public meeting on the seventh day after election day to establish a random seed for use with the secretary of state's RLA tool's random number generator.

(9) The seed is a number consisting of at least twenty digits, and each digit will be selected in order by sequential rolls of a ten-sided die. The secretary of state will designate

one or more staff members to take turns rolling the die. The secretary of state will publish online the random seed after it is established.

(10) No later than 5:00 p.m. on the Friday after election day, the secretary of state will select by lot a statewide contest, and for each county at least one ballot contest other than the selected statewide contest. The county auditor shall randomly select a ballot contest for audit if in any particular election there is no statewide contest. These will be considered the target contests for the RLA. The secretary of state will publish online a complete list of all target contests.

(11) The target contest with the closest diluted margin for each county determines the number of ballots that must be examined during the RLA.

(12) The secretary of state will determine the number of ballots to audit to satisfy the risk limit for the target contests based on the ballot manifests submitted by the counties. The number of ballots to audit will be determined according to the formulas maintained on file in the secretary of state's office.

(13) The secretary of state will randomly select the individual ballots to audit. The secretary of state will use a random number generator with the seed established under subsection (9) of this rule to identify individual ballots as reflected in the county ballot manifests. The secretary of state will notify each county of the randomly selected ballots that each county must audit no later than the seventh day after election day.

NEW SECTION

WAC 434-261-117 Conducting a risk-limiting audit.

The audit board must locate and retrieve, or observe as county election staff locate and retrieve, each randomly selected ballot or VVPAT record from the appropriate storage container. The audit board must verify that the seals on the appropriate storage containers are those recorded on the applicable chain-of-custody logs.

(1) In counties conducting comparison audits, each randomly selected ballot must be examined and voter markings or choices in all contests must be reported using the RLA tool or other means specified by the secretary of state. The audit board may refer to the digital image of the audited ballot captured by the voting system in order to confirm it retrieved the correct ballot randomly selected for audit. The audit board must complete the audit of all ballots randomly selected for audit within four business days to allow time for additional ballots to be included if a discrepancy is identified in accordance with RCW 29A.60.185(3).

(2) In counties conducting ballot polling audits, the audit board must examine and report the voter markings or choices in only the target contest on each randomly selected ballot in a form approved by the secretary of state. The audit board may refer to the digital image of the audited ballot captured by the voting system in order to confirm it retrieved the correct ballot. The audit board must complete its reports of all ballots randomly within four business days to allow time for additional ballots to be included if a discrepancy is identified in accordance with RCW 29A.60.185(3).

(3) The audit board must interpret voter markings on ballots selected for audit in accordance with WAC 434-261-086.

If the audit board members cannot unanimously agree on the voter's intent, they must indicate the inability to agree in the appropriate contest in the RLA tool's audit board user interface, or the ballot polling audit form approved by the secretary of state.

To the extent applicable, the secretary of state will compare the audit board's reports of the audited ballots to the corresponding CVRs and post the summary results of the comparison online. If there is a discrepancy that exceeds the risk limit, the RLA will continue until the risk limit for the target contests is met or until a full hand count results. If the county audit reports reflect that the risk limit has not been satisfied in a target contest, the secretary of state will randomly select additional ballots for audit using the same procedures described in WAC 434-261-116.

The formula used to determine if the risk limit has been satisfied will be maintained on file in the secretary of state's office.

The audit board must sign, date, and submit to the secretary of state a report of the results of the risk-limiting audit on the approved form within four business days. The report must include any discrepancies found.

The secretary of state will review the audit board's report and may direct the county auditor to conduct additional audit rounds, a random audit, a full hand count, or other action. The secretary of state may instruct the county to delay canvass until it completes any additional audit or other action.

NEW SECTION

WAC 434-261-118 Risk-limiting audit reports. The designated election official must segregate and seal the materials used during the post-election audit, including all tabulation reports, the audited ballots, and the audit report.

NEW SECTION

WAC 434-261-119 Removal of risk-limiting audit board members. Removal and replacement of audit board members. The county auditor may remove from the audit board any persons who indicate to the county auditor that they cannot or do not wish to serve as audit board members, and/or who, in the judgment of the county auditor, lack the ability to properly serve as audit board members. If the county auditor removes an audit board member, the auditor must notify the secretary of state and appoint a replacement in the same manner as described in WAC 434-261-116.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-262-020 Preliminary abstract of votes. (1) Prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes for certifying the election, listing the number of registered voters ~~((and))~~, votes cast, and individual declared write-in candidate tallies required by chapter 29A.60 RCW. The preliminary abstract of votes must list separately for each precinct:

- (a) Number of registered voters;
- (b) Number of ballots cast;
- (c) Votes cast for and against each measure;

- (d) Votes cast for each candidate;
- (e) Total number of write-in votes in each race; and
- (f) Total number of overvotes and undervotes in each race.

(2) Pursuant to RCW 29A.60.230, the county auditor may aggregate results or take other necessary steps to maintain the secrecy of ballots.

(3) The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-262-030 County auditor's abstract of votes. The county canvassing board shall meet and canvass all ballots. Upon completion of this canvass ten days after a special election, fourteen days after a primary, and twenty-one days after a general election, the county auditor shall present the auditor's abstract of votes, which must include, at a minimum:

(1) The number of registered voters eligible to vote in the election, by precinct;

(2) The number of ballots cast in the election, by precinct;

(3) The votes cast for each race or issue, including write-ins, undervotes, and overvotes, by precinct;

(4) Cumulative vote totals including write-ins, undervotes, and overvotes; and

(5) ~~((Individual candidate write-in vote tallies. Write-in votes must be tabulated correctly according to WAC 434-261-070. Individual write-in tallies are required for candidates not appearing on the ballot if the total number of write-ins is greater than the number of votes cast for the candidate elected; or in a primary, the total number of votes cast for either candidate that apparently qualified to appear on the general election ballot. Where there is only one candidate on the ballot in a primary, individual write-in tallies are required if the number of write-ins is greater than one percent of the total votes cast for that office.))~~ An aggregate total of votes cast for each declared candidate qualifying for the general election or elected. Individual write-in vote tallies for candidates not meeting the minimum threshold according to chapter 29A.60 RCW shall not be included in the official abstract of votes and results displayed online.

Write-in votes for candidates whose names appear on the ballot for that office should be counted according to ~~((RCW 29A.60.021. Individual tallies of these write-in votes are required under the circumstances described in RCW 29A.60.021(3)))~~ WAC 434-261-086.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-262-160 Write-in-voting—Voter intent.

(1) In all cases of write-in votes the canvassing board shall exercise all reasonable efforts to determine the voter's intent. ~~((Write-in votes in the general election are not to be counted for any person who filed for the same office as either a regular or write-in candidate at the preceding primary and failed~~

~~to qualify for the general election. If a write-in declaration of candidacy has been filed, the voter need only write in that candidate's name in order for the vote to be counted; the candidate's party preference does not impact whether the write-in vote shall be counted. If no declaration of write-in candidacy has been filed, the voter must write in the name of the candidate and, if the office or position number cannot be determined by the location of the write-in on the ballot, the office and position number, in order for the write-in vote to be counted.~~

~~(2)(a) If a write-in candidate for partisan office does not file a write-in declaration of candidacy but does qualify for the general election ballot, the candidate has not stated a preference for a political party and therefore shall have "(states no party preference)" printed on the general election ballot.~~

~~(b)) The board shall determine if votes with name and spelling variations are votes for a declared write-in candidate.~~

~~(2) If a declared write-in candidate ((for partisan office files a write-in declaration of candidacy and qualifies for the general election ballot)) qualifies as one of the top two candidates in the primary, the party preference stated on the write-in declaration of candidacy, if any, shall be printed on the general election ballot.~~

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-262-132 ~~((Election results for))~~ Multi-county candidate races. ~~((In a candidate race))~~ When a write-in candidate files a declaration in a multicounty jurisdiction, the filing officer shall notify the affected counties. The filing officer must combine the write-in totals from all affected counties to determine if the total write-in votes must be tallied for individual candidates as per chapter 29A.60 RCW. If votes must be tallied, the officer must immediately notify the affected counties.

With the exception of certificates of election issued in accordance with RCW 29A.52.360 and 29A.52.370, the filing officer must collect and combine the certified results from the county canvassing boards in order to issue a certificate of election for candidates in multicounty jurisdictions.

WSR 18-22-115

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 6, 2018, 11:12 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-887 WAC, Regulations implementing the Uniform Controlled Substances Act, the pharmacy quality assurance commission (commission) is amending this chapter to update federal citations, make grammatical corrections, clarify language, and update all schedules to reflect the changes made by the Drug Enforcement Administration (DEA) to 21 C.F.R. 1308 made from 2010 to April 1, 2018.

Hearing Location(s): On December 13, 2018, at 9:05 a.m., at Highline Community College, 2400 South 240 Street, Mt. Constance Room, Des Moines, WA 98198.

Date of Intended Adoption: December 13, 2018.

Submit Written Comments to: Tracy West, P.O. Box 48750, Olympia, WA 98504-8750, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2260, by December 10, 2018.

Assistance for Persons with Disabilities: Contact Doreen Beebe, phone 360-236-4946, TTY 360-833-6388 or 711, email WSPQAC@doh.wa.gov, by December 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing amendments to chapter 246-887 WAC to update citations to federal rules and laws adopted by the commission. Additionally, the commission is proposing to change the format of the schedules to be a staging ground for anticipated changes needed to the Revised Code of Washington (RCW). The rules will now only include substances not scheduled in RCW. The two separate lists eliminate redundancy and the chance for misspelling of substances. Also, by having the rule formatted to only schedule substances missing from RCW it will provide efficiency when the commission requests future updates to chapter 69.50 RCW, or if the legislature asks for assistance in updating the schedules. Other changes are proposed to clarify the language in rule and make the requirements more understandable. The commission is proposing to repeal WAC 246-887-110, 246-887-120, 246-887-130, 246-887-131, 246-887-132, 246-887-133, 246-887-165, and 246-887-190, to consolidate previously added substances into their appropriate schedules.

Reasons Supporting Proposal: RCW 69.50.201(d) requires the commission to update controlled substance schedules annually. The commission has not updated this chapter or schedules in over three years. In addition, the proposed rules incorporate amendments to WAC 246-887-100 Schedule I, requested in a rule petition from the Washington state attorney general's office to add certain synthetic cannabinoids, synthetic cathinones, fentanyl, and synthetic opioid drugs to Schedule I consistent with DEA classification of these substances. The petition resulted in the commission filing four emergency rules, recently refiled as WSR 18-16-098 on July 31, 2018, adding these substances to Schedule I. This proposal would make those emergency rule amendments to Schedule I permanent.

Statutory Authority for Adoption: RCW 69.50.201.

Statute Being Implemented: RCW 69.50.101 through 69.50.315, 69.50.401 through 69.50.525, and 69.50.601 through 69.50.608.

Rule is necessary because of federal law, 21 C.F.R. 1306, 21 C.F.R. 1308.

Name of Proponent: Pharmacy quality assurance commission and Washington state attorney general's office, consumer protection division, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Deputy Director, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4988; Implementation and Enforcement: Steve Saxe, Executive Director, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4853.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards; and RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: See explanations below.

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

Explanation of exemptions: WAC 246-887-020, exempt under RCW 34.05.010 (4)(c), (d) and 19.85.061. In this section there are updates to incorporated references, typographical and grammatical corrections, and changes on emergency oral prescriptions to conform to timelines in 21 C.F.R. 1306.11.

WAC 246-887-080 and 246-887-090, exempt under RCW 34.05.010 (4)(d) by correcting references to the pharmacy quality assurance commission rather than board.

WAC 246-887-100, exempt under RCW 34.05.010 (4)(d) and 19.85.061. In this section updates are based on clarifying and correcting language, and changes made to the federal schedules of controlled substances in 21 C.F.R. 1308.11.

WAC 246-887-140, exempt under RCW 34.05.010 (4)(d) and 19.85.061. In this section updates are based on clarifying and correcting language, and changes made to the federal schedules of controlled substances in 21 C.F.R. 1308.12.

WAC 246-887-150 and 246-887-200, exempt under RCW 34.05.010 (4)(d) by correcting references to the pharmacy quality assurance commission rather than board, and clarifying other language.

WAC 246-887-160, exempt under RCW 34.05.010 (4)(d) and 19.85.061. In this section updates are based on clarifying and correcting language, and changes made to the federal schedules of controlled substances in 21 C.F.R. 1308.13.

WAC 246-887-170, exempt under RCW 34.05.010 (4)(d) and 19.85.061. In this section updates are based on clarifying and correcting language, and changes made to the federal schedules of controlled substances in 21 C.F.R. 1308.14.

WAC 246-887-180, exempt under RCW 34.05.010 (4)(d) and 19.85.061. In this section updates are based on clarifying and correcting language, and changes made to the federal schedules of controlled substances in 21 C.F.R. 1308.15.

November 6, 2018

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 15-13-086, filed 6/15/15, effective 7/16/15)

WAC 246-887-020 Uniform Controlled Substances Act. (1) ~~((Consistent with the concept of uniformity where possible with the federal regulations for controlled substances (21 C.F.R.), the federal regulations are specifically made applicable to registrants in this state by virtue of RCW 69.50.306. Although those regulations are automatically applicable to registrants in this state,))~~ The pharmacy quality assurance commission (commission) ((is nevertheless adopting as its own regulations the existing regulations of the federal government published in)) adopts Title 21 of the Code of Federal Regulations ((revised as of April 1, 1991, and all references made therein to the director or the secretary shall have reference to the commission, and)). The following sections ~~((are not applicable)) do not apply:~~ Section ((1301.11-13, section 1301.31, section 1301.43-57)) 1301.13, section 1301.33, section 1301.35-.46, section 1303, section ((1308.41-.48)) 1308.41-.45, and section 1316.31-.67. ((The following specific rules shall take precedence over the federal rules adopted herein by reference, and therefore any inconsistencies shall be resolved in favor of the following specific rules.)) Any inconsistencies between Title 21 of the Code of Federal Regulations sections 1300 through 1321 and chapter 246-887 WAC should be resolved in favor of chapter 246-887 WAC. Further, nothing in these rules applies to the production, processing, distribution, or possession of marijuana as authorized and regulated by the Washington state liquor and cannabis board.

(2) Registration. A separate registration is required for each place of business, ~~((as defined in ((section 1301.23)))~~ 21 C.F.R. 1301.12 where controlled substances are manufactured, distributed or dispensed. Application for registration must be made on forms supplied by the commission, and all requested information ~~((called for thereon))~~ must be supplied unless the information is not applicable, ~~((in))~~ which ~~((ease #))~~ must be indicated by the applicant. An applicant for registration must hold the appropriate wholesaler, manufacturer or pharmacy license provided for in chapter 18.64 RCW.

(3) Every registrant shall be required to keep inventory records required by ~~((section))~~ 21 C.F.R. 1304.04 ~~((of the federal rules which have been adopted by reference by Rule 4))~~ and must maintain said inventory records for a period of two years from the date of inventory. Such registrants are further required to keep a record of receipt and distribution of controlled substances. Such record shall include:

(a) Invoices, orders, receipts, etc. showing the date, supplier and quantity of drug received, and the name of the drug;

(b) Distribution records; i.e., invoices, etc. from wholesalers and manufacturers and prescriptions records for dispensers;

(c) In the event of a significant loss ~~((by))~~ or theft ~~((or destruction))~~, two copies of DEA 106 (report of theft or loss of controlled substances) must be transmitted to the federal authorities and a copy must be sent to the commission;

(d) For transfers of controlled substances from one dispenser to another, a record of the transfer must be made at the time of transfer indicating the drug, quantity, date of transfer, who it was transferred to and from whom. Said record must be retained by both the transferee and the transferor. These transfers can only be made in emergencies pursuant to ~~((section))~~ 21 C.F.R. 1307.11 ~~((federal rules))~~.

(4) The records must be maintained separately for Schedule II drugs. The records for Schedule III, IV and V drugs may be maintained either separately or in a form that is readily retrievable from the business records of the registrant. ~~((Prescription records will be deemed readily retrievable if the prescription has been stamped in red ink in the lower right hand corner with the letter "C" no less than one inch high, and said prescriptions are filed in a consecutively numbered prescription file which includes prescription and noncontrolled substances.))~~

(5) A federal order form is required for each distribution of a Schedule I or II controlled substance, and said forms along with other records required to be kept must be made readily available to authorized employees of the commission.

(6) Schedule II drugs require that a dispenser have a signed prescription in his possession prior to dispensing said drugs. An exception is permitted in an "emergency." An emergency exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the physician to provide a written or electronic prescription for the drug at that time. If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within ~~((72 hours))~~ seven days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the seven-day period, and further ~~((he))~~ the pharmacist must note on the prescription that it was filled on an emergency basis.

(7) A prescription for a substance included in Schedule II may not be refilled.

(8) A prescription for a substance included in Schedule II may not be filled more than six months after the date the prescription was issued.

(9) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III, IV, or V, which is a prescription

drug as determined under RCW 69.04.560, may not be dispensed without a written, oral, or electronically communicated prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription for a substance included in Schedule III, IV, or V may not be filled or refilled more than six months after the date issued by the practitioner or be refilled more than five times, unless the practitioner issues a new prescription.

AMENDATORY SECTION (Amending WSR 91-18-057, filed 8/30/91, effective 9/30/91)

WAC 246-887-080 Sodium pentobarbital registration disciplinary action. In addition to any criminal or civil liabilities that may occur, the ~~((board))~~ pharmacy quality assurance commission (commission) may deny, suspend, or revoke registration upon determination that:

- (1) The registration was procured through fraud or misrepresentation~~((s))~~;
- (2) The registrant or any agent or employee of the registrant has violated any of the federal or state laws related to drugs, or has violated any of the rules or regulations of the ~~((board of pharmacy))~~ commission.

AMENDATORY SECTION (Amending WSR 91-18-057, filed 8/30/91, effective 9/30/91)

WAC 246-887-090 Authority to control. Pursuant to the authority granted to the ~~((board of))~~ pharmacy quality assurance commission (commission) in RCW 69.50.201, the ~~((board))~~ commission has considered the following factors with regards to each of the substances listed in this chapter and in chapter 69.50 RCW:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychic or psychological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under the Uniform Controlled Substances Act (chapter 69.50 RCW).

AMENDATORY SECTION (Amending WSR 11-22-086, filed 11/1/11, effective 12/2/11)

WAC 246-887-100 Schedule I. The ~~((board))~~ pharmacy quality assurance commission (commission) finds that the following substances have high potential for abuse and have no accepted medical use in treatment in the United States or that they lack accepted safety for use in treatment under medical supervision. ~~((The board, therefore;))~~ In addition to the substances scheduled in RCW 69.50.204 the commission places each of the following controlled substances by whatever official name, common or usual name, chemical name, or brand name in Schedule I.

~~((a))~~ The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

~~((b))~~ (1) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- ~~((1))~~ Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- ~~(4)~~ Alphaacetylmethadol; (except for levo-alphaacetylmethadol—Also known as levo-alpha-acetylmethadol, levo-methadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- ~~(7)~~ Alpha-methylfentanyl (N-[1-alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Benzethidine;
- (9) Betaacetylmethadol;
- (10) Betameprodine;
- (11) Betamethadol;
- (12) Betaprodine;
- (13) Clonitazene;
- (14) Dextromoramide;
- (15) Diampromide;
- (16) Diethylthiambutene;
- (17) Difenoxin;
- (18) Dimenoxadol;
- (19) Dimpheptanol;
- (20) Dimethylthiambutene;
- (21) Dioxaphetyl butyrate;
- (22) Dipipanone;
- (23) Ethylmethylthiambutene;
- (24) Etonitazene;
- (25) Etoperidine;
- (26) Furethidine;
- ~~(27)~~ Gamma-hydroxybutyric Acid (other names include: GHB);
- (28) Hydroxypethidine;
- (29) Ketobemidone;
- (30) Levomoramide;
- (31) Levophenacetylmorphan;
- ~~(32)~~ 3-Methylfentanyl (N-[3-Methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- ~~(33)~~ Morpheridine;
- ~~(34)~~ MPPP (1-Methyl-4-phenyl-4-propionoxypiperidine);
- (35) Noracetylmethadol;
- (36) Norlevorphanol;
- (37) Normethadone;
- (38) Norpipanone;
- ~~(39)~~ PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (40) Phenadoxone;
- (41) Phenampromide;
- (42) Phenomorphan;

- (43) Phenoperidine;
- (44) Piritramide;
- (45) Proheptazine;
- (46) Properidine;
- (47) Propiram;
- (48) Racemoramide;
- (49) Tilidine;
- (50) Trimeperidine.

(e)) (a) (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide); some other names: Acetyl fentanyl;

(b) 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; some other names: U-47700;

(c) 3,4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl]benzamide; some other names: AH-7921;

(d) Dextrorphan;

(e) N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; some other names: Acryl fentanyl and acryloylfentanyl;

(f) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; some other names: Butyryl fentanyl;

(g) N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; some other names: Furanyl fentanyl;

(h) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; some other names: 4-fluoroisobutyryl fentanyl and para-fluoroisobutyryl fentanyl;

(i) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; some other names: Beta-hydroxythiofentanyl;

(j) Propheptazine.

(2) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, ((~~their~~) its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- ((1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine;

(23) Thebacon.

(d)) Methylhydromorphine.

(3) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation ((f)). For purposes of ((~~paragraph (d) of this section,~~) this subsection only, the term "isomer" includes the optical, position, and geometric isomers((f):

(1) ~~4-bromo-2,5-dimethoxy-amphetamine; Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;~~

(2) ~~2,5-dimethoxyamphetamine; Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;~~

(3) ~~2,5-dimethoxy-4-ethylamphetamine (DOET)~~

(4) ~~4-methoxyamphetamine; Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;~~

(5) ~~5-methoxy-3,4-methylenedioxy-amphetamine;~~

(6) ~~4-methyl-2,5-dimethoxy-amphetamine; Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";~~

(7) ~~3,4-methylenedioxy-amphetamine;~~

(8) ~~3,4-methylenedioxymethamphetamine (MDMA);~~

(9) ~~3,4,5-trimethoxy-amphetamine;~~

(10) ~~Bufotenine; Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;~~

(11) ~~Diethyltryptamine; Some trade or other names: N,N-Diethyltryptamine; DET;~~

(12) ~~Dimethyltryptamine; Some trade or other names: DMT;~~

(13) ~~Ibogaine; Some trade or other names: 7-Ethyl-6,6-beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido(1',2':1,2)-azepino(5,4-b)indole; Tabernanthe iboga;~~

(14) ~~Lysergic acid diethylamide;~~

(15) ~~Marihuana;~~

(16) ~~Mescaline;~~

(17) ~~Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;~~

(18) ~~Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii Lemaire*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. § 812 (c), Schedule I (e)(12))~~

(19) ~~N-ethyl-3-piperidyl benzilate;~~

(20) ~~N-methyl-3-piperidyl benzilate;~~

(21) ~~Psilocybin;~~

(22) ~~Psilocybin;~~

(23) ~~Any of the following synthetic cannabimimetics, their salts, isomers, and salts of isomers, unless specifically~~

excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, and AM-2201;

(ii) Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199;

(iii) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307;

(iv) Naphthylmethylindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176;

(v) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8;

(vi) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol, and CP 47,497;

(vii) Benzoylindoles: Any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or

not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241;

(viii) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de][1,4-benzoxazin-6-yl]-1-naphthalenylmethanone: Some trade or other names: WIN-55,212-2.

(24) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp., and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1—~~cis—~~or ~~trans~~ tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6—~~cis—~~or ~~trans~~ tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4—~~cis—~~or ~~trans~~ tetrahydrocannabinol, and its optical isomers;

(iv) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[e]chromen-1-ol: Some trade or other names: HU-210.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(25) Ethylamine analog of phenethylidene: Some trade or other names: N-ethyl-1-phenylecyclohexylamine, (1-phenylecyclohexyl) ethylamine, N-(1-phenylecyclohexyl)ethylamine, cyclohexamine, PCE;

(26) Pyrrolidine analog of phenethylidene: Some trade or other names: 1-(1-phenylecyclohexyl)pyrrolidine; PCPy; PHP;

(27) Thiophene analog of phenethylidene: Some trade or other names: 1-(1-[2-thenyl]-cyclohexyl)-piperidine; 2-thienylanalog of phenethylidene; TPCP; TCP;

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Meclizolone;

(ii) Methaqualone.

(f)):

(a) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one; some other names: butylone and bk-MBDB;

(b) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one; some other names: pentylone and bk-MBDP;

(c) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine; some other names: 2C-P;

(d) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine; some other names: 2C-E;

(e) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine; some other names: 2C-D;

(f) 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine; some other names: 2C-N;

(g) 2-(2,5-Dimethoxyphenyl)ethanamine; some other names: 2C-H;

(h) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25B-NBOMe and 2C-B-NBOMe;

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine; some other names: 2C-C;

(j) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25C-NBOMe and 2C-C-NBOMe;

(k) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine; some other names: 2C-I;

(l) 2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25I-NBOMe and 2C-I-NBOMe;

(m) 2,5-dimethoxyamphetamine; some other names: 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA;

(n) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine; some other names: 2C-T-2;

(o) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine; some other names: 2C-T-4;

(p) 3,4-Methylenedioxymethcathinone; some other names: Methylone;

(q) 3,4-methylenedioxy-N-ethylamphetamine; some other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)-phenethylamine, N-ethyl MDA, MDE, and MDEA;

(r) 3,4-Methylenedioxypropylamphetamine; some other names: MDPV;

(s) 4-bromo-2,5-dimethoxy-amphetamine; Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; some other names: 4-bromo-2,5-DMA;

(t) 4-methoxyamphetamine; some other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine, PMA;

(u) 4-methyl-2,5-diamethoxyamphetamine;

(v) 4-methyl-2,5-dimethoxy-amphetamine; some other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM;" and "STP";

(w) 4-Methylmethcathinone; some other names: Mephedrone;

(x) 5-methoxy-N,N-dimethyltryptamine; some other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole and 5-MeO-DMT;

(y) Alpha-ethyltryptamine; some other names: Etryptamine; monase; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; a-ET; and AET;

(z) Beta-keto-N-Methylbenzodioxolylpropylamine; some other names: bk-MBDB and Butylone;

(aa) Ethylamine analog of phencyclidine; some other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(bb) Ibogaine; some other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; and Tabernanthe iboga;

(cc) Marijuana Extract—Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant;

(dd) N-hydroxy-3,4-methylenedioxyamphetamine; some other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine; and N-hydroxy MDA;

(ee) Pyrrolidine analog of phencyclidine; some other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; and PHP;

(ff) Thiophene analog of phencyclidine; some other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP.

(4) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

((+)) (a) Cathinone ((+)); also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone((+)); 2-amino-propiophenone; and norephedrone((+));

((2) 4 Fluoromethcathinone (Flephedrone);

(3) Beta-keto-N-Methylbenzodioxolylpropylamine (bk-MBDB, Butylone);

(4) 3,4-Methylenedioxy-methcathinone (Methylone);

(5) 3,4-Methylenedioxypropylamphetamine (MDPV);

(6) 4-Methylmethcathinone (Mephedrone);

(7) Fenethylamine;

(8) N-ethylamphetamine;

(9) 4-methylaminorex;

(10)) (b) N,N-dimethylamphetamine; some other names: N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine.

(5) Cannabimimetic agents and synthetic cannabinoids. Any of the following synthetic cannabimimetics and cannabinoids, commonly known as spice, their salts, isomers, and salts of isomers, unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) (1-pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone; some other names: UR-144;

(b) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: THJ-2201;

(c) [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetraethyl cyclopropyl)methanone; some other names: 5-fluoro-UR-144 and XLR11;

(d) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole; some other names: AM2201;

(e) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole; some other names: AM694;

(f) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole; some other names: JWH-200;

(g) 1-butyl-3-(1-naphthoyl)indole; some other names: JWH-073;

(h) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole; some other names: SR-18 and RCS-8;

(i) 1-hexyl-3-(1-naphthoyl)indole; some other names: JWH-019;

(j) 1-pentyl-3-(1-naphthoyl)indole; some other names: JWH-018 and AM678;

(k) 1-pentyl-3-(2-chlorophenylacetyl)indole; some other names: JWH-203;

(l) 1-pentyl-3-(2-methoxyphenylacetyl)indole; some other names: JWH-250;

(m) 1-pentyl-3-(4-chloro-1-naphthoyl)indole; some other names: JWH-398;

(n) 1-pentyl-3-(4-methyl-1-naphthoyl)indole; some other names: JWH-122;

(o) 1-pentyl-3-[(4-methoxy)-benzoyl]indole; some other names: SR-19 and RCS-4;

(p) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole; some other names: JWH-081;

(q) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; some other names: CP-47,497;

(r) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; some other names: cannabicyclohexanol or CP-47,497 C8-homolog;

(s) Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers; some other names: MDMB-FUBINACA;

(t) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers; some other names: 5F-ADB; and 5F-MDMB-PINACA;

(u) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers; some other names: 5F-AMB;

(v) Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers; some other names: MDMB-CHMICA; and MMB-CHMINACA;

(w) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide; some other names: APINACA and AKB48;

(x) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers; some other names: ADB-FUBINACA;

(y) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers; some other names: MAB-CHMINACA; and ADB-CHMINACA;

(z) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide; some other names: ADB-PINACA;

(aa) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide; some other names: AB-FUBINACA;

(bb) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: AB-CHMINACA;

(cc) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: AB-PINACA;

(dd) N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric

isomers, salts and salts of isomers; some other names: 5F-APINACA; and 5F-AKB48;

(ee) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate; some other names: 5-fluoro-PB-22; and 5F-PB-22;

(ff) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate; some other names: PB-22; and QUPIC.

(6) Synthetic cathinones, commonly known as bath salts, and its derivatives. Unless specifically exempted or listed in another schedule, any of the following synthetic cathinone and derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific designation:

(a) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one; some other names: Naphyrone;

(b) 2-(methylamino)-1-phenylpentan-1-one; some other names: Pentedrone;

(c) 3-fluoro-N-methylcathinone; some other names: 3-FMC;

(d) 4-fluoro-N-methylcathinone; some other names: 4-FMC and flephedrone;

(e) 4-methyl-alpha-pyrrolidinopropiophenone; some other names: 4-MePPP;

(f) 4-methyl-N-ethylcathinone; some other names: 4-MEC;

(g) Alpha-pyrrolidinobutiophenone; some other names: Alpha-PBP;

(h) Alpha-pyrrolidinopentiophenone; some other names: Alpha-PVP;

(i) N-Ethylpentylone, its optical, positional, and geometric isomers, salts and salts of isomers; some other names: 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one.

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 00-01-075, filed 12/13/99)

WAC 246-887-140 Schedule II. The ~~((board))~~ pharmacy quality assurance commission (commission) finds that the following substances have a high potential for abuse and have currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions and that the abuse of the following substances may lead to severe psychic or psychological dependence. ~~((The board, therefore,))~~ In addition to the substances listed in RCW 69.50.206, the commission places each of the following drugs and other substances by whatever official name, common or usual name, chemical name, or brand name in Schedule II.

~~((a))~~ The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

~~(b)~~ Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical syn-

thesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b)(1) of this section, but not including the isoquinoline alkaloids of opium:

(3) Opium poppy and poppy straw.

(4)) (1) Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine; or [¹²³]joflupane.

((5) Methylbenzoylcegonine (cocaine—its salts, optical isomers, and salts of optical isomers):

(6) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy):

(e)) (2) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts(±) and salts of isomers, esters(±) and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

- ((1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alpha-acetylmethadol—also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM;

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) ~~Methadone—Intermediate, 4 cyano-2-dimethyl-amino-4,4-diphenyl-butane;~~

(17) ~~Moramide—Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;~~

(18) Pethidine (meperidine);

(19) ~~Pethidine—Intermediate—A,4-cyano-1-methyl-4-phenylpiperidine;~~

(20) ~~Pethidine—Intermediate—B,ethyl-4-phenylpiperidine-4-carboxylate;~~

(21) ~~Pethidine—Intermediate—C,1-methyl-4-phenylpiperidine-4-carboxylic acid;~~

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Remifentanil;

(26) Racemorphan;

(27) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, its salts, optical isomers, and salts of optical isomers;

(3) Phenmetrazine and its salts;

(4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phenacyclidine;

(5) Secobarbital.

(f)) Thiafentanil.

(3) Hallucinogenic substances.

(a) Dronabinol[(-)-delta-9-trans tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration;

(b) Nabilone; some other names: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.

(4) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances: ((1) Immediate precursor to amphetamine and methamphetamine:

(2) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.

~~(3) Immediate precursors to phenylelidine (PCP):~~

~~(i) 1-phenylcyclohexylamine;~~

~~(ii) 1-piperidinocyclohexanecarbonitrile (PCC);~~

~~(g) Hallucinogenic substances:~~

~~(1) Nabilone. (Another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.)) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).~~

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 94-07-105, filed 3/18/94, effective 3/18/94)

WAC 246-887-150 Schedule II immediate precursors. ~~((4))~~ The ~~(board)~~ pharmacy quality assurance commission (commission) finds and designates the following substances as being the principal compound used or produced primarily for use and which are an immediate chemical intermediary used or likely to be used, in the manufacture of a Schedule II controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

~~((2))~~ (1) Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts or isomers having potential for abuse associated with the preparation of controlled substances shall be a Schedule II controlled substance.

(a) Anthranilic acid.

(b) Ephedrine.

(c) Hydriodic acid.

(d) Methylamine.

(e) Phenylacetic acid.

(f) Pseudoephedrine.

(g) Methamphetamine.

(h) Lead acetate.

(i) Methyl formamide.

~~(Provided: That)~~ (2) Any drug or compound containing Ephedrine, or any of its salts or isomers, or Pseudoephedrine, or any of its salts or isomers that are prepared for dispensing or over-the-counter distribution and are in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances for the purpose of this section~~(: And Provided Further, That))~~.

(3) Any cosmetic containing lead acetate that is distributed in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances.

AMENDATORY SECTION (Amending WSR 04-13-162, filed 6/23/04, effective 7/24/04)

WAC 246-887-160 Schedule III. The ~~(board)~~ pharmacy quality assurance commission (commission) finds that the following substances have a potential for abuse less than the substances listed in Schedule ~~(s))~~ I under RCW 69.50.204 and WAC 246-887-100 and Schedule II under RCW 69.50.206 and WAC 246-887-140, and have currently accepted

medical use in treatment in the United States and that the abuse of the substances may lead to moderate or low physical dependency or high psychological dependency. ~~((The board, therefore.))~~ In addition to substances listed in RCW 69.50.208, the commission places each of the following drugs and other substances by whatever official name, common or usual name, chemical name, or brand name in Schedule III.

~~((a))~~ The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule III.

~~(b)~~ Stimulants. ~~Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:~~

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations are referred to as excepted compounds in Schedule III as published in 21 C.F.R. 1308.13 (b)(1) as of April 1, 1984, and ~~any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;~~

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

~~(e))~~ (1) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system: ~~((1))~~ Any compound, mixture, or preparation containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

~~or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;~~

(2) Any suppository dosage form containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

~~or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;~~

~~(3)~~ Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

(4) Chlorhexadol;

(5) Ketamine, its salts, isomers, and salts of isomers—some other names for ketamine: ~~(-plus minus-)~~ 2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(6) Lysergic acid;

(7) Lysergic acid amide;

(8) Methyprylon;

(9) Sulfondiethylmethane;

- (10) Sulfonethylmethane;
- (11) Sulfonmethane;
- (12) Tiletamine and zolazepam or any salt thereof—some trade or other names for a tiletamine-zolazepam combination product: Telazol some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone—some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e]-[1,4]diazepin-7(1H)-one flupyrazapon;
- (d) Nalorphine;
- (e)) Perampanel, and its salts, isomers, and salt of isomers.

(2) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, ((f))other than estrogens, progestins, and corticosteroids((g)), that promotes muscle growth, and includes:

- ((1) Boldenone;
- (2) Chlorotestosterone;
- (3) Clostebol;
- (4) Dehydrochloromethyltestosterone;
- (5) Dihydrotestosterone;
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone (Formebolone);
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nandrolone;
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and
- (28)) (a) 17alpha-methyl-3alpha,17beta-dihydroxy-5alpha-androstane;

(b) 17alpha-methyl-3beta,17beta-dihydroxy-5alpha-androstane;

(c) 17alpha-methyl-delta1-dihydrotestosterone (17beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) some other names: '17-alpha-methyl-1-testosterone';

(d) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-dine-3,17-dione);

(e) Norandrostenediol:

(i) 19-nor-4-androstenediol (3alpha, 17beta-dihydroxyestr-4-ene);

(ii) 19-nor-4-androstenediol (3beta, 17beta-dihydroxyestr-4-ene);

(iii) 19-nor-5-androstenediol (3beta, 17beta-dihydroxyestr-5-ene);

(iv) 19-nor-5-androstenediol (3alpha, 17beta-dihydroxyestr-5-ene).

(f) Norandrostenedione:

(i) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(ii) 9-nor-5-androstenedione (estr-5-en-3,17-dione).

(g) Androstenediol:

(i) 3alpha,17beta-dihydroxy-5alpha-androstane;

(ii) 3beta,17beta-dihydroxy-5alpha-androstane.

(h) Boldione (androsta-1,4-dine-3,17-dione);

(i) Desoxymethyltestosterone (17alpha-methyl-5alpha-androst-2-en-17beta-ol); some other names: 'madol'.

(j) Mestanolone (17alpha-methyl-17beta-hydroxy-5alpha-androstan-3-one);

(k) Methasterone (2alpha,17alpha-dimethyl-5alpha-androstan-17beta-ol-3-one);

(l) Prostanozol (17beta-hydroxy-5alpha-androstano[3,2-c]pyrazole).

(m) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this ((paragraph)) subsection.

((The following are implants or pellets which are exempt:

Ingredients	Trade Name	Company
Testosterone Propionate, Estradiol Benzoate	F-TO	Animal Health Div.-Upjohn International-Kalamazoo, MI
Trenbolone Acetate	Finaplix-H	Hoechst-Roussel Agri-Vet Co., Somerville, NJ
Trenbolone Acetate	Finaplix-S	Hoechst-Roussel Agri-Vet Co., Somerville, NJ
Testosterone Propionate, Estradiol Benzoate	Heifer-oid	Anchor Division Boehringer Ingelheim St. Joseph, MO
Testosterone Propionate, Estradiol Benzoate	Heifer-oid	Bio-Ceutic Division-Boehringer Ingelheim St. Joseph, MO
Testosterone Propionate, Estradiol Benzoate	Heifer-oid	Ivy Laboratories, Inc. Overland Park, KS
Testosterone Propionate, Estradiol Benzoate	Implus	The Upjohn Co. Kalamazoo, MI
Trenbolone Acetate, Estradiol	Revalor-s	Hoechst-Roussel Agri-Vet Co., Somerville, NJ
Testosterone Propionate, Estradiol Benzoate	Synovex H	Syntex Laboratories Palo Alto, CA

((f)) (3) Exempt anabolic steroid products. The following anabolic steroid products in Table A of this subsection containing compounds, mixtures, or preparations are exempt

from the recordkeeping, refill restrictions, and other Controlled Substances Act requirements:

(Ingredients	Trade Name	Company
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Androgyn L.A.	Forest Pharmaceuticals St. Louis, MO
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Andro-Estro 90-4	Rugby Laboratories Roekville Centre, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	depANDROGYN	Forest Pharmaceuticals St. Louis, MO
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	DEPO-T.E.	Quality Research Laboratories Carmel, IN
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	depTESTROGEN	Martica Pharmaceuticals Phoenix, AZ
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Duomone	Wintec Pharmaceutical Paeific, MO
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	DURATESTRIN	W.E. Hauck Alpharetta, GA
Testosterone cypionate 50 mg/ml Esterified cypionate 2 mg/ml	DUO-SPAN-H	Primedies Laboratories Gardena, CA
Esterified estrogens 1.25 mg. Methyltestosterone 2.5 mg.	Estratest	Solvay Pharmaceuticals Marietta, GA
Esterified estrogens 0.525 mg. Methyltestosterone 1.25 mg.	Estratest HS	Solvay Pharmaceuticals Marietta, GA
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	PAN-ESTRA-TEST	Pan American Labs Covington, LA
Conjugated estrogens 1.25 mg. Methyltestosterone 10 mg.	Premarin with Methyltestosterone	Ayerst Labs, Inc. New York, NY
Conjugated estrogens 0.625 mg. Methyltestosterone 5 mg.	Premarin with Methyltestosterone	Ayerst Labs, Inc. New York, NY
Testosterone propionate 25 mg Estradiol benzoate 2.5 mg	Synovex H Pellets in process	Syntex Animal Health Palo Alto, CA

(Ingredients	Trade Name	Company
Testosterone propionate 10 parts Estradiol benzoate 1 part	Synovex H Pellets in process; granulation	Syntex Animal Health Palo Alto, CA
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testagen	Clint Pharmaceutical Nashville, TN
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	TEST-ESTRO-Cypionates	Rugby Laboratories Roekville Centre, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone-Cyp 50- Estradiol-Cyp 2	I.D.E.-Interstate Amityville, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Best Generies No. Miami Beach, FL
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Goldline Labs Ft. Lauderdale FL
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Schein Pharmaceuticals Port Washington, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Steris Labs, Inc. Phoenix, AZ
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Testosterone-Enanthate-Estradiol Valerate Injection	Goldline Labs Ft. Lauderdale FL
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Testosterone-Enanthate-Estradiol Valerate Injection	Schein Pharmaceuticals Port Washington, NY
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Testosterone-Enanthate-Estradiol Valerate Injection	Steris Labs, Inc. Phoenix, AZ

(g) ~~Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in paragraph (e) of this section:~~

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage

unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per

dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below;

(1) Buprenorphine.

(i) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved product. (Some other names for dronabinol [6a*R-trans*]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[*b,d*]pyran-1-ol, or (-) delta-9-(*trans*)-tetrahydrocannabinol.))

Table A

<u>Trade Name</u>	<u>Company</u>	<u>Form</u>	<u>Ingredients</u>	<u>Quantity</u>
<u>Andro-Estro 90-4</u>	<u>Rugby Laboratories, Rockville Centre, NY</u>	<u>Vial</u>	<u>Testosterone enanthate; Estradiol valerate</u>	<u>90 mg/mL; 4 mg/mL</u>
<u>Androgyn L.A.</u>	<u>Forest Pharmaceuticals, St. Louis, MO</u>	<u>Vial</u>	<u>Testosterone enanthate; Estradiol valerate</u>	<u>90 mg/mL; 4 mg/mL</u>
<u>Component E-H in process granulation</u>	<u>Ivy Laboratories, Inc., Overland Park, KS</u>	<u>Pail or drum</u>	<u>Testosterone propionate; Estradiol benzoate</u>	<u>10 parts; 1 part</u>
<u>Component E-H in process pellets</u>	<u>Ivy Laboratories, Inc., Overland Park, KS</u>	<u>Pail</u>	<u>Testosterone propionate; Estradiol benzoate</u>	<u>25 mg/2.5 mg/pellet</u>
<u>Component TE-S in process granulation</u>	<u>Ivy Laboratories, Inc., Overland Park, KS</u>	<u>Pail or drum</u>	<u>Trenbolone acetate; Estradiol USP</u>	<u>5 parts; 1 part</u>
<u>Component TE-S in process pellets</u>	<u>Ivy Laboratories, Inc., Overland Park, KS</u>	<u>Pail</u>	<u>Trenbolone acetate; Estradiol USP</u>	<u>120 mg/24 mg/pellet</u>
<u>depANDROGYN</u>	<u>Forest Pharmaceuticals, St. Louis, MO</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Depo-Testadiol</u>	<u>The Upjohn Company, Kalamazoo, MI</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>depTESTROGEN</u>	<u>Martica Pharmaceuticals, Phoenix, AZ</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>DEPTO-T.E.</u>	<u>Quality Research Pharm., Carmel, IN</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Duomone</u>	<u>Wintec Pharmaceutical, Pacific, MO</u>	<u>Vial</u>	<u>Testosterone enanthate; Estradiol valerate</u>	<u>90 mg/mL; 4 mg/mL</u>
<u>DUO-SPAN II</u>	<u>Primedics Laboratories, Gardena, CA</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>DURATESTRIN</u>	<u>W. E. Hauck, Alpharetta, GA</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Essian</u>	<u>Pharmaceutics International Inc., Hunt Valley, MD</u>	<u>TB</u>	<u>Esterified estrogens; Methyl-testosterone</u>	<u>1.25 mg; 2.5 mg</u>
<u>Essian H.S.</u>	<u>Pharmaceutics International Inc., Hunt Valley, MD</u>	<u>TB</u>	<u>Esterified estrogens; Methyl-testosterone</u>	<u>0.625 mg; 1.25 mg</u>

Trade Name	Company	Form	Ingredients	Quantity
<u>Esterified Estrogens and Methyltestosterone, USP (0.625 mg/1.25 mg)</u>	<u>Interpharm, Inc.,</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>0.625 mg; 1.25 mg</u>
<u>Esterified Estrogens and Methyltestosterone, USP (1.25 mg/2.5 mg)</u>	<u>Interpharm, Inc.</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>1.25 mg; 2.5 mg</u>
<u>Esterified Estrogens/ Methyltestosterone, (0.625 mg/1.25 mg) Tablet</u>	<u>ANDAPharm, LLC</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>0.625 mg; 1.25 mg</u>
<u>Esterified Estrogens/ Methyltestosterone, (1.25 mg/2.5 mg) Tablet</u>	<u>ANDAPharm, LLC</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>1.25 mg; 2.5 mg</u>
<u>Estratest</u>	<u>Solvay Pharmaceuticals, Marietta, GA</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>1.25 mg; 2.5 mg</u>
<u>Estratest H.S.</u>	<u>Solvay Pharmaceuticals, Marietta, GA</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>0.625 mg; 1.25 mg</u>
<u>Masculinizing Feed for Fish (Investigational)</u>	<u>Rangen, Inc., Buhl, ID</u>	<u>Plastic Bags</u>	<u>Methyltestosterone</u>	<u>60 mg/kg fish feed</u>
<u>Menogen</u>	<u>Sage Pharmaceuticals, Shreveport, LA</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>1.25 mg; 2.5 mg</u>
<u>Menogen HS</u>	<u>Sage Pharmaceuticals, Shreveport, LA</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>0.625 mg; 1.25 mg</u>
<u>Methyltestosterone and Esterified Estrogens (2.5 mg/1.25 mg)</u>	<u>Lannett Company, Inc.</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>1.25 mg; 2.5 mg</u>
<u>Methyltestosterone and Esterified Estrogens (Half Strength) (1.25 mg/0.625 mg)</u>	<u>Lannett Company, Inc.</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>0.625 mg; 1.25 mg</u>
<u>PAN ESTRA TEST</u>	<u>Pan American Labs; Covington, LA</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Premarin with Methyltestosterone</u>	<u>Ayerst Labs Inc., New York, NY</u>	<u>TB</u>	<u>Conjugated estrogens; Methyltestosterone</u>	<u>0.625 mg; 5.0 mg</u>
<u>Premarin with Methyltestosterone</u>	<u>Ayerst Labs Inc., New York, NY</u>	<u>TB</u>	<u>Conjugated estrogens; Methyltestosterone</u>	<u>1.25 mg; 10.0 mg</u>
<u>Synovex H in-process bulk pellets</u>	<u>Syntex Animal Health, Palo Alto, CA</u>	<u>Drum</u>	<u>Testosterone propionate; Estradiol benzoate</u>	<u>25 mg; 2.5 mg/pellet</u>
<u>Synovex H in-process granulation</u>	<u>Syntex Animal Health, Palo Alto, CA</u>	<u>Drum</u>	<u>Testosterone propionate; Estradiol benzoate</u>	<u>10 part; 1 part</u>
<u>Synovex Plus in-process bulk pellets</u>	<u>Fort Dodge Animal Health, Fort Dodge, IA</u>	<u>Drum</u>	<u>Trenbolone acetate; Estradiol benzoate</u>	<u>25 mg; 3.5 mg/pellet</u>
<u>Synovex Plus in-process granulation</u>	<u>Fort Dodge Animal Health, Fort Dodge, IA</u>	<u>Drum</u>	<u>Trenbolone acetate; Estradiol benzoate</u>	<u>25 parts; 3.5 parts</u>
<u>Syntest D.S.</u>	<u>Syntho Pharmaceuticals, Inc.</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>1.25 mg; 2.5 mg</u>
<u>Syntest H.S.</u>	<u>Syntho Pharmaceuticals, Inc.</u>	<u>TB</u>	<u>Esterified estrogens; Methyltestosterone</u>	<u>0.625 mg; 1.25 mg</u>
<u>TEST-ESTRO Cypionates</u>	<u>Rugby Laboratories, Rockville Centre, NY</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>

<u>Trade Name</u>	<u>Company</u>	<u>Form</u>	<u>Ingredients</u>	<u>Quantity</u>
<u>Testoderm 4 mg/d</u>	<u>Alza Corp., Palo Alto, CA</u>	<u>Patch</u>	<u>Testosterone</u>	<u>10 mg</u>
<u>Testoderm 6 mg/d</u>	<u>Alza Corp., Palo Alto, CA</u>	<u>Patch</u>	<u>Testosterone</u>	<u>15 mg</u>
<u>Testoderm in-process film</u>	<u>Alza Corp., Palo Alto, CA</u>	<u>Sheet</u>	<u>Testosterone</u>	<u>0.25 mg/cm2</u>
<u>Testoderm with Adhesive 4 mg/d</u>	<u>Alza Corp., Palo Alto, CA</u>	<u>Patch</u>	<u>Testosterone</u>	<u>10 mg</u>
<u>Testoderm with Adhesive 6 mg/d</u>	<u>Alza Corp., Palo Alto, CA</u>	<u>Patch</u>	<u>Testosterone</u>	<u>15 mg</u>
<u>Testoderm with Adhesive in-process film</u>	<u>Alza Corp., Palo Alto, CA</u>	<u>Sheet</u>	<u>Testosterone</u>	<u>0.25 mg/cm2</u>
<u>Testosterone Cyp 50 Estradiol Cyp 2</u>	<u>I.D.E.-Interstate, Amityville, NY</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Testosterone Cypionate/Estradiol Cypionate Injection</u>	<u>Best Generics, North Miami Beach, FL</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Testosterone Cypionate/Estradiol Cypionate Injection</u>	<u>Goldline Labs, Ft. Lauderdale, FL</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Testosterone Cypionate/Estradiol Cypionate Injection</u>	<u>Schein Pharmaceuticals, Port Washington, NY</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>
<u>Testosterone Cypionate/Estradiol Cypionate Injection</u>	<u>Steris Labs Inc., Phoenix, AZ</u>	<u>Vial</u>	<u>Testosterone cypionate; Estradiol cypionate</u>	<u>50 mg/mL; 2 mg/mL</u>

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 10-02-080, filed 1/5/10, effective 2/5/10)

WAC 246-887-170 Schedule IV. The ~~((board))~~ pharmacy quality assurance commission (commission) finds that the following substances have a low potential for abuse relative to substances in Schedule III under RCW 69.50.208 and WAC 246-887-160, and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. ~~((The board, therefore;))~~ In addition to substances listed in RCW 69.50.210, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule IV.

~~((a))~~ The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule IV.

~~((b))~~ (1) Narcotic drugs. Unless specifically ((excepted)) exempted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free

anhydrous base or alkaloid, in limited quantities as set ((forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) ~~Dextropropoxyphene (alpha (+)-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).~~

(~~e~~)) in this subsection: 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers (including tramadol).

(2) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- ((1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Carisoprodol;
- (6) Chloral betaine;
- (7) Chloral hydrate;
- (8) Chlordiazepoxide;

- (9) Clobazam;
- (10) Clonazepam;
- (11) Clorazepate;
- (12) Clotiazepam;
- (13) Cloxazolam;
- (14) Delorazepam;
- (15) Diazepam;
- (16) Estazolam;
- (17) Ethchlorvynol;
- (18) Ethinamate;
- (19) Ethyl loflazepate;
- (20) Fludiazepam;
- (21) Flunitrazepam;
- (22) Flurazepam;
- (23) Halazepam;
- (24) Haloxazolam;
- (25) Ketazolam;
- (26) Loprazolam;
- (27) Lorazepam;
- (28) Lormetazepam;
- (29) Mebutamate;
- (30) Medazepam;
- (31) Meprobamate;
- (32) Methohexital;
- (33) Methylphenobarbital (mephobarbital);
- (34) Midazolam;
- (35) Nimetazepam;
- (36) Nitrazepam;
- (37) Nordiazepam;
- (38) Oxazepam;
- (39) Oxazolam;
- (40) Paraldehyde;
- (41) Petrichloral;
- (42) Phenobarbital;
- (43) Pinazepam;
- (44) Prazepam;
- (45) Quazepam;
- (46) Temazepam;
- (47) Tetrazepam;
- (48) Triazolam;
- (49) Zolpidem.

(d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position or geometric), and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible.

- (e)) (a) Alfaxalone;
- (b) Fospropofol;
- (c) Suvorexant.

(3) Any material, compound, mixture, or preparation which contains any quantity of Lorcaserin, including its salts, isomers, and salts of such isomers, wherever the existence of such salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible

tence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- ((1)) (a) Cathine ((+) - norpseudoephedrine);
- ((2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;

(7) Pemoline (including organometallic complexes and chelates thereof);

- (8) Phentermine;
- (9) Pipradrol;

((10)) (b) SPA ((-)-1-dimethylamino-1,((2-diphenylethane))2-diphenylethane).

((11)) (5) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

- ((1) Pentazocine;

(2) Butorphanol.) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]](1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

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 91-18-057, filed 8/30/91, effective 9/30/91)

WAC 246-887-180 Schedule V. The ~~((board))~~ pharmacy quality assurance commission (commission) finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-887-170 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. ~~((The board, therefore,))~~ In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

~~((a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule V.~~

~~(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this section, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:~~

~~(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;~~

~~(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;~~

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

(3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.

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 92-12-035, filed 5/28/92, effective 6/28/92)

WAC 246-887-200 Other controlled substance registrants—Requirements. (1) All persons and firms, except persons exempt from registration, ~~((shall))~~ must register with the ~~((board))~~ pharmacy quality assurance commission (commission) in order to legally ~~((tø))~~ possess or use controlled substances.

(2) Persons or firms which are not classified as pharmacies, wholesalers, manufacturers, or researchers ~~((shall))~~ will be classified as other controlled substance registrants. Examples of persons or firms in this classification include analytical laboratories, dog handlers/trainers who use dogs for drug detection purposes, school laboratories and other agencies which have a legitimate need to use precursor chemicals as defined in WAC 246-887-150.

(3) The applicant for a controlled substance registration ~~((shall))~~ must complete and return an application form supplied by the ~~((board))~~ commission. Either on the form or on an addendum, the applicant ~~((shall))~~ must list the controlled substances to be used, the purpose for such use, and the names of the persons authorized to access the controlled substances.

(4) All controlled substances ~~((shall))~~ must be stored in a substantially constructed locked cabinet. The registrant shall maintain records in sufficient detail in order to account for the receipt, use, and disposition of all controlled substances. ~~((An))~~ The registrant shall inventory ((øf)) all controlled substances in the possession of the registrant ((shall be com-

pleted)) every two years on the anniversary of the issuances of the registration and shall ~~((be maintained))~~ maintain the inventory list for two years. The registrant shall return unwanted, outdated, or unusable controlled substances ((shall be returned)) to the source from which it was obtained or surrendered to the Federal Drug Enforcement Administration.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-887-110 Adding MPPP to Schedule I.

WAC 246-887-120 Adding PEPAP to Schedule I.

WAC 246-887-130 Adding MDMA to Schedule I.

WAC 246-887-131 Adding Methcathinone to Schedule I.

WAC 246-887-132 Adding Aminorex to Schedule I.

WAC 246-887-133 Adding Alpha-ethyltryptamine to Schedule I.

WAC 246-887-165 Adding Xyrem to Schedule III.

WAC 246-887-190 Adding buprenorphine to Schedule V.

WSR 18-22-119

PROPOSED RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed November 6, 2018, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-15-089.

Title of Rule and Other Identifying Information: WAC 110-425-0010 Authority, 110-425-0030 Definitions, 110-425-0040 Process for allocating or awarding funds, 110-425-0050 Use of funds, 110-425-0060 Comprehensive service delivery, 110-425-0070 Nondiscrimination, 110-425-0080 Eligibility for Services, and 110-425-0090 Staff qualifications.

Hearing Location(s): On December 12, 2018, at 1:00 p.m., at 1110 Jefferson Street S.E., Cascade Conference Room, Olympia, WA.

Date of Intended Adoption: December 21, 2018.

Submit Written Comments to: Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, <https://del.wa.gov/PolicyProposalComment/Detail.aspx>, by December 12, 2018.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by December 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The early childhood education and assistance program (ECEAP) is a state-funded, voluntary preschool program that serves eligible children ages three and four. An eligible child is a child not eligible for kindergarten and whose family is at or below one hundred ten percent of the federal poverty level or is eligible

for special education. Other children may be eligible under rules adopted by the department of children, youth, and families (DCYF). Chapter 155, Laws of 2018, codified at RCW 43.216.512, expanded access to the ECEAP program for other children eligible under DCYF rules from ten percent to twenty-five percent of all children participating in ECEAP. The proposed rules implement the expansion by making eligible for ECEAP children whose family income is above one hundred ten percent of the federal poverty level and who are homeless or impacted by specific developmental or environmental risk factors that are linked by research to school performance. The proposed rules prioritize children for enrollment in ECEAP who are below the income threshold or eligible for special education. The proposed rules also include nonsubstantive amendments necessary following the decodification of Title 170 WAC and recodification to Title 110 WAC.

Reasons Supporting Proposal: Currently, all income-eligible children and children eligible for special education who choose to participate are enrolled in ECEAP. There are over three hundred additional slots to be filled statewide and the proposed rules increase the number of children who may apply and be approved to participate in ECEAP.

Research shows that ECEAP positively influences all areas of a child's development. The long-term benefits realized from children's participation in ECEAP and similar programs include reduced taxpayer costs for grade retention and special education, higher graduation rates, increased number of high school graduates adequately prepared for the work force, and decreased criminal justice and incarceration rates.

Statutory Authority for Adoption: RCW 43.216.065, 43.216.512, and 43.216.525.

Statute Being Implemented: RCW 43.216.512.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Kelcy Schaffer, DCYF, Olympia, Washington, 360-407-3663; Implementation and Enforcement: DCYF, statewide.

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

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

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

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

November 6, 2018
Brenda Villarreal
Rules and Policies Administrator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0010 Authority. These rules are adopted under the authority of ~~((chapter 28A.215))~~ RCW 43.216.525.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0030 Definitions. (1) "Contractor" means a public or private organization that contracts with the department of ~~((early learning))~~ children, youth, and families to provide local ~~((early childhood education and assistance))~~ ECEAP services.

(2) "Department" means the department of ~~((early learning))~~ children, youth, and families.

(3) ~~(("Director" means the director of the department of early learning.))~~ "ECEAP" means the early childhood education and assistance program.

(4) "Eligible organization" means public or private organizations including, but not limited to, school districts, educational service districts, community and technical colleges, local governments, nonprofit organizations, and for-profit organizations provided that their proposed ~~((early childhood education and assistance program))~~ ECEAP is free from religious instruction, activities, or symbolism.

(5) "Performance standards" means the most current release of the ECEAP performance standards as incorporated into the ECEAP contract.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0040 Process for allocating or awarding funds. (1) Eligible organizations may apply to become contractors for ~~((the early childhood education and assistance program))~~ ECEAP.

(2) Funds shall be awarded on a competitive basis to new contractors or allocated by the department for renewal contracts, consistent with the amount allocated by the legislature.

(3) An applicant must use the application procedures established by the department.

(4) Successful applicants will be awarded a contract with the department. This contract must be signed by an official with authority to bind the recipient.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0050 Use of funds. (1) Contracting agencies must provide comprehensive early education and family support services free of charge to enrolled families.

(2) ~~((Early childhood education and assistance program funds must))~~ ECEAP funds may be used as dollars of last resort for medical, dental, nutrition, and mental health services.

(3) Administrative costs funded under this program are limited to fifteen percent of the total award.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0060 Comprehensive service delivery.

(1) Contractors must ~~((conduct a community assessment, and must))~~ plan and deliver the following comprehensive services to enrolled children and their families:

- (a) Early childhood education;
- (b) Family support, using the mobility mentoring approach to help families overcome the extreme stresses of poverty by improving focus, planning, and decision making;
- (c) Parent involvement including options for participation in their child's classroom, program policy decisions, service delivery system development, and parent education and training; and
- (d) Health screening, information, and referral, including medical, dental, nutrition, and mental health.

(2) Contractors must comply with the early childhood education and assistance program contract, performance standards, and policy memos in the delivery of all services.

(3) Contractors may request exceptions to rules, performance standards, or policies. Contractors must receive written approval from the department before implementing exceptions.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0070 Nondiscrimination. Contractors must not deny service to, or discriminate against, any person who meets the eligibility criteria for the ~~((early childhood education and assistance program))~~ ECEAP on the basis of sex, gender identity, race, ethnicity, color, religion, age, national origin, citizenship, ancestry, physical or mental disability, family configuration, sexual orientation, culture, or public assistance recipient status.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0090 Staff qualifications. (1) Contractors must provide adequate staff to comply with all ECEAP performance standards.

(2) Contractors must require their staff and other persons associated with the contractor that are considered to be a "subject individual" as defined in WAC ~~((170-06-0020))~~ 110-06-0020, and who may have unsupervised access to children, to obtain a fingerprint background check in compliance with the requirements of RCW ~~((43.215.215, 43.215.425))~~ 43.216.270, 43.216.525 and chapter ~~((170-06))~~ 110-06 WAC.

(3) All persons serving in the role of ECEAP lead teacher must meet one of the following qualifications:

- (a) An associate or higher degree with the equivalent of thirty college quarter credits ~~((or))~~ in early childhood education. These thirty credits may be included in the degree or in addition to the degree; or
- (b) A valid Washington state teaching certificate with an endorsement in early childhood education (pre-K - grade 3) or early childhood special education.

(4) All persons serving in the role of ECEAP assistant teacher must meet one of the following qualifications:

- (a) Employment as an ~~((early childhood education and assistance program))~~ ECEAP assistant teacher in the same agency before July 1, 1999;
- (b) The equivalent of twelve college quarter credits in early childhood education;
- (c) Initial or higher Washington state early childhood education certificate; or
- (d) A current Child Development Associate (CDA) credential awarded by the Council for Early Childhood Professional Recognition.

(5) All persons serving in the role of ECEAP family support staff must meet one of the following qualifications:

- (a) Employment as an ~~((early childhood education and assistance program))~~ ECEAP family support staff in the same agency before July 1, 1999;
- (b) An associate's or higher degree with the equivalent of thirty college quarter credits ~~((or))~~ in adult education, human development, human services, family support, social work, early childhood education, child development, psychology, or another field directly related to their job responsibilities. These thirty credits may be included in the degree or in addition to the degree; ~~((or~~

~~((or~~ (c) A degree, credential or certificate))

(c) A current home visitor child development associate (CDA) credential from the council for professional recognition; or

(d) A department-approved credential from a comprehensive and competency-based program that increases knowledge and skills in providing direct family support services to families.

(6) All persons serving in the role of ECEAP health advocate must meet one of the following qualifications:

- (a) Employment as an ~~((early childhood education and assistance program))~~ ECEAP family support aide or health aide in the same agency before July 1, 2014; or
- (b) The equivalent of twelve college quarter credits in family support, public health, health education, nursing, or another field directly related to their job responsibilities.

(7) The ~~((early childhood education and assistance program))~~ ECEAP health consultant must meet one of the following qualifications:

- (a) Licensed in Washington state as a registered nurse (R.N.) or physician (M.D., N.D., D.O.); or
- (b) A bachelor's or higher degree in public health, nursing, health education, health sciences, medicine, or related field.

(8) The ~~((early childhood education and assistance program))~~ ECEAP nutrition consultant must meet one of the following qualifications:

- (a) Registered dietitian (RD) credentialed through the Commission on Dietetic Registration (CDR), the credentialing agency for the Academy of Nutrition and Dietetics (formerly the American Dietetic Association); or
- (b) Washington state certified nutritionist under chapter 18.138 RCW.

(9) The ~~((early childhood education and assistance program))~~ ECEAP mental health consultant must meet one of the following qualifications:

(a) Licensed by the Washington state department of health as a mental health counselor, marriage and family therapist, social worker, psychologist, psychiatrist, or psychiatric nurse;

(b) Approved by the Washington state department of health as an agency affiliated or certified counselor, with a master's degree in counseling, social work or related field; or

(c) Credentialed by the Washington state office of the superintendent of public instruction as a school counselor, social worker, or psychologist.

(10) The ECEAP coach must meet all of the following qualifications:

(a) Bachelor's degree in early childhood or related field or a bachelor's degree with the equivalent of thirty college quarter credits in early childhood education. These thirty credits may be included in the degree or in addition to the degree;

(b) A minimum of two years working with young children in a group setting; and

(c) Experience as an early learning coach, consultant, mentor, or trainer.

(11) Contractors must hire and employ staff who meet the qualifications for their position.

(a) If the best candidate for the position is not fully qualified, the contractor must ensure the newly hired staff person is on a professional development plan (PDP) to fully meet the qualifications of their role within five years from the date of hire.

(b) Contractors must monitor progress on all PDPs and ensure staff make adequate yearly progress to meet the required qualifications.

~~((H))~~ (12) Equivalent degrees and certificates from other states and countries are accepted for ECEAP staff qualifications.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-425-0080 Eligibility for services. (1) ~~((Children are eligible for ECEAP if they are))~~ A child is eligible for ECEAP if the child is at least three years old(~~(, but not yet five years old,))~~ by August 31st of the school year, ~~is not age-eligible for kindergarten, and ((one of the following))~~ is:

~~(a) ((Returning to the same ECEAP contractor from the previous school year.~~

~~(b))~~ Qualified by ~~((their))~~ a school district for special education services under RCW 28A.155.020. All children on a school district individualized education program (IEP) meet this requirement(~~(-~~

~~(e) Receiving child protective services under RCW 26.44.020(3) or family assessment response services under RCW 26.44.260.~~

~~(d))~~;

(b) From a family with income at or below one hundred ten percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services(~~(-~~

~~(e))~~; or

(c) From a family with income that exceeds one hundred ten percent federal poverty level ~~((and))~~ ("over-income") and is homeless or is impacted by specific ~~((developmental or~~

~~environmental))~~ risk factors identified by the department that are linked by research to school performance.

~~((f) Ninety percent of enrolled families statewide must qualify by income or IEP. DEL establishes over-income limits for each contractor annually.~~

~~(2) Children who are eligible for ECEAP are not automatically enrolled in ECEAP. They must still be prioritized.))~~

(2) Contractors may provide ECEAP services to over-income children without IEPs as follows:

(a) Contractors must actively recruit and enroll income-eligible children within their service area.

(b) Contractors may enroll over-income children without IEPs up to the initial over-income limit assigned by the department to each contractor annually.

(i) This limit is based on contractor size; contractors with fewer funded ECEAP slots are allowed higher over-income percentages to provide flexibility to fill classes in rural areas.

(ii) For sites operated by tribes or tribal organizations, the department will set initial over-income limits at twenty-five percent.

(iii) The department may adjust limits midyear if slots are moved between contractors.

(c) Contractors may apply for additional over-income slots for the current year using the application provided by the department if:

(i) The contractor has enrolled all assigned over-income slots;

(ii) Additional funded slots are available; and

(iii) Efforts to recruit income-eligible children within the contractor's service area have been exhausted.

(d) The department will consider the following factors when reviewing applications for additional over-income slots:

(i) The statewide number of enrolled over-income children without IEPs must not equal more than twenty-five percent of the total funded ECEAP slots;

(ii) The similarity of the income levels, risk factors, and priority points of the children described in the applications and other ECEAP children enrolled in over-income slots;

(iii) The statewide plan to serve all income-eligible children from families who choose to participate;

(iv) The requesting contractor's need to fill slots to fully enroll a class to ensure access to services for income-eligible children; and

(v) The presence of unserved, income-eligible children in other locations in the state.

(3) Eligible, enrolled children are allowed to remain in ECEAP until kindergarten, without reverification of income or risk factors. However, returning children may be reprioritized against new children when enrollment slots are limited.

(4) Children ~~((may not be simultaneously))~~ are not eligible for ECEAP if they are enrolled in ~~((both ECEAP and))~~ Head Start, however Head Start duration funds may be used to increase the length of the ECEAP preschool day when federal funds are provided to a contractor specifically for this purpose.

(5) Children served by school district special education may be simultaneously enrolled in ECEAP.

~~((Contractors must systematically review all applications of eligible children and prioritize them to determine~~

~~which children to enroll in the available ECEAP slots. Contractors must prioritize children who are:~~

- ~~(a) Four years old by August 31st of the school year.~~
- ~~(b) From families at the lowest federal poverty levels, as published annually by the U.S. Department of Health and Human Services.~~
- ~~(c) Homeless, as defined by the federal McKinney-Vento Homeless Assistance Act.~~
- ~~(d) Receiving child protective services under RCW 26.44.020(3) or family assessment response services under RCW 26.44.260.~~
- ~~(e) From families with multiple needs.~~
- ~~(7) Contractors must use either the standard or customized priority point system built into the early learning management system (ELMS). Contractors may customize the environmental risk factor section of the priority points built into ELMS to best meet the needs of families in their community.)~~ Once contractors have established a pool of eligible children, contractors must prioritize the eligible children for available ECEAP slots using the department priority point system which is based on:
 - (a) Department review of research linking risk factors to school performance;
 - (b) Child age, with priority for children who are within one year of kindergarten age; and
 - (c) State law requiring ECEAP priority for children in foster care, in the child welfare system, homeless, in families with the lowest income, or in families with multiple risk factors.

WSR 18-22-121

PROPOSED RULES

STUDENT ACHIEVEMENT COUNCIL

[Filed November 6, 2018, 4:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-096.

Title of Rule and Other Identifying Information: Chapter 250-61 WAC, Degree Granting Institutions Act rules.

Hearing Location(s): On December 14, 2018, at 9:00 a.m., at the Washington Student Achievement Council, 917 Lakeridge Way S.W., Third Floor Conference Room, Olympia, WA 98502.

Date of Intended Adoption: December 21, 2018.

Submit Written Comments to: Sam Loftin, Director of Consumer Protection, P.O. Box 43430, Olympia, WA 98504-3430, email degreeauthorization@wsac.wa.gov, fax 855-265-0066, by December 13, 2018.

Assistance for Persons with Disabilities: Contact Kristin Ritter, phone 360-753-7810, fax 855-265-0066, email kristinr@wsac.wa.gov, by December 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement provisions of ESSHB [E2SHB] 1439, an act relating to regulating the institutions of higher education, and to strengthen consumer protections of degree-granting schools operating under the requirements of the Degree-Granting Institutions Act, chapter 28B.85 RCW.

- Clarifies definitions of "adverse action" and "operate" and adds a definition for "oversight entity."
- Expands criteria for administrators of degree-granting institutions.
- Amends guidelines for distance learning programs to create consistent standards for all institutions.
- Adds a requirement that institutions may not benefit from student loan products offered to students, pursuant to ESSHB [E2SHB] 1439, and must disclose to the council student loan products marketed or provided to students.
- Clarifies that the council may conduct a site visit at any time.
- Adds new section for publications that prohibits institutions from publishing data or recruitment materials inconsistent with specified sources, pursuant to ESSHB [E2SHB] 1439, and that requires disclosure of recruitment materials to the council.
- Amends the security requirement for institutions seeking initial standard authorization as a result of a change in ownership so that students receive the same level of protection as if no change of ownership had occurred.
- Adds new section for disclosures requiring institutions to disclose to the council any adverse action against the institution and any changes affecting authorization, as well as disclosures to students regarding the availability of the student complaint portal and the student loan advocate.
- Adds a requirement for institutions discontinuing a program or all operations in Washington to provide alternative opportunities for program completion acceptable to the council.
- Adds a requirement for institutions discontinuing all operations in Washington to submit to the council an account ledger for each student and to provide a transcript to each student currently enrolled or enrolled in the preceding term.
- Amends the fees for initial authorization and renewal of authorization based on the number of programs offered.
- Adds a late fee for renewal applications received after the specified application deadline.
- Clarifies that authorization may be suspended or withdrawn for violation of applicable law.

Reasons Supporting Proposal: Implements elements of ESSHB [E2SHB] 1439; adds or clarifies requirements for nonexempt degree-granting institutions and private vocational schools.

Statutory Authority for Adoption: RCW 28B.76.120 and 28B.85.020.

Statute Being Implemented: Chapter 28B.85 RCW.

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

Name of Proponent: Washington student achievement council, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sam Loftin, 917 Lakeridge Way S.W., Olympia, WA 98502, 360-753-7866.

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

A cost-benefit analysis is not required under RCW 34.05.328. The primary impact will be on existing in-state and out-of-state degree-granting institutions.

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

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

Explanation of exemptions: The fee adjustments are necessary to approximately recover the staffing costs incurred in administering the statute, pursuant to RCW 28B.85.060.

November 6, 2018

Don Bennett

Deputy Director

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-020 Applicability. A degree-granting institution shall not operate, conduct business, grant or offer to grant any academic courses or degree programs unless the institution has obtained authorization from the council, been granted a waiver of the requirements of authorization, or been determined by the council to be exempt.

The act applies to:

(1) Institutions granting or offering to grant degree programs and/or academic credit courses either at or from a location within the state; and

(2) Institutions maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose (~~(or any function of a degree-granting institution)~~) other than contact with the institution's former students; and

(3) Institutions specifically targeting Washington citizens with promotion of their degree programs and/or academic credit courses.

The act does not apply to degree programs and academic credit courses offered exclusively from outside the state through individual and private interstate communication.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-050 Definitions. The definitions set forth in this section are intended to supplement the definitions in chapter 28B.85 RCW and shall apply throughout this chapter.

(1) "Accredited institution" means an institution that has been accredited by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education.

(2) "Accrediting association" means a national or regional accrediting association that is recognized by the council and the Secretary of the U.S. Department of Education.

(3) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.

(4)(a) "Administrative capability" means that both administrative services and educational instruction take place at an authorized location.

(b) "Additional site" means a site with administrative capability that is not currently authorized.

(5) "Adverse action" means a warning or other sanction issued by the institution's accrediting association, (~~(a sanction issued by)~~) the United States Department of Education(~~(;)~~) or a state regulatory entity; a judgment against an institution that may impact ongoing operations; or any action, decision, or finding that impacts the institution's financial solvency.

(6) "At-risk" means a designation made by the council based on an adverse action or other findings that indicate a heightened potential of closure or other negative impacts on students.

(7) "Authorization" means the authority to operate in Washington state as a degree-granting institution.

(a) "Standard authorization" means authorization granted to institutions seeking to operate in Washington, but does not include institutions seeking field placement authorization only.

(b) "Field placement authorization" means authorization granted to institutions seeking authorization solely to offer required field placements at locations in Washington as part of distance learning programs.

(8) "Council" means the student achievement council, a Washington state agency, as established under chapter 28B.77 RCW.

(9) "Credit" generally means the unit by which an institution measures its course work. The number of credits assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(10) "Degree" means any designation, appellation, letters, or words including, but not limited to, "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.

(a) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.

(b) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.

(c) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.

(d) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.

(11) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.

(a) "College" means an institution which offers programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.

(b) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.

(c) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(12) "Distance learning" means a form of educational instruction other than classroom instruction to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.

(13) "Executive director" means the executive director of the council or the executive director's designee.

(14) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:

(a) Is not accredited by a council-recognized accrediting association or does not have the international equivalent to such accreditation; or

(b) Is not authorized by the council; or

(c) Has not been exempted or granted a waiver from the requirements of authorization by the council.

Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a council-recognized accrediting association; authorized by the council; or that has been exempted or granted a waiver by the council.

(16) "Field placement" means a student learning experience comprised primarily of the practical application of previously studied theories and skills. Examples include, but are not limited to, clinicals, student teaching, and practica.

(17) "Operate" means, but is not limited to, the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose

(~~or any other function of a degree-granting institution;~~) other than contact with the institution's former students for any legitimate purpose related to their (~~having attended~~) previous attendance.

(d) Maintaining or advertising an application for enrollment or a mechanism to collect prospective student data in any advertisement, publication, web site, software application, or other media, if the institution maintains a Washington location.

~~((4))~~ (e) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(18) "Oversight entity" includes, but is not limited to, the following:

(a) Any federal or state entity that provides financial aid to students of the institution or approves the institution for participation in a financial aid program;

(b) Any state or federal attorney general's office or department of justice;

(c) Any regulator that approves the operation of a postsecondary degree-granting institution;

(d) The federal consumer financial protection bureau or the federal securities and exchange commission; and

(e) Any accrediting agency.

(19)(a) "Program of study" means any course or grouping of courses prerequisite to or indicative of a degree.

(b) "Additional program" means a degree program that:

(i) Differs in title and curriculum from any currently authorized program; or

(ii) Is comprised of a curriculum that is twenty-five percent or more different in content than any currently authorized program.

~~((19))~~ (20) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.

~~((20))~~ (21) "State authorization reciprocity agreement (SARA)" means an agreement among member states, districts and territories that establishes comparable standards for interstate offering of postsecondary distance education courses and programs. SARA is overseen by a national council and is administered by four regional education compacts.

~~((21))~~ (22) "Suspend" means that, due to deficiencies, the council interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the council.

~~((22))~~ (23) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemption, the council has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-080 Authorization standards. These standards form the basis for the review of an institution and guide the decisions of the council. To receive authorization, the institution shall meet all of the specific requirements of this chapter. ~~((An institution is required to notify the council of any adverse action within thirty days of the action being taken. Failure to report an adverse action may result in suspension of the authorization granted.))~~

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-090 Administrative requirements. (1) Name. The official name of the institution shall be consistent with, and appropriate to, the program(s) of study offered.

(2) Purpose. The institution shall clearly define its purpose or mission in an official statement which describes its role in higher education. The statement shall reflect the practices of the institution.

(3) Administration and governance. The institution shall be governed by bylaws or policies defining a chain of authority and responsibility.

(a) Administrators shall normally be graduates of accredited institutions and have academic credentials and prior higher education administrative experience for their area of responsibility.

(b) The main campus of the institution shall have, as a minimum, personnel to adequately staff the following roles: A chief executive officer, academic officer, registrar, business officer, student services officer, library director, and, if financial aid services are offered, financial aid officer. These officers shall be accessible to students, faculty, and other personnel located at the main campus and at educational sites or centers in Washington. In the event that the proposed Washington site is a branch campus of an out-of-state institution, the branch campus shall also have sufficient personnel to adequately serve the students at that location.

(i) The chief executive and academic officers shall have at least a master's degree from an accredited institution and experience in college-level management, teaching, and academic administration, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(ii) The registrar shall have at least a baccalaureate degree from an accredited institution and college-level experience in admissions and student records, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(iii) The business, student services, and financial aid officers and library director shall have at least a baccalaureate degree from an accredited institution and experience in their assigned areas, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(c) The institution shall specify an individual who will serve as the principal contact person for each educational site or academic center in Washington.

(d) The institution shall have policies and provisions for the involvement of faculty in the academic affairs, curriculum development, and governance of the institution.

(e) The institution shall have policies and provisions for faculty selection, orientation, teaching load, supervision, evaluation, and professional development.

(4) The following conditions shall disqualify an individual as an administrator of a degree-granting institution:

(a) Conviction of a felony within the past ten years;

(b) Involuntary surrender of authorization or a license to operate a school ~~((in Washington))~~ as the result of any action by the council or an oversight entity;

(c) Having been served with a cease and desist order for activities in violation of ~~((the current Washington Administrative Code))~~ any applicable law or regulation; or

(d) ~~((Denial of renewal of authorization or a license))~~ Withdrawal of a license to operate an institution or denial of a renewal of authorization because of violation of ~~((the current Washington Administrative Code))~~ any applicable law or regulation; or

(e) Having been found in violation of any law or regulation applicable to the operation of a postsecondary institution.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-100 Academic requirements. (1) Educational programs. Each program shall require the completion of a prescribed program of study leading to the attainment of competence in an interdisciplinary area or specific field of study. Programs shall generally meet the guidelines or standards of an accrediting association recognized by the council and the Secretary of the U.S. Department of Education that accredits similar programs of study.

(a) Associate degrees:

(i) An associate degree shall require at least ninety quarter credits or sixty semester credits.

(A) An associate degree intended for occupational preparation shall require, as a minimum, general education requirements that comprise a recognizable body of instruction in three program-related areas:

(I) Communications;

(II) Computation; and

(III) Human relations.

(B) The general education requirements of all other associate degrees shall be consistent with the current guidelines of Washington's direct transfer agreement associate degree.

(ii) The following associate degree designations shall be acceptable:

(A) The associate of arts (A.A.), and associate of science (A.S.) for programs which emphasize the liberal arts and sciences. These programs generally satisfy the general education requirements for a baccalaureate degree and are transfer oriented.

(B) The associate in applied technology (A.A.T.), associate in applied science (A.A.S.), associate of occupational science (A.O.S.) and other such applied or technology-related degree designations for programs which emphasize preparation for occupations at the technical level. These programs generally do not satisfy the general education require-

ments for a baccalaureate degree and are not transfer-oriented.

(b) Baccalaureate degrees: A baccalaureate degree shall require at least one hundred eighty quarter credits or one hundred twenty semester credits. The degree shall require a distinct major and, as a minimum, twenty-five percent of the program shall be in general education curricula.

(c) Master's degrees:

(i) A master's degree program shall require at least thirty-six quarter credits or twenty-four semester credits, specialization in an academic or professional area, and a demonstration of mastery.

(ii) The following master's degree designations shall be acceptable:

(A) The master of arts (M.A.) and master of science (M.S.) for programs which advance study and exploration in the discipline. The majority of credit for M.A. and M.S. degrees shall be at the graduate level in the major field.

(B) The master of business administration (M.B.A.), master of fine arts (M.F.A.), master of education (M.Ed.), etc. for programs which emphasize professional preparation.

(d) Doctoral degrees:

(i) Doctoral degree programs shall provide a broad range of advanced course offerings, faculty in ancillary and supporting fields, access to adequate laboratory and research facilities, and a wide range of current reference materials in the subject field. A doctoral degree shall require at least three full academic years of specialized postbaccalaureate study. To obtain a doctoral degree a student shall be required to demonstrate, through comprehensive examination, the ability to perform research at the level of the professional scholar or perform the work of a professional that involves the highest levels of knowledge and expertise.

(ii) The following doctoral degree designations shall be acceptable:

(A) The doctor of philosophy (Ph.D.) degree for programs which are oriented toward original research and require a dissertation.

(B) A professional doctoral degree (J.D., Ed.D., etc.) for programs which emphasize technical knowledge and professional competence and require either a research thesis or a project involving the solution of a substantial problem of professional interest.

(e) Distance learning program(s) ~~(of study must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings))~~ shall meet the following guidelines:

(i) Online learning is appropriate to the institution's mission and purposes;

(ii) The institution's plans for developing, sustaining, and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;

(iii) Online learning is incorporated into the institution's systems of governance and academic oversight;

(iv) Curricula for the institution's online learning offerings are coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats;

(v) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the

online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals;

(vi) Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieving the online learning goals are appropriately qualified and effectively supported;

(vii) The institution provides effective student and academic services to support students enrolled in online learning offerings;

(viii) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings; and

(ix) The institution assures the integrity of its online offerings.

(f) Prior experiential learning.

(i) Credit for prior experiential learning may be awarded when validated through a portfolio or similar assessment procedure. The institution shall maintain copies of examinations, portfolios, and evaluations used in this process.

(ii) Credit awarded for prior experiential learning at the undergraduate and graduate level must be consistent with the minimum standards as published by the institution's accrediting association. This subsection applies to institutions that meet WAC 250-61-085 (1), (2), or (3).

(iii) Prior experiential learning credit shall constitute no more than twenty-five percent of an undergraduate or graduate degree program. This subsection applies to institutions that meet WAC 250-61-085(4).

(2) Faculty.

(a) Faculty shall be professionally prepared and graduates of accredited institutions and, as a group, the institutions from which they earned their degrees shall be diverse.

(b) Faculty shall be sufficient in number and kind and in the proportion of full-time and part-time positions to sustain rigorous courses, programs, and services.

(c) Faculty teaching academic courses at the undergraduate degree level shall have, as a minimum, a master's degree in the assigned or related program area from an accredited institution. Faculty assigned to teach in vocational-technical subjects shall have educational credentials and experience compatible with their teaching assignment. Faculty assigned to teach general education courses within any undergraduate program shall have, as a minimum, a master's degree in a related area from an accredited institution.

(d) Faculty teaching at the master's degree level in programs which emphasize advanced study and exploration in a discipline shall have an earned doctorate in a related field from an accredited institution and experience in directing independent study and research. Faculty teaching in master's programs which emphasize professional preparation shall have, as a minimum, a master's degree from an accredited institution and documented achievement in a related field.

(e) Faculty teaching at the doctoral level shall have an earned doctorate in a related field from an accredited institution and experience in teaching and directing independent study and research.

(3) Admissions. Admission requirements shall be based on the institution's objectives and consistently applied to each program of study. Through preenrollment assessments, testing and advising, the institution shall determine the readiness

and ability of each student to succeed in his/her degree program. Institutions shall use only those tests reviewed and approved by the U.S. Department of Education.

High school graduation or the equivalent shall be required for undergraduate admission. A baccalaureate degree or the equivalent shall be required for admission into graduate programs. Special undergraduate admission may be granted, based on the applicant's general educational development.

(4) Enrollment contract. If an enrollment contract is utilized, the institution shall discuss all terms and provisions of the contract with the student prior to the student's execution of the contract. The contract shall contain an acknowledgment section directly above the student's signature blank for the student to acknowledge that the institution discussed all terms and provisions of the contract with the student and that the student understands all financial obligations and responsibilities.

(5) Evaluation. The institution shall provide evidence that it has procedures for continuing evaluation and improvement of educational programs, quality of instruction, and overall operations of the institution.

(a) Student, alumni, and employer evaluations of the effectiveness of the curricula shall be considered in these evaluations.

(b) The institution's chief academic officer or designee shall periodically evaluate all areas of the institution to determine their effectiveness in fulfilling institutional objectives and meeting the standards set forth in these regulations or implied in the statute. The results of those evaluations shall be submitted to council staff upon request.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-110 Student services and instructional resources requirements. (1) Student services. The institution shall provide adequate services for students in addition to formal instruction. These services shall normally include admissions, advising and guidance, financial assistance, student records, and disability accommodation.

(a) Advising and guidance services shall be readily available to students to assist them in program planning, course selection, and other academic activities.

~~(b) ((Financial aid administration and distribution, if provided, shall be performed according to institutional, state, and federal policies.~~

~~(c))~~ Student records shall be maintained in accordance with the guidelines established by the U.S. Department of Education.

~~((d))~~ (c) Students with disabilities shall have access to, and reasonable accommodations in, all programs for which they are qualified consistent with the provisions of the Americans with Disabilities Act.

~~((e))~~ (d) Placement services and employment opportunities, if provided, shall be accurately described.

(2) Financial aid.

(a) Financial aid administration and distribution, if provided, shall be performed according to institutional, state, and federal policies.

(b) The institution shall not market, sell, or induce students to obtain loan products that financially benefit any owner or agent of the institution, unless it demonstrates that the student has exhausted all federal aid options and has been denied private commercial loan products. This rule shall apply to any institution with one hundred fifty or more students enrolled in the state in any given year or that has been operating in the state for less than two consecutive years.

(c) The institution shall disclose to the council, upon request, all information relating to loan products that are marketed, sold, or otherwise provided to any current or prospective student, as well as all communications with students regarding such loan products.

(3) Facilities for site-based instruction.

(a) The institution shall have adequate space, facilities and equipment, instructional materials, and staff to support quality education and services.

(b) The institution shall comply with all applicable ordinances, laws, codes, and regulations concerning the safety, health, and access of all persons on its premises.

~~((3))~~ (c) The council may conduct a site visit at any time. The fee for a site visit shall be five hundred dollars, payable to the Washington student achievement council.

(4) Disability accommodations. The institution shall provide reasonable accommodations for students and employees with disabilities. To the extent practicable, the institution must consider diagnosis, assessments, and accommodation plans received from prior secondary and postsecondary educational institutions or employers. The institution shall inform students and employees of local, state, and federal laws regarding discrimination against people with disabilities.

~~((4))~~ (5) Library. The institution shall provide adequate and accessible library resources and facilities to support the educational needs of students and faculty. If the institution, educational site, or academic center does not maintain its own library on site, it must demonstrate that it can provide sufficient library resources to meet the needs of the program(s) through a written agreement with another institution or organization, or through other mechanisms.

~~((5))~~ (6) Financial resources.

(a) The institution shall have adequate financial resources necessary to sustain its purpose and commitment to students.

(b) In the case of an institution seeking initial authorization, it shall have sufficient financial resources to sustain itself for one full academic year without the assistance of revenue from tuition and fees.

~~((6))~~ (7) Financial records.

(a) The institution shall maintain financial records in conformity to generally accepted accounting principles.

(b) The institution shall be audited annually by an independent certified public accountant according to generally accepted auditing standards.

(c) Such records shall be made available to the council upon request.

~~((7) Recruitment and publications. All publications relating to the institution, including advertisements, catalogs, and other communications shall be accurate and not misleading. Any catalog and/or web site that is made available to stu-~~

~~ents describing the educational services offered shall include the statement of authorization as provided by the council upon the granting of authorization.~~

~~Authorized institutions shall not advertise or publicize that they are approved, recommended, accredited, or otherwise endorsed by the council. Such institutions may only state that they are authorized by the council.)~~

(8) Transcripts and academic credentials. The institution shall provide accurate and appropriate transcripts of credit for enrolled students and diplomas for graduates.

(a) For each student, the institution shall maintain and make available a transcript that specifies the name of the institution, the name of the student, all courses completed and academic credentials awarded, and an explanation of the institution's evaluation system. Each course entry shall include a title, the number of credits awarded, and a grade or written evaluation. The transcript shall distinguish credits awarded by transfer, for prior learning experience, and credit by examination.

(b) The institution shall not be required to make copies of transcripts available unless all tuition and fees and other expenses owed by the student to the institution have been paid.

(c) In addition to transcripts, the institution shall maintain records to document the performance and progress of each student, including, but not limited to: Financial transactions, admissions records, and records of interruption for unsatisfactory progress or conduct. Transcripts shall be kept permanently after a student has discontinued enrollment. All other records and accounts shall be kept for a minimum of six years after a student has discontinued enrollment.

(d) The institution shall maintain physical or electronic copies of all transcripts at a secure off-site facility.

NEW SECTION

WAC 250-61-115 Publications. (1) Recruitment and publications. All publications and recruitments relating to the institution shall be accurate and not misleading or deceptive.

(2) Authorized institutions shall not advertise or publicize that they are approved, recommended, accredited, or otherwise endorsed by the council. Such institutions may only state that they are authorized by the council.

(3) The institution shall provide to the council, upon request, any testimonial, endorsement, advertisement, data or other recruitment made available to prospective students or the public regarding:

- (a) Current practices of the school;
- (b) Retention or completion rates;
- (c) Conditions or opportunities for employment, including probable earnings;
- (d) Postgraduation employment, including median hourly and annual earnings or employment statistics;
- (e) Financial aid opportunities; or
- (f) The ability of graduates to repay loans.

(4) The institution shall present to the council, upon request, any information necessary to confirm or verify the veracity of any statements or claims made in any testimonial, endorsement, advertisement, data or other recruitment.

(5) The institution shall not present data about the institution or its current or former students that is inconsistent with data posted by the workforce training and education coordinating board's career bridge web site or the United States Department of Education.

(6) The institution shall not use any official United States military logo in advertising or promotional materials.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-120 Catalog requirements. (1) An institution granted authorization shall publish a catalog supplemented as necessary by other published materials, providing sufficient information for students to obtain an adequate understanding of the institution, its programs, policies and procedures. Institutional catalogs shall be published at least once every two years and be provided to students at the time of their enrollment. Electronic catalogs must be archived and students must have access to the archived information.

(2) ~~((An institution granted authorization shall print a statement in a prominent position in the catalog and on its web site that reads))~~ Any catalog or web site that is made available to students describing the educational services offered shall prominently feature the following statement upon the granting of authorization: "(Name of institution) is authorized by the Washington student achievement council (the council) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer specific degree programs. The council may be contacted for a list of currently authorized programs. Authorization by the council does not carry with it an endorsement by the council of the institution or its programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the council at P.O. Box 43430, Olympia, WA 98504-3430 or by email at degreeauthorization@wsac.wa.gov."

(3) An institution granted authorization shall make the following statement regarding transferability available to all students: "The transferability of credits earned at (name of institution) is at the discretion of the receiving college, university, or other educational institution. Students considering transferring to any institution should not assume that credits earned in any program of study at (name of institution) will be accepted by the receiving institution. Similarly, the ability of a degree, certificate, diploma, or other academic credential earned at (name of institution) to satisfy an admission requirement of another institution is at the discretion of the receiving institution. Accreditation does not guarantee credentials or credits earned at (name of institution) will be accepted by or transferred to another institution. To minimize the risk of having to repeat coursework, students should contact the receiving institution in advance for evaluation and determination of transferability of credits and/or acceptability of degrees, diplomas, or certificates earned."

(4) The catalog shall include elements as required by the council in application materials such that a prospective stu-

dent may become reasonably informed about the institution, its offerings, policies and procedures.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-140 Security requirements. The institution is required to have on file with the council an original surety bond or other security acceptable to the council in lieu of the bond.

(1) An institution shall have a separate acceptable security for each authorized site with administrative capability.

(2) For institutions seeking initial standard authorization, the surety bond or security amount for the initial period of authorization shall be fifty thousand dollars for each proposed ~~((Washington))~~ site with administrative capability. However, for institutions seeking initial standard authorization as a result of a change in ownership or control, the surety bond or security amount for the initial period of authorization shall be ten percent of the preceding fiscal year's total tuition and fee revenue received for educational services in Washington, but not less than fifty thousand dollars for each authorized site with administrative capability.

(3) For institutions seeking initial field placement authorization, the surety bond or security amount for the initial period of authorization shall be twenty-five thousand dollars.

(4) For institutions seeking renewal of standard authorization, the surety bond or security amount shall be ten percent of the preceding fiscal year's total tuition and fee revenue received for educational services in Washington, but not less than fifty thousand dollars for each authorized ~~((Washington))~~ site with administrative capability.

(5) For institutions seeking renewal of field placement authorization, the surety bond or security amount shall be ten percent of the preceding fiscal year's total tuition and fee revenue received for the field placement courses offered in Washington, but not less than twenty-five thousand dollars.

(6) For private vocational schools that offer nondegree programs as well as degree programs, the amount required shall be based only on the degree program portion of its revenue from tuition and fees.

(7) Release of surety bonds and other securities shall be made in compliance with chapter 28B.85 RCW.

NEW SECTION

WAC 250-61-151 Disclosure requirements. (1) The institution shall disclose to the council any adverse action against the institution and any investigation by an oversight entity within thirty days of the institution's first knowledge of the action or investigation.

(a) The disclosure must include information about the nature of the adverse action or investigation and any additional documents or materials requested by the council.

(b) Failure to report an adverse action or an investigation by an oversight entity may result in suspension or withdrawal of the authorization granted.

(2) The institution shall disclose to the council any changes in the institution's operations that are inconsistent with the requirements of this chapter or that may impair the institution's ability to satisfy any requirement of this chapter

within thirty days of the institution's first knowledge of the change.

(a) The disclosure must include information about the nature of the changes in the institution's operations and any additional documents or materials requested by the council.

(b) The institution shall have a reasonable opportunity to address or correct any deficiencies within a time period specified by the council.

(3) The institution shall disclose the availability of the student complaint portal in all sections of the institutional catalog and web site containing information about complaints or complaint processes, or in a manner and location otherwise directed by the council.

(4) The institution shall disclose the availability of the student loan advocate in all sections of the institutional catalog and web site containing information about financial aid, or in a manner and location otherwise directed by law or by the council.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-160 Discontinuance or closure requirements. (1) In the event an institution plans to discontinue a program and/or site currently available to Washington residents, but maintain other operations, it shall notify the council immediately and ~~((provide information to the council pertaining to accommodations to be made for any currently enrolled students to ensure they are provided the))~~ submit alternative opportunities for program completion, acceptable to the council, that allow currently enrolled students a reasonable opportunity to complete their studies. Institutions may be subject to additional reporting requirements as specified by the council.

(2) In the event an institution plans to discontinue all its operations in Washington, the chief administrative officer of the institution shall:

(a) Notify the council immediately by certified mail and email; ~~((and))~~

(b) Furnish enrolled students with a written notice explaining the reasons for closure and what procedures they are to follow to secure refunds and their official records, and what arrangements have been made for providing continuing instruction at other institutions; ~~((and))~~

(c) ~~((The institution shall make all reasonable efforts to ensure that))~~ Provide current students ~~((are provided))~~ with alternative opportunities, acceptable to the council, to complete their studies; and

(d) Submit to the council the following:

(i) A timeline for the planned discontinuance of operations including the planned closure date; ~~((and))~~

(ii) A list of all students currently enrolled in program(s) of study at the Washington locations showing student name, contact information, program name, number of credits completed, and number of credits remaining for program completion; ~~((and))~~

(iii) The total number of students currently enrolled in each program of study for each site at which the program is offered; ~~((and))~~

(iv) The alternative opportunities for program completion, acceptable to the council, that are provided by the institution for students currently enrolled in programs of study; ~~((and))~~

(v) A copy of all information regarding the closure that is provided to students, administrators, and faculty at the Washington locations; ~~((and))~~

(vi) A copy of all documents provided by the institution's accrediting agency related to the closure; ~~((and))~~

(vii) A copy of any signed transfer agreement; ~~((and))~~

(viii) A copy of any signed teach-out agreement; ~~((and))~~

(ix) Electronic copies of transcripts for all current and past students; ~~((and))~~

(x) An account ledger for each student that includes, at a minimum, clear and correct information about student charges, payments, and the source for each payment; and

(xi) A plan for the maintenance of student records.

(3) Upon discontinuance of all Washington operations, the institution shall:

(a) Submit to the council a list of all students enrolled in program(s) of study at the Washington locations showing student name, contact information, program name, number of credits completed, number of credits remaining for program completion, and the alternative opportunities selected for program completion by each student; ~~((and))~~

(b) Provide at least one official transcript to each student who is currently enrolled or who was enrolled at any point in the preceding term, at no cost to such students;

(c) Provide for the permanent maintenance of official records; and

(d) Submit the following:

(i) Contact information for the location where records for Washington students will be maintained; and

(ii) A description of the method and language used to inform students as to how final transcripts may be obtained.

(4) In the event it appears to the council that the official records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the students and the council, the council may seek a court order to take possession of the records and provide for their permanent maintenance.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-170 Application requirements. (1) Initial application.

(a) Institutions seeking initial standard authorization shall contact the council staff to arrange for a preliminary conference to discuss the authorization criteria, application procedures and the review process.

(b) An institution shall submit a fully completed application packet using forms provided by council staff. The application packet will not be considered complete until all required elements have been received by the council.

(c) For standard authorization, ~~((and))~~ the initial application fee ((in the amount of five)) shall be two thousand dollars ((is to)), plus one thousand dollars for each proposed program, and shall be submitted along with the application

packet. The check is to be made payable to the Washington student achievement council.

(d) For field placement authorization, ~~((and))~~ the initial application fee ((in the amount of)) shall be two thousand dollars ((is to)) and shall be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(2) Renewal application.

(a) Authorized institutions must submit an application for renewal of authorization on a biennial basis when requested by council staff.

(b) No later than the due date provided by the council, an institution seeking renewal must submit a fully completed renewal application packet using the forms provided by council staff. Failure to provide all requested materials by the due date may result in temporary suspension of the institution's authorization.

(c) For standard authorization, ~~((and))~~ the renewal application fee ((in the amount of two thousand five hundred dollars is to be submitted along with the application packet)) shall be one thousand dollars, plus two hundred and fifty additional dollars per program. The check is to be made payable to the Washington student achievement council.

(d) For field placement authorization, a renewal application fee in the amount of one thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(e) Any programs that have been authorized for at least one year prior to the authorization renewal date, but which are not yet made available to students, must be so noted in the renewal application. The authorization granted for these programs will be withdrawn at that time and the institution must seek authorization for these programs through the new program application if it wishes to offer them in the future.

(3) Additional program(s).

(a) If an institution plans to offer additional program(s) of study ~~((during the current authorization period))~~, the institution shall submit a new program application well in advance of the proposed offering.

(b) An additional program application fee in the amount of one thousand dollars per program is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The program(s) of study may not be offered, advertised or promoted prior to the granting of authorization.

(d) A nonaccredited institution will be limited to no more than two additional programs per calendar year until full accreditation is received.

(4) Additional site(s).

(a) If an institution plans to offer programs at a new site in Washington, the institution shall submit a new site application well in advance of the proposed start of operations at that site.

(b) An additional site application fee in the amount of five hundred dollars per site is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The site may not be utilized, advertised or promoted prior to the granting of authorization.

(5) Late fees. A late fee for applications for renewal of authorization shall be applied to applications received after the renewal application deadline. The late fee imposed shall be one thousand dollars and shall be added to all other applicable fees.

(6) All fees submitted to the council are nonrefundable.

(7) Change of ownership or control. A significant change of ownership or control of an institution shall nullify any previous authorization or exemption. The chief administrator, representing the new owner(s), shall notify the council as soon as the change is known. If the chief administrator asserts in a written statement that all conditions set forth in the act and these rules are being met or will be met before offering instruction, the council may issue a temporary certificate of authorization for a maximum of one hundred eighty days. The new ownership shall complete an application for initial authorization and submit the application to the council no later than sixty days prior to the expiration of the temporary certificate of authorization.

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-180 Application review procedures. (1)

Staff analysis. Following receipt of a fully completed application, council staff shall review and analyze the material submitted.

(2) Additional documentation and site visit. If council staff determines it is necessary to verify or supplement the information provided in the application, the staff may require additional written documentation and/or arrange for a site visit. The expense for any site visits shall be paid by the institution applying for authorization.

(3) External consultants. At the discretion of the council, the expertise of other higher education experts may be used to assist in the evaluation of the documentation submitted. The cost for the services of the evaluation expert(s) shall be paid by the institution applying for authorization. The fee for such services is five hundred dollars per program per consultant, to be submitted by the institution upon request by the council during the review process. The check is to be made payable to the Washington student achievement council.

(4) Comment period. Upon completion of a preliminary review, the council shall post a notification of the request for authorization on its web site for a set period of time. Any persons having knowledge as to why the institution or its program(s) may not meet the requirements for degree authorization may provide comment to the council on the proposal.

(5) Staff recommendations. After the final review has been completed, council staff shall summarize its findings and develop a recommendation to the executive director regarding the application. This recommendation will take one of the following forms:

(a) That the institution be granted authorization, subject to biennial reporting and maintenance of the conditions under which authorization has been granted.

(b) That the institution be granted conditional authorization, subject to additional conditions as established by the council, and maintenance of the conditions under which authorization has been granted.

(c) That the institution be denied authorization.

(6) Notification. Following the council's decision to authorize or deny the institution's request, a letter signifying the action shall be sent from the council to the chief administrative officer of the institution.

(a) The letter of authorization will serve as official authorization for the institution to operate in Washington for the specific programs and locations designated in the letter.

(b) An institution denied authorization shall be provided with an explanation as to how the institution and/or its programs failed to meet the criteria for authorization. ~~((Any institution denied standard authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of four thousand dollars. Any institution denied field placement authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of one thousand dollars. The check is to be made payable to the Washington student achievement council.))~~

AMENDATORY SECTION (Amending WSR 17-09-041, filed 4/14/17, effective 5/15/17)

WAC 250-61-200 Suspension or withdrawal of authorization. (1) The executive director may suspend or withdraw an institution's authorization based on a finding that:

that:

(a) Any information contained in the application for authorization is untrue; or

(b) The institution has failed to maintain the standards for authorization as detailed in the act and this chapter; or

(c) Advertising or representations made on behalf of, and sanctioned by, the institution is deceptive or misleading; or

(d) The institution has violated any provision of this chapter; or

(e) The institution has violated any applicable federal or state law.

(2) In the case of an adverse finding the executive director shall provide the institution a notice of violation that includes details of the legal basis of the finding and the facts used to make the determination.

(3) The institution will have an opportunity to respond to the notice of violation and address deficiencies within a reasonable time period specified by the council.

(4) The executive director may designate an institution as at-risk.

(5) The executive director may suspend the institution's authorization for a period of time if, in the executive director's judgment, the deficiencies can be corrected within the given time period. Upon suspension, the institution must immediately cease the recruitment and/or enrollment of new students. The institution may continue serving currently enrolled students for the remainder of the term. Authorization may be reinstated after any deficiencies have been resolved to the satisfaction of the council.

(6) The executive director may withdraw the institution's authorization if, in the executive director's judgment, the deficiencies cannot be corrected within the given time period. Upon withdrawal, the institution must immediately cease all

degree-granting operations. To seek reinstatement of authorization, the institution must apply for initial authorization.

(7) The executive director's action to suspend or withdraw authorization is subject to the hearing procedures specified in WAC 250-61-210.

WSR 18-22-123
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 18-11—Filed November 7, 2018, 7:14 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 173-423 WAC, Low emission vehicles, establishes rules implementing the California motor vehicle emission standards adopted by the 2005 Washington legislature. This rule making incorporates by reference recent changes to California clean car rules to maintain consistency with the California motor vehicle emission standards and compliance with federal law.

For more information on this rule making visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rule-making/Rulemaking/WAC-173-423>.

Hearing Location(s): On December 11, 2018, at 2:00 p.m., at a Webinar and in-person at the Department of Ecology, 300 Desmond Drive, Lacey, WA 98503.

Presentation, question and answer session followed by the hearing.

We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e788c16198495653d0acd408e8f72e37e>.

For audio call United States toll number 1-855-929-3239 and enter access code 809 005 897. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: December 27, 2018.

Submit Written Comments to: Elena Guilfoil, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, online <http://ac.ecology.commentinput.com/?id=x2Sih>, by December 18, 2018. Submit comments by mail, online, or at the hearing(s).

Assistance for Persons with Disabilities: Contact Sultana Shah, phone 360-407-7832, people with speech disability may call TTY 877-833-6341, people with impaired hearing may call Washington relay service 711, email sultana.shaw@ecy.wa.gov, by December 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We propose to update our rule to match revisions to California's motor vehicle emission standards for greenhouse gases approved by the California Air Resources Board on September 28, 2018. These changes:

- Clarify that automobile makers who want to sell cars and light-duty trucks in California (and by extension in

Washington) for model years 2021 through 2025 would need to meet the existing standards agreed to by California, the federal government, and automakers in 2012; and

- Update requirements and test procedures for certifying compliance with the vehicle emission standards.

Other changes:

- Update requirements for onboard diagnostic systems from California's 2015 rule making in Section 1968.2 and Section 1968.5.
- Update the California effective date for two sections to reflect the current date rather than the revision date for that citation:
 - Section 1956.8 (g) and (h): California revisions to Section 1956.8 did not change the content in (g) and (h); and
 - Appendix A to Article 2.1: Appendix A is part of Section 2112 so the effective date should be the effective date for Section 2112 not the date Appendix A was last revised.
- Correct that ten sections are located in Article 2 not Article 1: Sections 1956.8 (g) and (h), 1960.1, 1961, 1961.1, 1961.2, 1961.3, 1965, 1968.2, 1968.5, 1976, and 1978.

Reasons Supporting Proposal: The Washington legislature requires automotive emissions standards to be consistent with California low emission vehicle standards in Title 13 of the California Code of Regulations. RCW 70.120A.010 directs ecology to "amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards." This rule making will incorporate by reference recent updates of Title 13 of the California Code of Regulations into chapter 173-423 WAC.

The federal Clean Air Act allows states that want to be more stringent than the federal standards for new vehicles to adopt the California clean car program and requires these states to maintain consistency with the California vehicle emission standards.

Statutory Authority for Adoption: RCW 70.120A.010.

Statute Being Implemented: Chapter 70.120A RCW, Motor vehicle emission standards.

Rule is necessary because of federal law, 42 U.S.C. Sec. 7507.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: In 2012, California, the federal government (National Highway Traffic Safety Administration and the United States Environmental Protection Agency), and automakers agreed to establish one national program for fleet-wide emission standards. With that decision, California adopted rules in 2012 declaring that cars meeting federal standards for model years 2017-2025 comply with California's greenhouse gas standards. Twelve other states and the District of Columbia have adopted California's standards. Colorado is in the process of adopting the California standards. These states make up more than thirty-five percent of the United States new car market.

In August 2018, the National Highway Traffic Safety Administration and the United States Environmental Protection Agency announced they were considering freezing the

current federal fuel efficiency and greenhouse gas emissions standards at the 2020 levels. The existing federal and California standards require automobile makers to increase efficiency and reduce emissions year over year though model year 2025.

On September 28, 2018, the California Air Resources Board endorsed rules to clarify that automobile makers who want to sell cars and light-duty trucks in California after the 2020 model year would need to meet the existing standards, rather than weaker standards that the National Highway Traffic Safety Administration and the United States Environmental Protection Agency may adopt. We intend to adopt by reference California's rule revisions when they adopt their rule changes.

- California 2018 rule-making documents: <https://www.arb.ca.gov/regact/2018/leviii2018/leviii2018.htm>.
- California 2015 rule-making documents: <https://www.arb.ca.gov/regact/2015/obdii2015/obdii2015.htm>.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Lacey, 360-407-6855; Implementation and Enforcement: Transportation planner, Lacey, 360-407-6600.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute (in this case RCW 70.120A.010 directs ecology to amend its rules to maintain consistency with the California motor vehicle emission standards).

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

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

November 6, 2018
 Polly Zehm
 Deputy Director

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference. Each manufacturer and each new 2009 and subsequent model year passenger car, light duty truck and medium duty passenger vehicle subject to this chapter shall comply with each applicable standard set forth in Table 070(1) and incorporated by reference:

Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington starting January 14, 2009

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	10/8/15
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8 (g) and (h)	Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles	((12/5/14)) <u>10/16/17</u>
Section 1960.1	Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	12/31/12
Section 1961	Exhaust Emission Standards and Test Procedures - 2004 through 2019 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	12/31/12
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 through 2016 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	8/7/12
Section 1961.2	Exhaust Emission Standards and Test Procedures - 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((10/8/15)) <u>(The date will be the effective date of the rule making approved by the California Air Resources</u>

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
		<u>Board on Sep- tember 28, 2018.)</u>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((12/31/12)) <u>(The date will be the effective date of the rule making approved by the California Air Resources Board on September 28, 2018.)</u>
Section 1965	Emission Control, Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model-Year Motor Vehicles	10/8/15
Section 1968.2	Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	((7/31/13)) <u>7/25/16</u>
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	((7/31/13)) <u>7/25/16</u>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	10/8/15
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	10/8/15
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	11/9/07

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	12/5/14
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	12/5/14
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	8/7/12
Section 2039	Emission Control System Warranty Statement	12/26/90
Section 2040	Vehicle Owner Obligations	12/26/90
Section 2046	Defective Catalyst	2/15/79
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 2 Enforcement of New and In-Use Vehicle Standards		
Section 2109	New Vehicle Recall Provisions	12/30/83
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	12/8/10
Section 2112	Definitions	12/5/14
	Appendix A to Article 2.1	((8/16/09)) <u>12/5/14</u>

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2113	Initiation and Approval of Voluntary and Influenced Emission-Related Recalls	1/26/95
Section 2114	Voluntary and Influenced Recall Plans	11/27/99
Section 2115	Eligibility for Repair	1/26/95
Section 2116	Repair Label	1/26/95
Section 2117	Proof of Correction Certificate	1/26/95
Section 2118	Notification	1/26/95
Section 2119	Recordkeeping and Reporting Requirements	11/27/99
Section 2120	Other Requirements Not Waived	1/26/95
Article 2.2 Procedures for In-Use Vehicle Ordered Recalls		
Section 2122	General Provisions	12/8/10
Section 2123	Initiation and Notification of Ordered Emission-Related Recalls	1/26/95
Section 2124	Availability of Public Hearing	1/26/95
Section 2125	Ordered Recall Plan	1/26/95
Section 2126	Approval and Implementation of Recall Plan	1/26/95
Section 2127	Notification of Owners	1/26/95
Section 2128	Repair Label	1/26/95
Section 2129	Proof of Correction Certificate	1/26/95
Section 2130	Capture Rates and Alternative Measures	11/27/99
Section 2131	Preliminary Tests	1/26/95
Section 2132	Communication with Repair Personnel	1/26/95
Section 2133	Recordkeeping and Reporting Requirements	1/26/95
Section 2135	Extension of Time	1/26/95
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	12/8/10
Section 2142	Alternative Procedures	2/23/90

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2143	Failure Levels Triggering Recall	11/27/99
Section 2144	Emission Warranty Information Report	11/27/99
Section 2145	Field Information Report	8/7/12
Section 2146	Emissions Information Report	11/27/99
Section 2147	Demonstration of Compliance with Emission Standards	12/5/14
Section 2148	Evaluation of Need for Recall	11/27/99
Section 2149	Notification and Subsequent Action	2/23/90
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	8/8/12

WSR 18-22-124**PROPOSED RULES****DEPARTMENT OF ECOLOGY**

[Order 18-03—Filed November 7, 2018, 7:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-113.

Title of Rule and Other Identifying Information: Chapter 173-405 WAC, Kraft pulping mills, regulates air pollution from mills that use the Kraft process to produce paper pulp or paper from wood fibers.

Chapter 173-410 WAC, Sulfite pulping mills, regulates air pollution from mills that use a cooking liquor consisting of sulfurous acid, a sulfite or bisulfite salt alone or in any combination, with or without additional mechanical refining or delignification to produce pulp, pulp products, or cellulose from wood fibers.

Chapter 173-415 WAC, Primary aluminum plants, regulates air pollution from primary aluminum reduction plants that manufacture aluminum by electrolytic reduction.

These three rules are enacted under RCW 70.94.395 to set statewide air quality requirements and standards for Kraft pulping mills, sulfite pulping mills and primary aluminum plants.

Hearing Location(s): On December 12, 2018, at 2:30 p.m., at a webinar and in person at the Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503.

Presentation, question and answer session followed by the hearing.

We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=efdf8ba90c1780c04f6b026956bcfcc62>.

For audio call United States toll number 1-855-929-3239 and enter access code 808 604 799. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: April 3, 2019.

Submit Written Comments to: Debebe Dererie, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, submit comments online at <http://ac.ecology.commentinput.com/?id=35Zx2>, by December 20, 2019 [2018]. Submit comments by mail, online, or at the hearing(s).

Assistance for Persons with Disabilities: Contact Sultana Shah, phone 360-407-6831, TTY 711 for deaf or hard of hearing, 877-833-6341 (Washington relay service), email sultana.shah@ecy.wa.gov, by December 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing sets of changes in this rule making:

1. The primary purpose of this rule making is to align the following statewide rules with the general regulations for air pollution sources (chapter 173-400 WAC), the federal Clean Air Act (CAA), and the Environmental Protection Agency (EPA) startup, shutdown and malfunction (SSM) policy: Chapter 173-405 WAC, Kraft pulping mills, chapter 173-410 WAC, Sulfite pulping mills, and chapter 173-415 WAC, Primary aluminum plants.

The CAA and EPA SSM policy require emission standards to apply continuously without automatic or discretionary exemptions, even during periods of SSM. Contrary to the CAA requirements and EPA SSM policy (80 F.R. 33840), chapter 173-400 WAC exempted or allowed a source to avoid an enforcement action for exceedances of emission standards during periods of startup, shutdown, and scheduled maintenance. EPA determined WAC 173-400-107 had overly broad enforcement discretion that potentially bars enforcement action by EPA and citizens in federal courts (80 F.R. 33840). On August 16, 2018, ecology adopted amendments to chapter 173-400 WAC to correct EPA-identified deficiencies, and meet the CAA requirements and SSM policy that allow comprehensive enforcement of applicable requirements.

This rule making harmonizes chapters 173-405, 173-410 and 173-415 WAC with chapter 173-400 WAC through adoption-by-reference of the SSM related provisions to:

- Remove impermissible provisions that shield sources from civil penalties for excess emissions during startup, shutdown, and scheduled maintenance.
- Establish alternative emission standards for soot-blowing and grate cleaning, refractory curing, and startup and shutdown of hog-fuel boilers with dry particulate controls.
- Outline the process for establishing facility-specific alternative emission limits for specific short-term operation modes like SSM that exceed the otherwise applicable emission standards in the SIP.

- Simplify the excess emission notification and reporting requirements.

We are proposing these changes to allow facilities subject to chapters 173-405, 173-410 and 173-415 WAC rules to:

- Have clear and consistent regulatory requirements across air quality rules that meet the federal requirements for SSM.
- Use the alternative emission standards for soot-blowing and grate cleaning, refractory curing, and startup and shutdown of wood-fired and hog-fuel boilers with dry particulate controls.
- Have a pathway to get an ecology approved source-specific alternative emission limit for specific short-term operations, when a source demonstrates it is technically infeasible to comply with the otherwise applicable emission standard.
- Simplify excess emissions notification and reporting requirements.

2. Other changes include:

- Explicitly require monthly performance tests for secondary emissions of total fluoride from primary aluminum plants, while providing a procedure that allows reduction of the performance testing frequency to quarterly.
- Extend the time allowed for submission of source testing reports to sixty days instead of fifteen days for pulping mills and thirty days for primary aluminum plants, to address the historical compliance challenge.
- Delete provisions that are outdated and not applicable to facilities covered by these rules.
- Correct typos and citations, and clarify rule language without changing the intent of the rules.

We are proposing these changes to:

- Protect human health and the environment through early identification of excess emissions of fluorides by maintaining the monthly total fluoride performance testing frequency for the secondary emission control systems of primary aluminum plants. In 2015, the federal equivalent requirement was changed to semiannual performance testing. However, the aluminum plants have shown some history of exceedances of the secondary total fluoride emission standard. Thus, we are maintaining the monthly testing frequency to avoid undetected exceedances of the emission standard.
- Provide a primary aluminum plant opportunity to reduce the performance testing frequency for the total fluoride from secondary emission control systems, if the plant consistently demonstrates emissions well below the emission standard.
- Promote compliance by extending the deadline for performance testing report submissions to reflect the time it takes to develop and to perform quality assurance on the report. This helps facilities avoid late reporting.
- To improve the readability of the rule and update references.

Reasons Supporting Proposal: Please see "**Purpose of the proposal and its anticipated effects, including any changes in existing rules**" above.

Statutory Authority for Adoption: Chapter 70.94 RCW, RCW 70.94.152, 70.94.331, 70.94.395.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is necessary because of federal law and federal court decision:

- Federal Clean Air Act, 42 U.S.C. Section 7401 et. seq. (1970);
- 80 Federal Register 33840 EPA SSM SIP Call;
- *Natural Resources Defense Council v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014);
- *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008);
- *Settlement agreement for Sierra Club et al. v. Jackson*, No.3:10-cv-04060-CRB (N.D. Cal.).

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Debebe Dererie, Lacey, 360-407-7558; Implementation and Enforcement: James DeMay, Lacey, 360-407-6868.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Debebe Dererie, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-7558, TTY 877-833-6341, email debebe.dererie@ecy.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Ecology analyzed the compliance costs of the proposed amendments in Chapter 3 of the preliminary regulatory analyses. We determined that no small business economic impact statement is required under the Regulatory Fairness Act (RFA, chapter 19.85 RCW) for the proposed amendments.

Based on our employment research, none of the ten existing facilities (nine currently operating), covered by the proposed amendments, are small businesses as defined in the RFA. (Washington state employment security department (2018); web sites for facility ownership at highest owner/operator level (see references list in preliminary regulatory analyses)). Consequently, ecology is not required to prepare a small business economic impact statement under the RFA (RCW 19.85.025(4)).

November 6, 2018

Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-405-021 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is

clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

(1) "**Ecology**" means the department of ecology.

(2) "**Kraft mill**" means any manufacturing facility which uses an alkaline solution containing sodium hydroxide and/or sodium sulfide, and any other chemical pulping facility, except those covered by chapter 173-410 WAC, to produce pulp and/or paper products from wood fibers. For the purposes of this regulation "kraft mill" is equivalent to "source."

((2)) (3) "**Noncondensibles**" means gases and vapors from the digestion and evaporation processes of a mill that are not condensed with the equipment used in those processes.

((3)) (4) "**Recovery furnace stack**" means the stack from which the products of combustion from the recovery furnace are emitted to the ambient air.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-405-040 Emission standards. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; no kraft pulp mill shall cause or permit air contaminant emissions in excess of the limits listed below. Specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

(1) Recovery furnaces.

(a) The particulate emissions from each recovery furnace stack shall not exceed 0.23 grams of particulate per dry cubic meter at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen averaged over three one hour tests.

(b) The TRS emissions from each recovery furnace stack constructed before January 1, 1970, and for recovery furnaces that have direct contact evaporators, shall not exceed 17.5 ppm corrected to eight percent oxygen for a daily average.

(c) The TRS emissions from each recovery furnace constructed after January 1, 1970, which does not have a contact evaporator, shall not exceed 5.0 ppm corrected to eight percent oxygen for a daily average.

(2) Smelt dissolver tank vent. The particulate emissions from smelt dissolver tank vents shall not exceed 0.15 grams per kilogram (0.30 pounds per ton) of solids fired at the associated recovery furnace.

(3) Lime kilns.

(a) The particulate emission from each lime kiln stack shall not exceed 0.30 grams of particulate per dry cubic meter (0.13 grains/dscf) at standard conditions corrected to ten percent oxygen.

(b) The TRS emissions from any lime kiln stack shall not exceed eighty ppm expressed as hydrogen sulfide for more than two consecutive hours in any one day.

(c) The average daily emission of TRS from any lime kiln stack shall not exceed fifty ppm. After January 1, 1985, TRS emissions from each lime kiln stack shall not exceed twenty ppm corrected to ten percent oxygen for a daily average.

(4) Other TRS emissions units.

(a) Noncondensibles from digesters, multiple-effect evaporators and condensate stripper system shall ~~((at all times))~~ be treated to reduce the emissions of TRS equal to the reduction achieved by thermal oxidation in a lime kiln.

(b) A backup treatment system or equivalent approved by ecology must be installed to assure continual treatment of noncondensibles.

(5) Other particulate emissions units. The emission of particulates from emissions units other than kraft recovery furnaces, lime kilns, or smelt dissolving tank vents, shall not exceed the following maximums:

(a) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood and wood residue to produce steam and which commenced construction prior to January 1, 1983.

(b) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood and wood residue to produce steam, and which commenced construction after January 1, 1983.

(c) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under (a) or (b) of this subsection.

(6) Opacity.

(a) No person shall cause or allow the emission of a plume from any kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than thirty-five percent for more than six consecutive minutes in any sixty minute period, except as described in WAC 173-405-040(7).

(b) No person shall cause or allow the emission of a plume, from any emissions unit other than a kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than twenty percent for more than six consecutive minutes in any sixty minute period ~~((, except that these provisions do not apply when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit soot blowing and grate cleaning necessary to the operation of the boiler facility. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ecology shall be advised of the schedule)).~~ The emissions unit shall comply with the alternative visible emission standard for:

(i) Soot blowing or grate cleaning in WAC 173-400-040 (2)(a);

(ii) Hog fuel or wood fired boiler in operation before January 24, 2018, in WAC 173-400-040 (2)(e); and/or

(iii) Furnace refractory in WAC 173-400-040 (2)(f).

(c) There shall be no more than one violation notice issued in any sixty minute period.

(d) These provisions (of WAC 173-405-040(6)) shall not apply when the presence of uncombined water is the only reason for the opacity of the plume to exceed the applicable maximum.

~~((7))~~ ~~((Each mill may petition for, and ecology may establish by regulatory order, alternate opacity limits for a specific kraft recovery furnace or lime kiln, providing:~~

~~(a) The mill can demonstrate compliance; with all other applicable emission limits; and~~

~~(b) Best practicable operation and maintenance procedures, as approved by ecology, are continuously employed.~~

~~(8) Any person electing to apply for exceptions per the provisions of WAC 173-405-040(7) shall submit a program acceptable to ecology. The program shall include the following information: The amount and concentration of suspended particulate material emitted during best practicable operating procedures, opacity recorded at such emission level, the type of equipment and procedures which will be used to demonstrate compliance and the time required for installation of the equipment.~~

~~(9) The opacity provisions of this chapter shall apply until an application is received by ecology, petitioning for a revised limit as allowed by WAC 173-405-040(7). After a petition is received, enforcement of the opacity provisions will be stayed until the application is rejected or a new limit is established.~~

~~((10))~~ Alternative emission limitation. An owner or operator may request an alternative emission limit (as defined in WAC 173-400-030) under:

(a) WAC 173-400-081 for an action covered under a notice of construction application; or

(b) WAC 173-400-082 for a permit modification.

~~(8)~~ Operation and maintenance. At all times, including periods of abnormal operation and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

~~((11))~~ (9) SO₂.

(a) The emission of sulfur dioxide from any recovery furnace or lime kiln shall not exceed five hundred ppm for an hourly average, corrected to eight percent oxygen for a recovery furnace or to ten percent oxygen for a lime kiln.

(b) The emission of sulfur dioxide from any emissions unit other than a recovery furnace or lime kiln shall not exceed one thousand ppm for an hourly average, corrected to seven percent oxygen for combustion units.

~~((12))~~ (10) Source testing. To demonstrate compliance with this chapter, the provisions of WAC 173-400-105 shall apply to all sources to which this chapter is applicable.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-405-072 Monitoring requirements. Each mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ecology. Results of the monitoring shall be reported monthly within fifteen days of the end of each calendar month ~~((and)), except~~

that source testing results shall be submitted within sixty days of completion of each source testing. All reports shall include data as follows:

- (1) Particulate: The results of particulate measurements made on each source during the month.
- (2) TRS:
 - (a) The average TRS concentration expressed in units of the standard for each recovery furnace and lime kiln stack.
 - (b) The date, time and concentration of TRS for each TRS emissions violation and the total numbers of hours that exceed the standard.
- (3) Opacity or other continuous monitor:
 - (a) The date and time of opacity in excess of the standard.
 - (b) If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required by a regulatory order as an alternate. If an alternate is approved, the date and time of each occurrence in excess of the regulatory order must be reported.
- (4) Production: The average daily production of air-dried unbleached pulp.
- (5) Other data: Each kraft mill shall furnish, upon request of ecology, such other pertinent data required to evaluate the mill's emissions or emission control program.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-405-077 (~~Report of startup, shutdown, breakdown or upset conditions.~~) Excess emissions. The provisions of WAC (~~(173-400-105(5))~~) 173-400-107, or 173-400-108 and 173-400-109 shall apply to all sources to which this chapter is applicable.

Note: WAC 173-400-107 is in effect until the effective date of EPA's removal of the provision from the SIP.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-405-086 New source review (NSR). The provisions of WAC 173-400-110 through 173-400-114 shall apply to all new sources and emissions units to which this chapter is applicable.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-405-087 Prevention of significant deterioration (PSD). The provisions of WAC (~~(173-400-144)~~) 173-400-700 through 173-400-750 shall apply to all new major sources and major modifications to which this chapter is applicable.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-410-021 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

- (1) "Acid plant" means the facility in which the cooking liquor is either manufactured or fortified when not associated with a recovery system.
- (2) "Average daily emission" means total weight of an air contaminant emitted in each month, divided by the number of days of production that month.
- (3) "Average daily production" means air dried tons of unbleached pulp produced in a month, divided by the number of days of production in that month.
- (4) "Blow system" includes the storage chest, tank or pit to which the digester pulp is discharged following the cook.
- (5) "Ecology" means the department of ecology.
- (6) "Recovery system" means the process by which all or part of the cooking chemicals may be recovered, and cooking liquor regenerated from spent cooking liquor, including evaporation, combustion, dissolving, fortification, storage facilities, and emission control equipment associated with the recovery cycle.
- ~~((6))~~ (7) "Sulfite pulping mill" means any manufacturing facility which uses a cooking liquor consisting of sulfurous acid, a sulfite or bisulfite salt alone or in any combination, with or without additional mechanical refining or delignification to produce pulp, pulp products or cellulose from wood fibers. For the purposes of this regulation "sulfite pulping mill" is equivalent to "source."

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-410-040 Emission standards. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; no sulfite pulping mill shall cause or permit air contaminant emissions in excess of the limits listed below. Specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

- (1) Sulfur dioxide.
 - (a) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill which practices incineration of the spent sulfite liquor, shall not exceed ten grams of sulfur dioxide per kilogram (twenty pounds per ton) of air dried, unbleached pulp produced.
 - (b) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill that does not incinerate the spent sulfite liquor, shall not exceed two grams of sulfur dioxide per kilogram (four pounds per ton) of air dried, unbleached pulp produced.
 - (c) The blow system emissions shall not exceed 0.1 grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram (0.2 pounds per ton) of air dried, unbleached pulp discharged from the digester.
 - (d) Emissions from the recovery system and acid plant shall not exceed 800 ppm of sulfur dioxide for any hourly average.
 - (e) Emissions from recovery systems constructed after January 24, 1972, shall not exceed 300 ppm of sulfur dioxide for any hourly average.
 - (f) Emissions from any emissions unit, other than a recovery system, a blow system or an acid plant, shall not exceed 1000 ppm of sulfur dioxide, corrected to seven per-

cent oxygen in the case of combustion unit, for any hourly average.

(2) Particulate.

(a) Emissions of particulate from recovery systems constructed before January 24, 1972, shall not exceed 0.23 grams per dry cubic meter of exhaust at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen.

(b) Emissions of particulate matter from recovery systems constructed after January 24, 1972, shall not exceed 0.14 grams per dry cubic meter of exhaust at standard conditions (0.06 grains/dscf) corrected to eight percent oxygen.

(c) The emission of particulates from emissions units other than acid plants or recovery systems shall not exceed the following maximums:

(i) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood and wood residue to produce steam and which commenced construction prior to January 1, 1983.

(ii) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood and wood residue to produce steam, and which commenced construction after January 1, 1983.

(iii) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under (c) (i) or (ii) of this subsection.

(3) Opacity.

(a) No person shall cause or allow the emission of a plume from a recovery system or acid plant which has an average opacity greater than thirty-five percent, for more than six consecutive minutes in any sixty minute period (~~(except as allowed per RCW 70.94.331 (2)(c))~~).

(b) Visible emissions from units other than acid plants or recovery systems shall comply with WAC 173-400-040(2), except when an alternative opacity limit established under WAC 173-400-081 or 173-400-082 is applicable.

(4) Operation and maintenance. At all times, including periods of abnormal operations and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(5) No recovery system shall emit total reduced sulfur (TRS) gases in excess of 17.5 ppm for a daily average.

(6) More restrictive limits. Ecology may set more restrictive emissions limits than the specific limits set in this chapter (after public involvement and hearing), if there is reason to believe that the emission(s) from a source is a cause of public nuisance or a cause of violation of ambient air quality standards. The source shall, within ninety days from notification of the more restrictive limits, achieve operation that will prevent further recurrence of the nuisance or violation.

(7) Source testing. To demonstrate compliance with this chapter, the provisions of WAC 173-400-105 shall apply to all sources to which this chapter is applicable.

(8) Alternative emission limitation. An owner or operator may request an alternative emission limitation (as defined in WAC 173-400-030) under:

(a) WAC 173-400-081 for an action covered under a notice of construction application; or

(b) WAC 173-400-082 for a permit modification.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-410-062 Monitoring requirements. Each mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ecology. Results of monitoring shall be reported monthly within fifteen days of the end of each calendar month ~~((and))~~ except that source testing results shall be submitted within sixty days of completion of each source testing. All reports shall include data as follows:

(1) For the recovery system and acid plant:

(a) The average daily emissions of sulfur dioxide expressed as grams SO₂ per kilogram of air dried, unbleached pulp produced and the kilograms of SO₂ per day.

(b) Daily average concentration of sulfur dioxide.

(c) The date, time and concentration for each sulfur dioxide emission violation and the total number of hours that exceed the standard.

(d) The results of particulate tests conducted during the month.

(2) For the blow system:

(a) The grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram of air dried, unbleached pulp discharged from the digester.

(b) The average daily production of air dried, unbleached pulp.

(3) Each mill shall furnish, upon request of ecology, such other pertinent data required to evaluate the mill's emission control program.

(4) All measurements shall be made in accordance with WAC 173-400-105.

(5) Each mill shall be required to establish a program approved by ecology for continuous opacity monitoring to demonstrate compliance with WAC 173-410-040(3) and to report the results to ecology in a format and on a schedule set by regulatory order. If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required as an alternate until continuous opacity monitoring equipment is available.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-410-067 ((Report of startup, shutdown, breakdown or upset conditions.)) Excess emissions. The provisions of WAC ~~((173-400-105(5)))~~ 173-400-107, or 173-400-108 and 173-400-109 shall apply to all sources to which this chapter is applicable.

Note: WAC 173-400-107 is in effect until the effective date of EPA's removal of the provision from the SIP.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-410-086 New source review (NSR). The provisions of WAC 173-400-110 through 173-400-114 shall apply to all new sources and emissions units to which this chapter is applicable.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-410-087 Prevention of significant deterioration (PSD). The provisions of WAC ~~((173-400-141))~~ 173-400-700 through 173-400-750 shall apply to all new major sources and major modifications to which this chapter is applicable.

AMENDATORY SECTION (Amending WSR 05-17-169, filed 8/23/05, effective 9/23/05)

WAC 173-415-015 Applicability. (1) In addition to the general applicability of chapter 173-400 WAC to all emission sources, all primary aluminum reduction plants are required to meet the emissions standards of this chapter. Specific emissions standards and requirements listed in this chapter shall supersede the general emissions standards and general requirements in chapter 173-400 WAC.

(2) All primary aluminum reduction plants are required to meet applicable National Emissions Standards for Hazardous Air Pollutants (NESHAP~~((s))~~). New primary aluminum reduction plants must meet federal New Source Performance Standards (NSPS).

(3) Primary aluminum reduction plants are also subject to chapter 173-481 WAC.

(4) In this rule, whenever a federal regulation is cited, it refers to the ~~((most recent))~~ version of the federal regulation that has been adopted ((into Washington Administrative Code is the version of the federal regulation that is referenced. These most recent adoptions by reference can be found in chapter 173-400 WAC)) by reference in WAC 173-400-025.

AMENDATORY SECTION (Amending WSR 05-17-169, filed 8/23/05, effective 9/23/05)

WAC 173-415-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

(1) "Ecology" means the department of ecology.

(2) "Potline" means a single discreet group of electrolytic reduction cells connected in series, in which alumina is reduced to form aluminum.

~~((2))~~ (3) "Primary aluminum reduction plant" means any facility manufacturing aluminum by electrolytic reduction. The primary aluminum reduction plant includes the following processes and their emission control systems: Pitch

storage tanks, paste production plant, anode bake furnaces and potlines. For the purposes of this regulation "primary aluminum reduction plant" is equivalent to "source."

~~((3))~~ (4) "Primary emission control system" means the equipment used to capture and remove the gases and particulate matter evacuated directly from the reduction cells ~~((and the emission control device(s) used to remove pollutants))~~ prior to discharge of the cleaned gas to the atmosphere ~~((--A roof scrubber is not part of the primary control system))~~.

~~((4))~~ (5) "Secondary emission control system" means the equipment used to collect and treat the gases and particulate matter that escape from the reduction cells into the potroom prior to discharge of the cleaned gas to the atmosphere. Roof scrubbers are part of the secondary emission control system.

(6) "Total fluorides (TF)" means elemental fluorine and all fluoride compounds as measured by Methods 13A, 13B or 14A in 40 C.F.R. Part 60 Appendix A or by an EPA approved alternative method.

AMENDATORY SECTION (Amending WSR 05-17-169, filed 8/23/05, effective 9/23/05)

WAC 173-415-030 Emission standards. (1) Fluoride.

(a) The emission of total fluorides from a primary aluminum reduction plant shall meet the ~~((MACT))~~ requirements ~~((specified))~~ in 40 C.F.R. 63 Subpart LL.

(b) In addition to meeting the requirements in (a) of this subsection, the emission of fluorides from a primary aluminum reduction plant shall meet the requirements in chapter 173-481 WAC.

(c) If ~~((the department))~~ ecology has reason to believe that adverse fluoride impacts are occurring ~~((in violation of chapter 173-481 WAC))~~, a primary aluminum reduction plant must establish, in response to a request from ~~((the department))~~ ecology, an ambient air and/or forage monitoring program approved by ~~((the department))~~ ecology as required by WAC 173-481-150.

(2) Particulate. The total emission of particulate matter to the atmosphere from the reduction process (potlines) shall be reduced to the lowest level consistent with reasonably available control technology (RACT) for primary aluminum reduction plants. The emission of solid particulate shall not exceed 7.5 grams per kilogram (fifteen pounds per ton) of aluminum produced on a daily basis. Aluminum produced shall be calculated by the method used to determine aluminum production rate in 40 C.F.R. 63.847 (e)(6).

(3) Visible emissions. Visible emissions from any emissions unit in a primary aluminum reduction plant shall not exceed an average twenty percent opacity for more than six consecutive minutes in any sixty minute period. This provision shall not apply:

(a) When the presence of uncombined water is the only reason for the opacity of the plume to exceed twenty percent; or

(b) When an alternate opacity limit has been established under ~~((RCW 70.94.331-2)(e))~~ WAC 173-400-040, 173-400-081, or 173-400-082.

(4) Fugitive emissions. Each primary aluminum reduction plant shall use RACT to prevent fugitive emissions. Fugitive dust is included in fugitive emissions.

(5) Sulfur dioxide.

(a) Total emissions of sulfur dioxide from all emissions units shall not exceed thirty grams of sulfur dioxide per kilogram of aluminum produced on a monthly average (sixty pounds per ton). ~~((Those primary aluminum plants which were in excess of the above sulfur dioxide limit on January 1, 1978, will be allowed to emit at the January 1, 1978, level of emissions provided that the owners or operators did demonstrate to ecology by July 1, 1981, by use of modeling and ambient measurements, that the emissions will not cause the ambient standard to be exceeded, and that the limits are placed in a regulatory order(s):))~~

(b) In no case shall any plant cause or permit the emission of a gas containing sulfur dioxide in excess of one thousand parts per million corrected to dry standard conditions for an hourly average.

(6) Operation and maintenance (O&M). At all times, including periods of abnormal operation and upset conditions, owners and operators shall, to the extent practicable, maintain and operate an affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source. The means for demonstrating ongoing compliance with good O&M may include, but not be limited to: More frequent source testing, prescriptive procedures or inspections, control values for emissions at values less than the applicable regulatory requirements and that function as an investigative trigger rather than as a limit, collection and efficiency requirements, or the use of CEMs.

(7) Source testing.

~~(a) To demonstrate compliance with this chapter, the testing provisions of chapters 173-400, 173-481 WAC and ((MACT)) the requirements ((as specified)) in 40 C.F.R. Part 63, Subpart LL shall be ((used as)) applicable, except that a primary aluminum reduction plant must conduct the total fluoride (TF) performance test for their secondary emission control system according to (b) or (c) of this subsection.~~

~~(b) Monthly performance testing: A primary aluminum reduction plant must conduct TF performance testing for the secondary emission control system monthly, except when ecology has approved quarterly testing according to (c) of this subsection.~~

~~(c) Quarterly performance testing: The owner or operator of a primary aluminum plant may request that ecology reduce the testing frequency of TF from the secondary emission control system from monthly to quarterly.~~

~~(i) The owner or operator shall provide information and data on secondary TF emissions to demonstrate to ecology's satisfaction that:~~

~~(A) The long-term average secondary TF emission for the last twenty-four consecutive months is less than sixty percent of the applicable limit.~~

~~(B) No monthly average emission during the last twenty-four consecutive months exceeded seventy-five percent of the applicable limit.~~

~~(ii) Ecology may approve the quarterly performance testing after:~~

~~(A) Verifying the criteria in (c)(i) of this subsection are met.~~

~~(B) Providing public notice and an opportunity for public comment on the proposed reduction in performance testing frequency, according to WAC 173-400-171.~~

~~(iii) If the TF secondary emissions exceed the applicable limit while performing quarterly testing approved under (c)(ii) of this subsection, the owner or operator:~~

~~(A) Shall immediately return to monthly testing for at least twelve months.~~

~~(B) May request ecology's approval to return to quarterly testing.~~

~~(iv) Ecology may approve the return to quarterly performance testing if the following criteria are met:~~

~~(A) The long-term average secondary TF emission for the last twenty-four consecutive months is no more than sixty percent of the applicable limit; and~~

~~(B) No more than one monthly average emission during the last twenty-four consecutive months exceeds seventy-five percent of the applicable limit.~~

~~(C) Ecology provides public notice and an opportunity for public comment on the proposed reduction in monitoring frequency, according to WAC 173-400-171.~~

~~(8) Alternative emission limitation. An owner or operator may request an alternative emission limitation (as defined in WAC 173-400-030) under:~~

~~(a) WAC 173-400-081 for an action covered under a notice of construction application; or~~

~~(b) WAC 173-400-082 for a permit modification.~~

AMENDATORY SECTION (Amending WSR 05-17-169, filed 8/23/05, effective 9/23/05)

WAC 173-415-060 Monitoring and reporting. (1)

When requested by ~~((the department))~~ ecology, each primary aluminum reduction plant shall conduct routine monitoring of emissions, ambient air, and forage in accordance with a program that has been approved by ~~((the department of))~~ ecology. Results of monitoring shall be reported monthly within thirty days of the end of each calendar month, except that source testing results shall be submitted within sixty days of completion of each source testing. In addition to the information required by ~~((the Primary Aluminum MACT,))~~ 40 C.F.R. Part 63, Subpart LL and chapter 173-481 WAC, the approved program shall include data as follows:

(a) Particulate emissions:

(i) Results of all emission sampling conducted during the month for particulates, shall be expressed in units used in the applicable requirements or in units specified in the monitoring plan.

(ii) The method of calculating pounds per ton shall be completed as specified in the approved monitoring programs.

(iii) For each potline, particulate data shall be reported as total particulates and percentage of fluoride ion contained

therein. For other units at a primary aluminum reduction plant, particulate data shall be reported as total particulates.

(iv) Compliance with WAC 173-415-030(2) shall be determined by measurements of emissions from the potline primary emission control system plus measurements of emissions from the potline (~~(~~pot~~)~~) secondary emission control system.

(b) Fluoride emissions: Results of all sampling conducted during the month for fluoride emissions shall be reported in pounds of total fluoride per ton of aluminum produced. Aluminum produced shall be calculated by the method used to determine aluminum production rate in 40 C.F.R. 63.847 (e)(6).

(c) Other emission and ambient air data as specified in the approved monitoring program.

(2) Other data: Each primary aluminum reduction plant shall furnish other data requested by (~~(the department of)~~) ecology to evaluate a plant's emission control program.

(3) Change in raw materials or fuel: Any change or series of changes in raw material or fuel which results in a cumulative increase in emissions of sulfur dioxide of five hundred tons per year or more over that stated in the 1979 emissions inventory shall require the submittal of sufficient information to (~~(the department of)~~) ecology so that the effect upon ambient concentrations of sulfur dioxide can be determined. (~~(The department of)~~) Ecology may issue regulatory orders requiring controls to reduce the effect of such increases.

NEW SECTION

WAC 173-415-075 Excess emissions. The applicable provisions of WAC 173-400-107, or 173-400-108 and 173-400-109 shall apply to all sources to which this chapter is applicable.

Note: WAC 173-400-107 is in effect until the effective date of EPA's removal of the provision from the SIP.

WSR 18-22-130

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 7, 2018, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-118 and 17-20-083.

Title of Rule and Other Identifying Information: Chapter 16-230 WAC, Use of chemicals and chemically treated materials in certain counties; chapter 16-231 WAC, Restricted use herbicides; and chapter 16-232 WAC, Use restricted herbicides in certain counties. The department is proposing to:

1. Adopt the American Society of Agricultural and Biological Engineers (ASABE) standards as a national consensus code;

2. Repeal the requirement in individual counties for landowners to inform aerial applicators of nearby sensitive crops;

3. Repeal the requirement in Spokane County for applicators to inform commercial greenhouses within one half

mile forty-eight hours in advance of any use restricted herbicide (URH) application;

4. Repeal the allowance to use "approved ground rigs" at higher wind speeds;

5. Repeal the redundant prohibition on the use of high volatile and dust formulations of URHs that are already prohibited in chapter 16-228 WAC, General pesticide rules;

6. Delete the reference to "critical weed control" and 2,4-D committees on the Washington state department of agriculture's (WSDA) ability to issue permits;

7. Add a reminder that applicators in Benton County must comply with state rules and general pesticide rules;

8. Repeal the redundant prohibition in individual counties of aerial applications within one mile of commercial vineyards;

9. Repeal the restrictions in Areas 1 and 3 of Whitman County prohibiting application of URHs from April 15 to October 31 when wind speed exceeds seven mph.

10. Add a definition for "ready-to-use liquid formulations" and an exception for "ready-use-liquid formulations" to the definition of URHs in individual counties;

11. Amend nozzle and pressure requirements to reflect current standards that applications must be made by creating a droplet spectrum size (e.g., medium, coarse or very coarse) that is in conformance with ASABE standards;

12. Repeal the eighty-five degree Fahrenheit cut-off requirement in individual county rules since it is already a requirement in the statewide rules;

13. Repeal restriction in statewide rules that limits the addition of oil carriers and adjuvants to one pint per acre;

14. Repeal restrictions in individual county rules that prohibit use of oil type carriers for brush control during certain times of the year;

15. Repeal restriction in statewide rules that prohibits mixing, loading and equipment decontamination (also aircraft takeoff and landing) in a manner that causes damage to susceptible crops;

16. Repeal restrictions in counties and specific "areas" of counties that limit mixing loading of aircraft to formulations that can be applied in the area where the airstrip is located;

17. Repeal the prohibition in statewide rules on turning or flying low over cities, towns, residences and other sensitive sites;

18. Repeal the prohibition in the statewide rules for storing URHs in "areas" where their use is prohibited unless they are in a sealed container and the outside of the container is not contaminated;

19. Repeal the provision in the statewide rules that indicates application of URHs through irrigation is subject to the same requirements as ground applications except for nozzle size and pressure requirements;

20. Expand the boundaries of Area 1 in Kittitas County as a result of a petition for rule making; and

21. Change the section titles that are in a Q&A format to a statement/phrase format to be consistent throughout the chapters.

Hearing Location(s): On December 11, 2018, at 2:00 p.m., at WSDA, 222 North Havana Street, Rooms B and C (downstairs), Spokane, WA 99202; on December 12, 2018, at 9:00 a.m., at WSDA, 21 North 1st Avenue, Conference

Room 238, Yakima, WA 98902; and on December 12, 2018, at 2:00 p.m., at the Hilton Garden Inn, 701 North Young Street, Columbia Club Room, Kennewick, WA 99336.

Date of Intended Adoption: December 26, 2018.

Submit Written Comments to: Gloriann Robinson, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by December 12, 2018.

Assistance for Persons with Disabilities: Contact Maryann Connell, phone 360-902-2012, fax 360-902-2093, TTY 800-833-6388 or 711, email mconnell@agr.wa.gov, by December 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules covering restricted use pesticides (mostly restricted use herbicides) found in chapters 16-230, 16-231 and 16-232 WAC are for the protection of sensitive crops. They are extensive, complex and confusing (there are over fifty different established areas in eastern Washington, each with their own restrictions). In some cases the rules are redundant, while in other cases they are so outdated that they pose an increased risk to sensitive crops (nozzle/pressure requirements). Rules that are complex and confusing promote inadvertent noncompliance. Some of these rules are over fifty years old and there has been no substantial revisions for over twenty years. Many things have changed in the interim. Remarkable improvements in sprayer and application technology have made some of the requirements obsolete, and pesticide labels now have many restrictions that didn't exist when these rules were first adopted. Many of the requirements found in these three WAC chapters are preventative in nature. In all cases, if there is an incident of crop damage that occurs, the department can take action under various other statutes and rules (e.g., chapter 16-228 WAC, General pesticide rules). These changes will help to simplify the rules without increasing risk to sensitive crops.

The major changes to chapters 16-230, 16-231 and 16-232 WAC are in requirements for making URHs applications with specific nozzle opening diameters and maximum pressures to apply in a manner that creates a specific spray droplet spectrum in accordance with the standards of ASABE. Throughout chapters 16-230, 16-231 and 16-232 WAC the existing rules require applications of URHs be made using nozzles with minimum orifice opening diameters and maximum pressure in pounds per square inch (psi). These requirements were adopted decades ago (1970s and early 80s) to decrease the risk of drift and damage to sensitive crops (especially grapes). Experts recognized long ago that larger spray droplets do not drift as far as smaller droplets. At the time the rules were adopted, the only way to create a large droplet spectrum was to use nozzles with large orifice opening diameters at low pressure. Thus, applications of URHs in sensitive areas where drift could be very devastating, were required to be made using nozzles with large orifice openings at low pressure. That is not always the case today since applications with large nozzle orifice opening diameters at low pressure do not always create the largest droplets. Spray equipment and nozzle technology have advanced tremendously since the current rules were adopted. Air induction nozzles for example, which were developed to reduce drift,

require higher pressures to function correctly. Thus, an applicator that is trying to use the best equipment (nozzles) to reduce drift is prevented from doing so by the current rules since the rules do not allow for the necessary higher pressure. Over the last seven years, in order to allow applicators to use the best drift prevention technology, WSDA has issued a general permit that applies to all areas of eastern Washington. This permit provides for an allowance to use nozzles that make applications safer.

The other problem facing applicators is that nozzle manufacturers and dealers no longer describe nozzles by the size of the orifice opening diameter. Nozzle specifications are described as the droplet spectrum size that will be created at a given pressure (see nozzle chart at <https://agr.wa.gov/LawsRules/Rulemaking/PM/UseRestrictedHerbicides.aspx>). In order to comply with the current rules, applicators have to guess at what nozzles they need to purchase in order to comply with the rules. While some long-time, experienced applicators are likely accurate at purchasing the correct nozzles, others may, with the best intentions, purchase incorrect nozzle sizes, thus unknowingly putting themselves out of compliance. In changing these rules WSDA is following the most up-to-date, current industry standard. A standard that will be very understandable to URH applicators.

Additionally, many Environmental Protection Agency (EPA) registered pesticide labels require applications to be made in a manner that creates a specific droplet spectrum according to ASABE standards. In fact, in a recent message to states (see <https://agr.wa.gov/LawsRules/Rulemaking/PM/UseRestrictedHerbicides.aspx>), EPA indicated that they are "requiring that registrants remove reference to Volumetric Mean Diameter" as a required droplet size and indicated that "the preferred droplet size standard is from the American Society of Agricultural & Biological Engineers Standard ..."

It is a requirement of both statute (RCW 15.58.150 (2)(c)) and rule (WAC 16-228-1500 (1)(b)) that pesticide applications be made consistent with the pesticide label. Not only do most of the URH labels require a medium or coarse droplet spectrum, but all URH labels have language that requires applications be made so as not to affect desirable plants through drift or misapplication. While there are advantages to applying herbicides with a small droplet spectrum spray (potentially better coverage of the weed foliage, thus higher efficacy), those advantages are limited. If droplets are too small, a portion of the spray could be lost through evaporation and any wind will more easily blow the droplets off course. The results are a loss of chemical and poor coverage with a higher probability of drift off-target and damage to neighboring crops. Applications are prohibited under temperature inversion conditions (zero to 2+ mph wind) since very small droplets will become suspended in the air and drift off-target with air movement. Thus applications must be made when there is at least a slight breeze and the droplet spectrum created must be large enough to stay on target (medium or larger droplet spectrum). To comply with existing statute and rules, applicators must already use nozzles that create a medium or larger droplet spectrum.

The "statewide rules" (WAC 16-230-600 through 16-230-675) cover all of eastern Washington. Additionally, sixteen of the twenty eastern Washington counties have restric-

tions that go beyond the statewide rules. The specific county rules address more sensitive areas within the county. These existing rules have restrictions on nozzle orifice diameters that include minimums of 0.036 inch, 0.056 inch and 0.076 inch orifice opening diameters. When applications are made at the required pressures, these orifice opening diameters equate to creation of ASABE standard's fine, medium and coarse droplet spectrums, respectively. As discussed, a fine droplet spectrum cannot be used without violating other requirements that prohibit drift, whether on the pesticide label or in WAC. There are no registered URH labels that direct the applicator to apply with a fine droplet spectrum (most require a coarse droplet spectrum, but some have allowances for a medium spectrum). A "medium" droplet spectrum will provide for sufficient coverage and reduced chance of drift. Therefore, WSDA is adding a requirement to the statewide rules that ground applications must be made with nozzles and at a pressure that creates at least a medium droplet spectrum according to ASABE standards. The statewide rules will also require that all aerial applications be made with a coarse or larger droplet spectrum. By making these two requirements in the statewide rules, it allows for the repeal of all individual county rules that require a minimum 0.036 inch and 0.056 inch orifice opening diameter nozzles. These rule changes will not require applicators to purchase new nozzles in order to be in compliance since the change in nozzle standards are not more restrictive than existing rules.

Other proposed changes to chapters 16-230, 16-231 and 16-232 WAC, repeal requirements that are redundant or outdated to the extent that they are no longer necessary, including:

- Repeal WAC 16-230-450, which requires landowners in Spokane County to inform aerial applicators of nearby sensitive crops. This requirement is unique to Spokane and Whitman counties. Aerial applicators are aware that all applications need to be made in a careful, on-target manner so as to avoid drift. In the last twenty-five years WSDA has not investigated any incidents (throughout the state) resulting from a landowner failing to inform an aerial applicator of nearby susceptible crops.
- Repeal WAC 16-230-460, which requires applicators in Spokane County to inform commercial greenhouses forty-eight hours in advance of any URH applications within one-half mile. This requirement is unique to Spokane County. Greenhouse owners can't realistically take steps to protect their crops when they are notified in anticipation that drift may occur. Aerial applicators know they are responsible if they drift. Though it does provide the greenhouse owner with the identity of the applicator, that information can easily be obtained in the event of an incident.
- Eliminate allowance to use "approved ground rigs" at higher wind speeds (up to twenty mph). Decades ago, at the time these allowances were adopted into rule, there were efforts to fabricate ground spray rigs that had covers and deflectors that could prevent drift at higher wind speeds. Those efforts never came to fruition. WSDA does not approve of specialized ground rigs, and there are no known ground rigs that can safely apply herbicides in twenty mph winds. Most URH pesticide labels prohibit applications in wind speeds over fifteen mph. Therefore, in most cases it would be a violation of statute (RCW 15.58.150 (2)(c)) and rule (WAC 16-228-1500 (1)(b)) to use such ground rigs even if approved by WSDA.
- Delete prohibition in WAC 16-230-600 on using high volatile and dust formulations of URHs. WAC 16-228-1250 of the general pesticide rules also prohibits high volatile and dust formulations of phenoxy herbicides. Since this prohibition covers the entire state, there is no need for it in WAC 16-230-600.
- Repeal WAC 16-230-625, which requires mixing, loading, decontamination of equipment, and aircraft take-off/landing be done in a manner that doesn't damage susceptible crops. The department has not investigated an incident at an aircraft mixing/loading/landing site for many years. The risk of an incident occurring is very low and if an incident does occur at a mixing/loading site, any resulting damage would very likely be localized. The department can cite provisions in the general pesticide rules for any incident at a mix/load site (e.g., WAC 16-228-1220(2)) or during transport (e.g., WAC 16-228-1220(8) and 16-228-1500 (1)(d), (e)).
- Repeal WAC 16-230-630, which prohibits storing URHs in areas where they're prohibited, unless in sealed or uncontaminated containers. The department has not cited a violation of this provision since at least the mid-90s and is not aware of any incidents where damage occurred due to storage of a contaminated and/or open container of a URH. The department believes that the chances of an incident causing damage are very low, and if such an incident did occur, the damage would be localized and not likely very severe. In such an instance the department can cite violation(s) of the general pesticide rules (e.g., WAC 16-228-1200(1), 16-228-1220 (2), (6)).
- Repeal WAC 16-230-635, which restricts oil carriers and adjuvants to a maximum of one pint per acre. Oil carriers and adjuvants have not been a concern for many years. Adjuvants have been regulated as pesticides since 1991. This restriction no longer serves an apparent purpose for the protection of sensitive crops. WSDA has not cited a violation of this provision since at least the mid-90s. Herbicide and adjuvant chemistries have changed tremendously since this provision was adopted decades ago. With the limitation of one pint per acre for adjuvants, this provision may in some cases hinder current best management practices which could be helpful in preventing drift.
- Repeal WAC 16-230-660, which prohibits aircraft from turning or flying low over cities and towns. This restriction regulates the operation of the aircraft when the booms are off. The department may get a call about low flying aircraft once every few years. When we do, we generally refer the complaint to the Federal Aviation Administration (FAA). Department staff do not have any expertise in determining what would be considered a legitimate aircraft maneuver. If this provision is repealed, staff can still assist the complainant (as we do now) with getting FAA involved.

- Repeal WAC 16-230-673, which requires that application through irrigation systems (chemigation) must go by the same rules as ground applications. Applications of URHs via chemigation are subject to the same requirements as ground applications (except for nozzle and pressure requirements). There is no need to make this statement in order for chemigation applications to be subject to the statewide rules. The department adopted specific chemigation rules to regulate off-target movement of pesticides through irrigation (e.g., WAC 16-202-1003 (3), (6) and (8)).
- Repeal eighty-five degrees Fahrenheit temperature cut-off for URHs in individual counties. Since the statewide rules in WAC 16-230-640 also require applications to stop at eighty-five degrees Fahrenheit there is no reason to repeat it in the individual county requirements.
- Delete reference to "critical weed control" in WAC 16-230-650 on ability for WSDA to issue permits. Also delete reference to "2,4-D committees" in the same subsection. WSDA issues permits based upon specific situations and whether a permit is justified. "Critical weed control" is not defined. "2,4-D committees" have not been in existence for three decades.
- Added statement in WAC 16-230-800 (Benton County) that applicators must comply with statewide rules (WAC 16-230-600 through 16-230-680) and general pesticide rules (chapter 16-228 WAC). This is important with the change on nozzle orifice opening size and maximum pressure to applications creating specific droplet spectrum sizes that applicators must default to the statewide rules when there are no specific requirements in the area they intend to treat.
- Added exception for "ready-to-use liquid formulations" to definition of restricted use herbicides in the various county rules. This exception is currently in the statewide rules under WAC 16-230-610(3), but is negated if not also included in individual counties. Ready-to-use liquid formulations are marketed and sold almost exclusively to homeowners mostly in one-gallon containers. These formulations are premixed (unconcentrated) so the potential for misapplication is substantially reduced (applicators cannot mix too strong of a spray solution). In response to a petition for rule making, in 2014 WSDA adopted an exception for these ready-to-use formulations to the "definition" of URHs in the statewide rules (WAC 16-230-610). The intent of the petition and the rule making was to allow this exception in all of eastern Washington. The effect of this exception allows stores to sell these formulations to unlicensed persons and the store that sells does not need a pesticide dealer license. At the time of rule making, WSDA failed to add this exception to the individual county rules. Since pesticide dealers and applicators must abide by both the statewide and county requirements, this exception must be added to the county rules to be effective in the county.
- Repeal subsections that restrict oil carriers for brush control in certain counties. Oil carriers for brush control have not been a concern for many years. Herbicide and adjuvant chemistries have changed tremendously since this provision was adopted decades ago. WSDA has not cited a violation of this provision since at least the mid-90s. This restriction no longer serves an apparent purpose for the protection of sensitive crops. WSDA does not anticipate that this will become more of a practice if this restriction is repealed, however, the general pesticide rules (WAC 16-228-1220(2)) can be cited for violations occurring from any incidents.
- Delete prohibition of aerial applications within one mile of a commercial vineyard in individual county rules. This requirement as well as the ability to acquire a permit are covered in the statewide rules under WAC 16-230-665. Since there is the same requirement in the statewide rules, there is no reason to repeat it in the individual counties.
- Repeal subsections in individual counties that restrict the loading and/or mixing of URHs for aerial applications to those formulations which may be applied in the area in which the airstrip is located. The department has not investigated an incident at an aircraft mixing/loading site for many years, nor of a transport from one area to another. The safety and professionalism of the aerial application industry has greatly improved over the last three decades. The risk of an incident occurring is very low and if an incident does occur at a mixing/loading site, any resulting damage would very likely be localized. The department can cite provisions in the general pesticide rules for any incident at a mix/load site (e.g., WAC 16-228-1220(2)) or during transport (e.g., WAC 16-228-1220(8) and 16-228-1500 (1)(d), (e)). This is an outdated requirement that can now be eliminated.
- Repeal restriction in WAC 16-231-530(1) that prohibits application of URHs in Areas 1 and 3 of Whitman County from April 15 to October 31 when wind speed exceeds seven mph. Area 1 of Whitman County are those areas that surround incorporated communities and towns where ornamental landscapes may be at risk from exposure to drift of URHs. Some other counties also have restrictions around major population centers, but most communities in eastern Washington have no special restriction for application of URHs. Area 3 covers roughly the eastern third of Whitman County.
Wind speed and direction is a constant factor that must be taken into consideration when making applications of URHs in Areas 1 and 3. Even with wind speeds lower than seven mph, damage can occur to sensitive plants downwind of the application if the application is not made in a careful manner. On the other hand, applications at eight or nine mph can be more protective if the wind is blowing away from sensitive plants. The applicator is responsible to keep the application on-target and must take all of these factors into consideration when making an application. Since sustained wind speeds of less than seven mph are infrequent during April through October, applicators are severely limited in making necessary applications of URHs. There already is a general restriction in the statewide rules (WAC 16-230-640) that prohibits making applications when weather conditions could cause damage to "adjacent and nearby towns, susceptible crops and plantings through physical drift"

This is enforceable even when wind speeds are below any set maximum in the rules.

- Delete prohibition in WAC 16-232-015 on mixing/loading of URH on any airstrip, airfield, except the municipal airport. The department has not investigated an incident at an aircraft mixing/loading site for many years, nor of a transport from one area to another. The safety and professionalism of the aerial application industry has greatly improved over the last three decades. The risk of an incident occurring is very low and if an incident does occur at a mixing/loading site, any resulting damage would very likely be localized. The department can cite provisions in the general pesticide rules for any incident at a mix/load site (e.g., WAC 16-228-1220(2)) or during transport (e.g., WAC 16-228-1220(8) and WAC 16-228-1500 (1)(d), (e)). This is an outdated requirement that can now be eliminated.

Additionally, an expansion of Area 1 in Kittitas County is proposed. The department received a petition to expand Area 1 of Kittitas County to provide better protection of orchards in an area that currently lies just outside of Area 1. Road names in the description of Area 1 were also in need of updating. There are very few cropping systems that apply URHs in the expanded area, and these would only be affected if they are within five hundred feet of an orchard. The Washington state department of transportation (WSDOT) is the main applicator of phenoxy herbicides in the proposed expanded area. According to WSDOT, they can easily change chemistries in this area and it will not negatively impact their program.

Reasons Supporting Proposal: The rules covering restricted use pesticides (mostly restricted use herbicides) found in chapters 16-230, 16-231 and 16-232 WAC are extensive, complex and confusing. In some cases the rules are redundant, while in other cases they are so outdated that they pose an increased risk to sensitive crops (nozzle/pressure requirements). Rules that are complex and confusing promote inadvertent noncompliance. Some of these rules are over fifty years old and there has been no substantial revisions for over twenty years. Many things have changed in the interim. Remarkable improvements in sprayer and application technology have made some of the requirements obsolete, and pesticide labels now have many restrictions that didn't exist when these rules were first adopted. Many of the requirements found in these three chapters are preventative in nature. In all cases, if there is an incident of crop damage that occurs, the department can take action under various other statutes and rules (e.g., chapter 16-228 WAC, General pesticide rules). These changes will help to simplify the rules without increasing risk to sensitive crops.

Statutory Authority for Adoption: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW.

Statute Being Implemented: Chapters 15.58 and 17.21 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joel Kangiser, 1111 Washington Street S.E., Olympia, 360-902-2013.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

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

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

Is exempt under RCW 34.05.310 (4)(c), (d), and (g).

Explanation of exemptions:

- RCW 34.05.310 (4)(c): The proposed rule amendment adopts the droplet spectrum standards of ASABE. This change will make the rules understandable to applicators and will allow them to use the most current nozzle technology to make safer applications of URHs. There is not a requirement in state law that these standards be adopted, but the standards are the most up-to-date standard available.
- RCW 34.05.310 (4)(d): Changing the nozzle/pressure requirements to a droplet spectrum requirement clarifies the application requirement language for URHs without changing its effect. Also, section titles will change from a Q&A format to a statement/phrase that describes the content of the section.
- RCW 34.05.310 (4)(g): Fewer permits will be necessary for aerial applicators to mix/load and transport URHs since WAC 16-232-015 (2)(d) will be repealed. This subsection prohibits the loading and/or mixing of URHs on any airstrip, airfield or any location within Area 2, except the municipal airport located northeast of Walla Walla. Aerial applicators may need to use a different airstrip in Area 2 of Walla Walla County, but they must currently obtain a permit to do so. Additionally, fewer permits will be necessary for aerial applicators to mix/load and transport URHs since WAC 16-231-140, 16-231-230, 16-231-725, 16-231-830, and 16-231-930 will be repealed. These subsections restrict the loading and/or mixing of URHs for aerial applications to those formulations which may be applied in the area in which the airstrip is located. Aerial applicators contract to make applications far outside of the area where the airstrip is located. Thus, if they need to apply a URH to another

area where the URH is allowed, but not allowed in the airstrip area, they must currently obtain a permit.

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

- The main changes to chapters 16-230, 16-231 and 16-232 WAC involve a change in equipment and application standards for making applications of URHs. This change is from requirements to use nozzles with specific orifice opening diameters at maximum pressures to making applications in a manner that creates a droplet spectrum of medium or larger according to the standards of ASABE. It is a requirement of both statute (RCW 15.58.-150 (2)(c)) and rule (WAC 16-228-1500 (1)(b)) that pesticide applications be made consistent with the pesticide label. Not only do most of the URH labels require a medium or coarse droplet spectrum, but all URH labels have language that requires applications be made so as not to affect desirable plants through drift or misapplication. While there are advantages to applying herbicides with a small droplet spectrum spray (potentially better coverage of the weed foliage, thus higher efficacy), those advantages are limited. If droplets are too small, a portion of the spray could be lost through evaporation and any wind will more easily blow the droplets off course. The results are a loss of chemical and poor coverage with a higher probability of drift off-target and damage to neighboring crops. Applications are prohibited under temperature inversion conditions (zero to 2+ mph wind) since very small droplets will become suspended in the air and drift off-target with air movement. Thus applications must be made when there is at least a slight breeze and the droplet spectrum created must be large enough to stay on target (medium or larger droplet spectrum). To comply with existing statute and rules, applicators must already use nozzles that create a medium or larger droplet spectrum so there is no cost to individuals or businesses with these changes.
- Other changes involve repeal of requirements that are outdated and irrelevant, or are redundant with other rules. None of these repeals will cost applicators.
- An exception to the "definition" of URHs that is in the statewide rules (WAC 16-230-610) was added to the individual county rules. This exception will not cost applicators or dealers.
- Area 1 of Kittitas County was slightly expanded to protect orchards that currently lie outside of the area. There are very few cropping systems that apply URHs in the expanded area. And these would only be affected if they are within five hundred feet of an orchard. WSDOT is the main applicator of phenoxy herbicides in the proposed expanded area. According to WSDOT, they can easily change chemistries in this area and it will not negatively impact their program. There are no known negative impacts to expanding this area, and no associated costs. Road names in the description of Area 1 were also updated.

November 7, 2018

R. Schoen-Nessa

Assistant Director

Pesticide Management Division

NEW SECTION

WAC 16-230-005 Adoption of national consensus code. Adoption of provisions under the American Society of Agricultural and Biological Engineers (ASABE) standards in this chapter is adoption of the provisions in the July 2018 version.

NEW SECTION

WAC 16-230-008 Order of precedence. If there is a conflict between the spray droplet spectrum size required in these rules and that which is required by the pesticide label, the applicator must use the largest droplet spectrum size required.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-010 (~~What are the~~) Restrictions on insecticides used on blossoming alfalfa, clover and mint(?). For the purposes of WAC 16-230-010 through 16-230-079, the following pesticides have additional statewide use restrictions when applied to blossoming alfalfa, clover and mint.

COMMON CHEMICAL NAME	ALSO KNOWN AS*
acephate	Orthene
azinphos-methyl	Guthion
carbaryl	Sevin
carbofuran	Furadan
chlorpyrifos	Lorsban
diazinon	
dimethoate	Cygon
disulfoton	Di-Syston
endosulfan	Thiodan
fluvalinate	Spur
formetanate hydrochloride	Carzol
malathion	Fyfanon
methidathion	Supracide
methomyl	Lannate, Nudrin
methoxychlor	Marlate
methyl parathion	
naled	Dibrom
oxamyl	Vydate
oxydemeton-methyl	Metasystox-R
phorate	Thimet

COMMON CHEMICAL NAME	ALSO KNOWN AS*
phosmet	Imidan
trichlorfon	Dylox

* This column is to be used only as a guide and may not include all brand or trade names under which these chemicals are distributed.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-015 (~~What definitions apply to this section?~~) Definitions and terms. (1) The term "blossoming alfalfa, mint or clover" as used in WAC 16-230-010 through ~~((16-230-083))~~ 16-230-082 shall apply when there are five or more blooms per square yard on the average in a given field: Provided, That following the first cutting the bloom count shall be taken only on the current crop. For the purpose of this rule, a "bloom" on clover or alfalfa is defined as any alfalfa raceme or clover head containing one or more open flowers. A "bloom" on mint is defined as any head or spike with one or more open (florets) flowers.

(2) The term "pollen shedding corn" as used in WAC 16-230-082 through 16-230-088 shall be that stage of growth when ten percent or more of the corn plants in any one quarter portion of a field are showing spike anthers.

(3) The time of sunrise and sunset shall be that of the official tables, U.S. Weather Bureau, Yakima, Washington.

(4) "Ready-to-use" means a pesticide that is applied directly from its original container consistent with label directions.

(5) "Picloram" means all registered pesticide products containing 4-amino-3,5,6-trichloropicolinic acid as the potassium salt. This formulation may be known as Tordon.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-030 (~~What are the~~) Use restrictions for alfalfa and clover pesticide applications(?) (1) The use or application of any formulation (except where the formulation is specified) of the following listed pesticides is prohibited on blossoming alfalfa and clover crops within seven days to blossoming: Provided, That methidathion (Supracide) when used in Kittitas County on timothy hay mixed with alfalfa and/or clover shall only be prohibited within three days to blossoming. See WAC 16-230-076 and 16-230-078 for additional restrictions in certain areas of Walla Walla County.

- Azinphos-methyl (Guthion)
- Carbaryl (Sevin)
- Carbofuran (Furadan)
- Dimethoate (Cygon)
- Methidathion (Supracide)

(2) The use or application of liquid formulations of chlorpyrifos (Lorsban), wettable powder formulations of naled (Dibrom), and liquid or wettable powder formulations of malathion (Fyfanon) and phorate (Thimet) applied as sprays on blossoming alfalfa or clover crops is restricted to applications only within the period beginning at two hours prior to sunset and ending at midnight of the same day.

(3) The use or application of any formulation (except where the formulation is specified) of the following pesticides is prohibited on blossoming alfalfa and clover crops:

(a) Carbaryl (Sevin) see ~~((number (1) above))~~ subsection (1) of this section

- Diazinon
- Fenthion (Baytex)
- Malathion (Fyfanon) ULV and dust
- Methyl parathion
- Naled (Dibrom) dust
- Phosmet (Imidan)

(4) The use or application of the following listed pesticides or any formulation thereof (except where the formulation is specified) on blossoming alfalfa and clover crops is restricted to applications only within the period beginning at two hours prior to sunset and ending at two and one-half hours after sunrise the following morning: Provided, That methomyl (Lannate or Nudrin) shall only be applied to blossoming clover crops pursuant to this rule, and its application to blossoming alfalfa is further restricted to applications only within the period beginning at two hours prior to sunset and ending at midnight the same day: Provided further, That the application of the following use restricted pesticides on blossoming alfalfa in Walla Walla County is further restricted to applications only within the period beginning at sunset and ending at two hours after midnight the following morning:

- Formetanate hydrochloride (Carzol)
- Naled (Dibrom) emulsifiable concentrate
- Disulfoton (Di-Syston)
- Endosulfan (Thiodan)
- Oxydemeton-methyl (Metasystox-R)
- Methomyl (Lannate or Nudrin)
- Methoxychlor (Marlate)
- Phorate (Thimet) granular
- Trichlorfon (Dylox)
- Oxamyl (Vydate)
- Fluvalinate (Spur)

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-075 (~~What are the~~) Restrictions for blossoming mint pesticide applications(?) The use or application of malathion dust on blossoming mint is prohibited. The use or application of malathion (Fyfanon) liquid, oxydemeton-methyl (Metasystox-R), and methomyl (Lannate or Nudrin) liquid on blossoming mint is restricted to applications only within the period beginning at two hours prior to sunset and ending at two and one-half hours after sunrise the following morning. The use or application of any formulation of acephate (Orthene) on blossoming mint is restricted to applications only within the period beginning at two and one-half hours prior to sunset and ending at midnight of the same day.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-076 (~~What are the~~) Boundaries and restrictions for blossoming alfalfa, clover and mint for Area 1(?) (1) Area 1 description. South central Walla

Walla County - All lands lying within a line starting at the junction of the Washington-Oregon border and the Rainville Road; thence north along the Rainville Road to the Frog Hollow Road; thence west along the Frog Hollow Road to the McDonald Road; thence north along the McDonald and Bridge Road to State Highway 12; thence west along Highway 12 to the Woodward Canyon Road; thence north and west along the Woodward Canyon Road to the northeast corner of Section 24, T7N, R33E; thence west along the section lines to the northwest corner of Section 23, T7N, R32E; thence south along the section lines to the Walla Walla River; thence southerly along the Walla Walla River to its intersection with the west section line of Section 7, T6N, R33E; thence south along the section lines to the Washington-Oregon border; thence east along the border to the point of beginning.

(2) Area 1 restrictions. In addition to the restrictions in WAC 16-230-030, the use or application of azinphos-methyl (Guthion), carbofuran (Furadan), phosmet (Imidan), chlorpyrifos (Lorsban), and methidathion (Supracide) on alfalfa and clover crops, is prohibited after May 23rd of each year, and the use or application of dimethoate (Cygon) on alfalfa and clover crops is prohibited after May 30th of each year.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-078 ((~~What are the~~) Boundaries and restrictions for blossoming alfalfa, clover and mint for Area 2(?)). (1) Area 2 description. South central Walla Walla County - All lands lying within a line starting at the junction of the Rainville Road and the Washington-Oregon border; thence north to the Frog Hollow Road; thence east along the Frog Hollow Road to the Valley Chapel Road; thence south along the Valley Chapel Road to the Washington-Oregon border; thence west along the border to the point of beginning.

(2) Area 2 restrictions. In addition to the restrictions in WAC 16-230-030, the use or application of azinphos-methyl (Guthion), carbofuran (Furadan), phosmet (Imidan), chlorpyrifos (Lorsban), and methidathion (Supracide) on alfalfa and clover crops, is prohibited after May 30th of each year, and the use or application of dimethoate (Cygon) on alfalfa and clover crops is prohibited after June 6th of each year.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-079 ((~~Can the department issue~~) Special permits(?)) for blossoming alfalfa, clover and mint pesticide applications. The department may issue a permit upon receipt of a written request to apply use restricted pesticides listed in WAC 16-230-010 in variation of any restrictions listed in WAC 16-230-015, 16-230-030, and 16-230-075 through 16-230-078. The department will consider the hazard to pollinating insects before a permit is issued.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-082 ((~~What are the use~~) Restrictions on pesticides used on pollen shedding corn(?)). (1) ~~((The term "pollen shedding corn" as used in WAC 16-230-082 through 16-230-088 shall be that stage of growth when ten percent or more of the corn plants in any one quarter portion of a field are showing spike anthers.~~

~~((2))~~ The insecticides* carbaryl (Sevin), diazinon, endosulfan (Thiodan), fenvalerate (Pydrin), malathion (Fyfanon), methomyl (Lannate or Nudrin), methyl parathion, parathion, and permethrin (Ambush or Pounce) are by this order declared to be use restricted insecticides. Such insecticides are restricted in their use in Areas 1, 2 and 3 in eastern Washington.

~~((3))~~ (2) Area under order. Area 1 - Yakima County; Area 2 - Franklin, Adams and Grant counties; Area 3 - Area within Area 2 in Grant County.

*Listed trade names are to be used as a guide and may not include all the trade or brand names under which the chemicals are distributed.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-084 ((~~What are the~~) Restrictions in Areas 1 and 2(?)) for pollen shedding corn insecticide applications. (1) Area 1 description - Yakima County. This area includes all of the irrigable lands encompassed by a line beginning at the southwest corner of Section 18, T8N, R21E; thence north nine miles more or less to the southeast corner of Section 36, T10N, R20E; thence fifteen miles west more or less to the southwest corner of Section 34, T10N, R18E; thence north fifteen miles more or less to the northwest corner of Section 22, T12N, R18E; thence east four miles more or less to the Northern Pacific Railroad tracks; thence following the tracks southeast to the Oldenway Road; thence north along the Oldenway Road and section lines to the Yakima River; thence southeast along the Yakima River to Highway 22 north of Toppenish; thence north along Highway 22 to Highway 12 at Buena; thence southeasterly along Highway 12 to the southern section line of Section 31, T11N, R21E; thence south one-quarter mile more or less to the Yakima River; thence southeast along the Yakima River to the Sunnyside-Mabton Road; thence south one mile to the Boundary Road; thence southwest along the Boundary Road and the Yakima Indian reservation boundary to the northern section line of Section 22, T8N, R22E; thence west nine miles more or less to the point of beginning.

(2) Area 2 description - Franklin, Adams and Grant counties. This area includes all of the irrigable lands encompassed by a line beginning at Highway 12 and the Columbia River; thence north and west following the river the length of Franklin County and into Grant County to the junction of Grant-Douglas County line; thence north on Grant-Douglas County line to the fifth standard parallel north; thence east twenty-five miles more or less to Highway 17; thence southeast seventeen miles more or less on Highway 17 to Highway 90; thence east twelve miles more or less to Grant-Adams County line; thence south on county line twelve miles more or less to the southeast corner of Section 36, T17N, R30E

(southeast corner of Grant County); thence south twelve miles more or less (in Adams County) along east boundary of Section 1, 12, 13, 24, 25, 36, T16N, R30E; thence south along east boundary of Sections 1, 12, 13, 24, 25, 36, T15N, R30E continuing south into Franklin County along east boundary of Section 1 and 12, T14N, R30E to southeast corner of said Section 12; thence west one mile to Highway 17 (Franklin County); thence south on Highway 17 seventeen miles more or less to junction with Highway 395; thence south on Highway 395 fifteen miles more or less to Highway 12; thence west and south four miles more or less to Columbia River to the point of beginning.

(3) Area 1 and 2 restrictions.

(a) On and after August 1st to October 1st of any given year, application of carbaryl (Sevin) (except Sevin XLR), methyl parathion and malathion dust in any combination on pollen shedding corn is prohibited.

(b) On and after August 1st to August 15th of any given year, application of diazinon, fenvalerate (Pydrin), endosulfan (Thiodan), Sevin XLR, methomyl (Lannate or Nudrin), malathion liquid, and permethrin (Ambush or Pounce) on pollen shedding corn is prohibited between the hours of 7:00 a.m. and 2:00 p.m.

(c) On and after August 15th to September 1st of any given year, application of diazinon, fenvalerate (Pydrin), endosulfan (Thiodan), Sevin XLR, methomyl (Lannate or Nudrin), malathion (Fyfanon) liquid, and permethrin (Ambush or Pounce) on pollen shedding corn is prohibited between the hours of 8:30 a.m. and 3:30 p.m.

(d) On and after September 1st to October 1st of any given year, application of diazinon, fenvalerate (Pydrin), endosulfan (Thiodan), Sevin XLR, methomyl (Lannate or Nudrin), malathion (Fyfanon) liquid, and permethrin (Ambush or Pounce) on pollen shedding corn is prohibited between the hours of 10:00 a.m. and 4:00 p.m.

(e) The application of microencapsulated methyl parathion shall be prohibited on all pollen shedding corn when properly marked honey bee apiaries occur within a six-mile radius of the pollen shedding corn to be treated.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-086 ((What are the)) Restrictions in Area 3(?) for pollen shedding corn insecticide applications. (1) Area 3 description - Area within Area 2 in Grant County. This area includes all of the irrigable lands encompassed by a line beginning at the junction of West 645 wasteway and White Trail Road and proceeding east four miles more or less on White Trail Road to Winchester wasteway; thence southeast four miles more or less along Winchester wasteway to I-90; thence east on I-90 nine miles more or less to Potholes Reservoir; thence following the west shoreline southeast to the Frenchmen Hills wasteway; thence west along Frenchmen Hills wasteway fourteen miles more or less to its junction with West 645 wasteway; thence northwest and north fourteen miles more or less along West 645 wasteway to junction with White Trail Road, the point of beginning.

(2) Area 3 restriction. This area is unrestricted as to the use of carbaryl (Sevin), diazinon, endosulfan (Thiodan), fenvalerate (Pydrin), malathion (Fyfanon), methomyl (Lannate or Nudrin), methyl parathion, and permethrin (Ambush or Pounce) on pollen shedding corn: Provided, That the application of microencapsulated methyl parathion shall be prohibited on all pollen shedding corn when properly marked honey bee apiaries occur within a six-mile radius of the pollen shedding corn to be treated.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-088 ((May a permit be issued for)) Permits granting a variance from restrictions(?). Upon receipt of a written request and justification for a variance, the director of the Washington state department of agriculture may issue a permit granting a variance from restrictions pertaining to pollen shedding corn.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-150 ((What areas are)) Areas under order for use restricted desiccants and defoliants(?). (1) Area under order: All counties located east of the crest of the Cascade Mountains.

(2) Use restricted desiccants and defoliants: The following desiccants and defoliants are declared to be use restricted desiccants and defoliants in the area under order: Diquat; Paraquat; and Endothall.

(3) Additional restrictions apply for certain areas of Walla Walla County (see WAC 16-230-190).

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-160 Desiccants and defoliants—Ground equipment—((Nozzle and pressure)) Droplet spectrum requirements for the entire area under order. The following requirements apply to the entire area under order as listed in WAC 16-230-150:

(1) ~~((Nozzle requirements—A minimum orifice diameter of .052 inches shall be used for application of all use restricted desiccants and defoliants: Provided, That a RD 2 Raindrop nozzle shall be allowed.~~

~~(2) Pressure requirements—Maximum pressure at the nozzles for all applications of use restricted desiccants and defoliants shall be 30 psi.~~

~~(3)) Ground applications of use restricted desiccants and defoliants shall conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the medium (or larger) range as defined by the ASABE standards.~~

(2) The Washington state department of agriculture may issue a permit upon receipt of a written request to apply use restricted desiccants and defoliants within the area as described in WAC 16-230-150 with nozzles, nozzle type, drift control additives, and/or arrangements other than those allowed herein. The director will consider safety factors and

the possible exposure to susceptible crops in the areas of proposed application before a permit will be issued.

~~((4))~~ (3) Diesel and other fuel oils are prohibited in all tank mixes with desiccants and defoliant.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-170 Desiccants and defoliants—Aerial equipment—Boom length, pressure, nozzle requirement, nozzle height of discharge and smoke device requirements for the entire area under order. The following requirements apply to the entire area under order as listed in WAC 16-230-150:

(1) Boom length restrictions:

(a) Fixed wing: The working boom length shall not exceed 3/4 of the distance from the center of aircraft to wing tip on each side of aircraft.

(b) Helicopters: The working boom length shall not exceed 6/7 of the distance from the center of rotor to rotor tip on each side of the aircraft for rotors 40 feet or under or 3/4 of the distance from the center of rotor to rotor tip on each side of the aircraft where the rotor exceeds 40 feet while applying use restricted desiccants and defoliant.

~~(2) ((Pressure restrictions: Maximum pressure at the nozzles for all aerial applications of use restricted desiccants and defoliant shall be 25 psi.~~

~~(3) Nozzle requirements for applications of use restricted desiccants and defoliant:~~

~~(a) Fixed wing:~~

~~(i) Aircraft shall not be equipped with core plates or any device or mechanism which would cause a sheet, cone, fan or other dispersion of the discharged material. Nozzle orifices shall not be less than 0.094 inches. Provided, That the RD8-46 Raindrop® nozzles may be used with a minimum orifice diameter of 0.156 inches;~~

~~(ii) Nozzles shall be directed downward and backward 135 degrees from the direction of flight.~~

~~(b) Helicopter:~~

~~(i) Straight stream jet nozzles, without core plates, with a minimum orifice diameter of 0.063 inches;~~

~~(ii) Straight stream jet nozzles with a minimum orifice diameter of 0.125 inches with No. 46 core plates or larger;~~

~~(iii) RD8-46 Raindrop® nozzles may be used with a minimum orifice diameter of .075 inches;~~

~~(iv) Nozzles shall be directed downward and backward 135 degrees from the direction of flight for applications over 50 miles per hour and 90 degrees downward and backward for applications under 50 miles per hour.~~

~~(4)) Aircraft applications shall conform to the manufacturer's specified combination of nozzles, pressure (psi), plates, nozzle orientation, and aircraft speed that produces a droplet class that falls within the coarse (or larger) range as defined by the ASABE standards.~~

(3) Height of discharge requirements by aircraft of use restricted desiccants and defoliant: The nozzles must be closed while either descending onto or ascending from the target field, and also ascending or descending over an obstacle or obstruction within the target field that would alter the height of application more than ten feet.

~~((5))~~ (4) Smoke device requirements: All aircraft applying use restricted desiccants and defoliant shall utilize a smoke device to determine wind directions and temperature inversion situations.

~~((6))~~ (5) The Washington state department of agriculture may issue a permit upon receipt of a written request to apply use restricted desiccants and defoliant within the area under order as described in WAC 16-230-150 with nozzles, nozzle type, drift control additives and/or arrangements other than those allowed herein. The director will consider safety factors and the possible exposure to susceptible crops in the areas of proposed application before a permit will be issued.

~~((7))~~ (6) Diesel and other fuel oils are prohibited in all tank mixes with desiccants and defoliant.

~~((8))~~ (7) Aerial applications of desiccants and defoliant are prohibited within a distance of one mile of the city limits of any incorporated city or town and the same distance from the center of any unincorporated city or town comprised of ten or more inhabited, closely grouped residences.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-180 ((What are the) Weather and evening cutoff requirements for desiccants and defoliant(?)). The following requirements apply to the entire area under order as listed in WAC 16-230-150:

(1) Weather conditions: Use restricted desiccants and defoliant shall not be applied when there is a temperature inversion, or if wind or weather conditions are such that damage could result to susceptible crops or ornamentals: Provided, That aircraft applications of Paraquat shall be prohibited until the temperature inversion ceiling at the site of application is 1,000 feet or greater. Aircraft must be equipped with thermometers to detect the height of the inversion.

(2) Evening cutoff: All applications of use restricted desiccants and defoliant are prohibited from three hours prior to sunset to one hour after sunrise the following morning: Provided, That ground applications in Area 2 of Walla Walla County may begin at sunrise: Provided further, That ground applications may be allowed at other times by obtaining a written permit from the department.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-190 ((What are the) Restrictions on the use of desiccants and defoliant in Walla Walla County(?)). The following restrictions shall apply in Walla Walla County:

(1) Area 1 description - Town of Walla Walla and vicinity: This area includes all lands lying within the town of Walla Walla and vicinity beginning at the Washington-Oregon border and the west section line of Section 15, T6N, R34E; thence north along section lines and McDonald Road approximately seven miles to the southwest corner of Section 3, T7N, R36E; thence east along section lines approximately twenty miles to the southeast corner of Section 1, T7N, R37E; thence south approximately seven miles to the Washington-Oregon border; thence west approximately fifteen miles to point of beginning.

(2) Area 1 restrictions:

During the period of February 15th through November 1st of any year, any aerial application of use restricted desiccants and defoliants must have prior approval by obtaining a written permit from the Washington state department of agriculture.

(3) Area 2 description - Southern portion of Walla Walla County: This area includes all lands lying within an area encompassed by a line beginning at the Washington-Oregon border and the west section line of Section 18, T6N, R33E; thence north along section lines approximately eight miles to the northwest corner of Section 7, T7N, R33E; thence west along section lines approximately nine miles to the southeast corner of Section 4, T7N, R34E; thence south along section lines approximately eight miles to the Washington-Oregon border; thence west along the border approximately nine miles to the point of beginning.

(4) Area 2 restrictions:

(a) Paraquat restrictions:

During the period of February 15th through November 1st of any year, any aerial application of Paraquat or any mixture containing Paraquat must have prior approval by obtaining a written permit from the Washington state department of agriculture.

(b) Diquat restrictions:

During the period of February 15th through November 1st of any year, any application of Diquat or any mixture containing Diquat is restricted to ground apparatus only.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-400 (~~What is the~~) Area under order for use restricted herbicides in Spokane County(~~?~~)₂ (1) The area under order includes all lands lying within the borders of Spokane County. WAC 16-230-410 through 16-230-470 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through (~~16-230-675~~) 16-230-670.

AMENDATORY SECTION (Amending WSR 09-21-006, filed 10/8/09, effective 11/8/09)

WAC 16-230-410 (~~What are~~) Use restricted herbicides in Spokane County(~~?~~)₂ All formulations of phenoxy hormone-type herbicides, (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba are declared as use restricted herbicides except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf;

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlor-

prop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-420 (~~What are the~~) Boundaries and restrictions for Spokane County Area 2(~~?~~)₂ (1) This area includes all lands lying within a boundary line starting at the intersection of state Highway 2 and Christianson Road; thence north two miles more or less to the northwest corner of Section 17, T25N, R41E; thence east five miles more or less to Hayford Road; thence north eight miles more or less to the northwest corner of Section 6, T26N, R41E; thence east ten miles more or less to the northeast corner of Section 3, T26N, R43E; thence south five miles more or less to the northeast corner of Section 34, T26N, R43E; thence east fourteen miles more or less to the Idaho-Washington border; thence south seven miles more or less to the common boundary line between T24N and 25N; thence west six miles more or less to Chapman Road; thence south one mile more or less along Chapman Road to the common boundary line between Sections 1 and 12, T24N, R44E; thence east thirteen miles more or less to the Cheney-Spokane Road; thence southwesterly along the Cheney-Spokane Road two miles more or less to the common boundary line between Sections 14 and 15, T24N, R42E; thence south one and one-half miles more or less to the southeast corner of Section 22, T24N, R42E; thence west one and one-half miles more or less to the Cheney-Spokane Highway; thence southerly one mile more or less along the Cheney-Spokane Highway to the common boundary line between Section 28 and 33, T24N, R42E; thence east six miles more or less to Interstate 90; thence southerly three miles more or less to the intersection of Interstate 90 and Salnave Road; thence northwesterly along the Salnave Road three miles more or less to its intersection with the Medical Lake-Tyler Road; thence north four miles more or less to the intersection of Hallet and Richey Road; thence east one mile more or less along Hallet Road to the intersection of Hallet Road and Brooks Road; thence north three miles more or less on Brooks Road to the intersection of Brooks Road and Highway 2; thence east one mile more or less along Highway 2 to the point of beginning.

(2) Area 2 restrictions.

(a) (~~On and after May 1 through October 15, ground applications of use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.036 inches.~~

(b) ~~For roadside and right of way application drift reduction type systems such as direct-spray, raindrop or invert systems must be used.~~

(~~e~~) The use or application of low volatile ester formulations of use restricted herbicides is prohibited from May 1st through October 15th: Provided, That the department, upon written request, may issue a permit for the use of low volatile formulations for special weed control.

(~~(d)~~) (b) The application of use restricted herbicides is prohibited from three hours prior to sunset to sunrise the next day: Provided, That lawn and turf residential weed control, using nonvolatile formulations are exempt from the evening cutoff.

~~((e))~~ (c) The aerial application of use restricted herbicides is prohibited within Area 2: Provided, That the department may issue a special permit, upon written request, for special weed control.

~~((f))~~ Use restricted herbicides shall not be applied on or after May 1 through October 15 when the temperature is 85° or above at the point of application.

~~(g)~~ Ground applications of use restricted herbicides are allowed when using No. 2RD or 2RA raindrop nozzles: Provided, That the mean sustained wind velocity is fifteen miles per hour or less.)

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-430 ~~((What are the))~~ Boundaries and restrictions for Spokane County Area 3 ~~((?))~~. (1) An area within a distance of two-thirds of a mile of the city limits of incorporated cities and towns and the same distance from the center of any unincorporated town comprised of ten or more inhabited, closely grouped residences within Area 4 exclusive of Area 2.

(2) Area 3 restrictions. ~~((a))~~ The aerial application of use restricted herbicides is prohibited within Area 3: Provided, That the department, upon written request, may issue a permit to allow aerial applications of nonvolatile formulations of use restricted herbicides up to one-half mile of the city limits of incorporated towns and cities and up to one-half mile of the center of any unincorporated towns comprised of ten or more inhabited closely grouped residences.

~~((b))~~ On and after May 1 through October 15, aerial applications shall be made using the danger area restrictions (see WAC 16-230-675).

~~(c)~~ Ground applications of use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.031 inches.

~~(d)~~ Ground applications of use restricted herbicides shall be allowed when using No. 2RD or 2RA raindrop nozzles: Provided, That the mean sustained wind velocity is fifteen miles per hour or less.)

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-470 ~~((When is the))~~ Application of use restricted herbicides prohibited in Spokane County due to wind conditions ~~((?))~~. The use or application of use restricted herbicides shall be prohibited in the area under order when the mean sustained wind velocity is over twelve miles per hour throughout the year ~~((: Provided, That applications of use restricted herbicides shall be allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data))~~.

AMENDATORY SECTION (Amending WSR 79-07-091, filed 6/29/79)

WAC 16-230-520 Use and application of picloram in Spokane County. Picloram (Tordon) is hereby declared to

be a restricted use pesticide and the use or application of any formulation of picloram shall be prohibited in the following portion of Spokane County: An area beginning at the intersection of Brooks Road and state Highway 902; thence northerly along the Brooks Road four miles more or less to state Highway 2; thence easterly along state Highway 2 four miles more or less to the Craig Road; thence northerly on Craig Road for 1/2 mile more or less to the Airway Heights city limits; thence easterly one mile more or less along the north boundary of the Airway Heights city limits; thence southerly 1/2 mile more or less along the east boundary of the Airway Heights city limits to state Highway 2; thence easterly one mile along state Highway 2 to the Hayford Road; thence southerly three miles more or less along the Hayford Road to state Highway 902; thence westerly along state Highway 902 to the point of beginning.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-600 ~~((Can high volatile ester and dust formulations be used in Washington and what are the))~~ Areas under order for use restricted herbicides ~~((?))~~. ~~((+))~~ The distribution, use and application of all high volatile ester and dust formulations of restricted use herbicides are prohibited throughout the state.

~~((2))~~ WAC 16-230-605 through ~~((16-230-675))~~ 16-230-670 apply to all counties located east of the crest of the Cascade Mountains.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-605 ~~((Can))~~ Additional county rules ~~((be applied to))~~ for use restricted herbicides ~~((?))~~. The rules in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670 shall not preclude any additional restrictions on the application of use restricted herbicides provided for in the rules for specific counties located east of the Cascade Mountains.

AMENDATORY SECTION (Amending WSR 14-08-095, filed 4/2/14, effective 5/3/14)

WAC 16-230-610 ~~((What are))~~ Use restricted herbicides in eastern Washington ~~((?))~~. All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below are use restricted herbicides.

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf ~~((:))~~;

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less. ~~((For purposes of this subsection, "ready-to-use" means a pesticide that is~~

applied directly from its original container consistent with label directions:))

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-615 ((What are the)) Restrictions on the sale and distribution of use restricted phenoxy-hormone type herbicides and dicamba in eastern Washington((?)). Phenoxy-hormone type herbicides and dicamba shall be sold and distributed only by licensed pesticide dealers to certified applicators or their duly authorized representatives except those listed in WAC 16-230-610 (1) and (2).

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-640 Use restricted herbicides—Eastern Washington—Weather and temperature conditions. Use restricted herbicides shall not be applied on and after April 1st through October 31st of each year when there is a temperature inversion; or throughout the year if weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops and plantings through physical drift or volatilization, or the temperature is 85°F. or above at the point of application: Provided, That application at the rate of fifty gallons or more per acre ((using nozzles having a minimum orifice diameter of .072 inches)) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards shall be exempt from the 85°F. temperature cutoff requirement: Provided further, That when using ((the)) an invert system, applications may ((continue)) occur up to 95°F. with a maximum wind velocity of fifteen miles per hour and with water carrier at twelve or more gallons per acre.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-645 ((What is the)) Evening cutoff for use restricted herbicides((?) in eastern Washington. On and after May 1st through October 31st of each year, the application of use restricted herbicides is prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That if there is a mean sustained legal wind velocity of not less than five miles per hour the application of use restricted herbicides is allowed in Areas 3 and 4 up to one hour prior to sunset in all counties as restricted by rule except Benton, Franklin, Yakima, and Walla Walla counties.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-650 ((Can a permit be issued)) Permits for the application of certain use restricted herbicides((?)). The Washington state department of agriculture may issue a permit, upon receipt of a written request, to mix, load and apply certain use restricted herbicides ((for purposes of critical weed control when such activities are restricted by

rule. The director may consider recommendations of the 2,4-D committee for the county in question: Provided, That the 2,4-D committee is kept current for each county)) with nozzles, nozzle type, control additives, or arrangements other than those required by rule.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-655 Use restricted herbicides—Eastern Washington—Ground equipment ((pressure)) application requirements. ((Pressure shall not exceed twenty-five pounds per square inch at the nozzles: Provided, That pressure up to fifty pounds per square inch at the nozzle may be used for equipment with handguns, up to ninety pounds per square inch at the nozzle manifold for an invert system: Provided further, That when using a LP 8002 nozzle instead of a regular 8004 or equivalent, the maximum pressure shall be fifteen pounds per square inch at the nozzle:)) Ground applications of use restricted herbicides shall conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the medium (or larger) range as defined by the ASABE standards: Provided, That a pressure of 50 psi at the nozzle is the maximum that can be used for handgun applications when no manufacturer specified combination of nozzle and pressure for droplet size are available for that equipment. Upon request by the department the applicator shall provide all data which supports the nozzle configuration is compliant with the spray droplet classifications of medium or larger.

AMENDATORY SECTION (Amending WSR 10-15-015, filed 7/8/10, effective 8/8/10)

WAC 16-230-665 ((What are the)) Restrictions on aerial applications near vineyards((?)). (1) Aerial application of use restricted herbicides is prohibited within one mile of any commercial vineyard: Provided, That the Washington state department of agriculture may approve written requests and issue permit for aerial application of use restricted herbicides that may be applied to lands located one-half to one mile from commercial vineyards: Provided further, That no distance restrictions shall apply to aerial applications of use restricted herbicides near vineyards during the grape dormant season if written permission of the vineyard owner/manager is obtained. ((EXCEPTIONS are found in Franklin and Grant County restrictions.))

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-670 Use restricted herbicides—Eastern Washington—Aircraft boom length and ((pressure)) application requirements. In all ((Areas 1 and 2, of all)) counties restricted by rule the working boom length on fixed wing aircraft shall not exceed 3/4 of the wing span and the

working boom length on helicopters shall not exceed 6/7 of the total rotor length or 3/4 of the total rotor length where the rotor length exceeds forty feet.

~~((Pressure for aerial equipment shall not exceed 25 psi at the nozzles. Provided, That helicopters shall be allowed to use up to 35 psi in Areas 3 and 4 of all counties restricted by rule. Provided further, That pressure up to 50 psi at the nozzle may be used with invert systems which are allowed by written permit only.))~~ Aerial applications of use restricted herbicides shall conform to a combination of nozzles, pressure (psi), plates, nozzle orientation, and aircraft speed that produces a spray droplet class that falls within the coarse (or larger) range as defined by the ASABE standards. Upon request by the department the applicator shall provide all data which supports the nozzle configuration is compliant with spray droplet classifications of coarse (or larger).

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-800 ~~((What is the))~~ Area under order and restrictions for Benton County((?)). (1) The area under order includes: All lands lying within the boundaries of Benton County.

(2) The distribution, use, and application of use restricted pesticides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-810 ~~((What are the))~~ Restrictions on the application of certain pesticides in Benton County((?)). For the purposes of WAC 16-230-800 through ~~((16-230-870))~~ 16-230-868, the following pesticides are declared to be use restricted pesticides:

(1) Use restricted herbicides:*

(a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort);

(b) Desiccants and defoliants (such as Paraquat, Diquat, Endothal);

(c) Glyphosate (such as Roundup, Landmaster);

(d) Phenoxy hormone-type herbicides (such as 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)), except:

(i) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(ii) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf;

(iii) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

(e) Dicamba (such as Banvel);

(f) Bromoxynil except that the cutoff date of April 5th does not apply.

(2) Use restricted insecticides:

(a) Aerial applications of category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations;

(b) Aerial applications of category I insecticides, except granular and pellet formulations in Area 1 and Area 1A.

*Listed trade names are to be used as a guide and may not include all the trade or brand names under which the chemicals are distributed.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-815 ~~((Can))~~ Application of Paraquat and Diquat ((be applied)) by air in Benton County((?)). Aerial application of Paraquat or Diquat is prohibited in the entire area under order listed in WAC 16-230-800.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-820 ~~((Can))~~ Application of sulfonylurea herbicides ((be applied)) by air in Benton County((?)). Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-825 ~~((What are the))~~ Conditions apply to permits in Benton County((?)). The following conditions will apply to all permits issued under the authority of WAC 16-230-800 through ~~((16-230-870))~~ 16-230-868.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 21 N. First Avenue Suite 236, Yakima, Washington 98902. Applications may also be taken in person or by facsimile. Permits will not be granted by telephone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-830 ~~((Can))~~ Application of use restricted pesticides ((be applied)) in an emergency((?)) in Benton County. In the event of an emergency, as declared by the director, the department may issue permits for the use of

use restricted pesticides in variation of any restrictions contained in the area under order as defined in WAC 16-230-800. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substantially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-835 (~~What are the~~) Boundaries and restrictions for Benton County Area 1((?)). (1) Area 1 description (North Horse Heaven Hills). An area including all lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence east seven miles along section lines to the northwest corner of Section 27, T8N, R25E; thence north two miles along section lines to the northwest corner of Section 15, T8N, R25E; thence east eight miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N, R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of Section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence south approximately two miles along the Columbia River to the south section line of Section 5, T6N, R31E; thence west approximately eight miles along section lines to the southwest corner of Section 1, T6N, R29E; thence north two miles along section lines to the southwest corner of Section 25, T7N, R29E; thence west thirteen miles along section lines to the southeast corner of Section 27, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 27, T7N, R27E; thence west one mile along the section line to the northwest corner of Section 27, T7N, R27E; thence north two miles along section lines to the northeast corner of Section 16, T7N, R27E; thence west one mile along the section line to the southeast corner of Section 8, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 8, T7N, R27E; thence west approximately twenty miles along section lines to the Benton-Yakima County line at the southwest corner of Section 6, T7N, R24E;

thence north two miles along the county line to the point of beginning.

(2) Area 1 restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-230-810 is prohibited: Provided, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited on and after April 5th through October 31st of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, all applications of use restricted herbicides are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-836 (~~What are the~~) Boundaries and restrictions in Benton County Area 1A((?)). (1) Area 1A description. All lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence east seven miles along section lines to the northwest corner of Section 27, T8N, R25E; thence north two miles along section lines to the northwest corner of Section 15, T8N, R25E; thence east eight miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N, R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of Section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines

to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence north approximately three miles to the Kennewick Irrigation District (K.I.D.) Division Four Canal in Section 8, T7N, R31E; thence westerly along the K.I.D. Division Four Canal to the intersection with the K.I.D. Main Irrigation Canal at the Amon Pumping Station located in Section 7, T8N, R29E; thence westerly along the K.I.D. Main Irrigation Canal to its intersection with the east section line of Section 14, T9N, R26E; thence south approximately one mile along the section line to the northwest corner of Section 25, T9N, R26E; thence northwest approximately one and four tenths miles diagonally across Section 23 to the northwest corner of Section 23, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 21, T9N, R26E; thence southwest approximately one and four tenths miles diagonally across Section 20 to the northwest corner of Section 29, T9N, R26E; thence west one mile along section lines to the northwest corner of Section 30, T9N, R26E; thence south one mile along section lines to the northwest corner of Section 31, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 35, T9N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 34 to the northwest corner of Section 3, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 4, T8N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 5 to the northwest corner of Section 8, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 7, T8N, R25E; thence south one mile along section lines to the northwest corner of Section 18, T8N, R25E; thence west two miles along section lines to the northwest corner of Section 14, T8N, R24E; thence south one mile along section lines to the northwest corner of Section 23, T8N, R24E; thence west four miles to the northwest corner of Section 19, T8N, R24E; thence south two miles along the county line to the point of beginning.

(2) Area 1A restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-230-810 is prohibited: Provided, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited on and after April 5th through October 31st of each year: Provided, That phenoxy hormone-type sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~(at twenty pounds of pressure or less at the nozzle)~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that

produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-840 (~~(What are the)~~ Boundaries and restrictions for Benton County Area 2(~~(?)~~). (1) Area 2 description. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence south approximately five miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence northwesterly along the Columbia River until its intersection with the United States Department of Energy Hanford Site south boundary line; thence west approximately one mile and south approximately two and one-half miles along the south boundary line to the southeast corner of Section 27, T10N, R28E; thence west seven miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(2) Area 2 restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~(at twenty pounds of pressure or less at the nozzle)~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-845 (~~What are the~~) Boundaries and restrictions for Benton County Area 3(?), (1) Area 3 description.

(a) Eastern Yakima Valley. An area including all lands lying within a boundary line beginning at the northwest corner of Section 19, T8N, R24E; thence east four miles along section lines to the southwest corner of Section 14, T8N, R24E; thence north one mile along the section line to the northwest corner of Section 14, T8N, R24E; thence east two miles along section lines to the southwest corner of Section 7, T8N, R25E; thence north one mile along the section line to the northwest corner of Section 7, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 5, T8N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 5 to the northeast corner of Section 5, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 34, T9N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 34 to the northeast corner of Section 34, T9N, R25E; thence east two miles along section lines to the southwest corner of Section 30, T9N, R26E; thence north one mile along the section line to the northwest corner of Section 30, T9N, R26E; thence east one mile along the section line to the southwest corner of Section 20, T9N, R26E; thence northeast approximately one and four-tenths of a mile diagonally across Section 20 to the northeast corner of Section 20, T9N, R26E; thence east two miles along section lines to the northwest corner of Section 23, T9N, R26E; thence southeast approximately one and four-tenths of a mile diagonally across Section 23 to the southeast corner of Section 23, T9N, R26E; thence north six miles along section lines to the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence south approximately eleven miles along the Benton-Yakima county line to the point of beginning.

(b) Cold Creek Area. An area including all lands lying within a boundary line beginning at the intersection of the Benton-Yakima County line and the Columbia River in Section 7, T13N, R24E; thence south approximately six and one-half miles along the Benton-Yakima County line to the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence west approximately five miles along the Columbia River to the point of beginning.

(c) Horse Heaven Hills southwest buffer zone. An area near Patterson starting at the southeast corner of Section 7, T5N, R26E following section lines north five miles to the

northeast corner of Section 19, T6N, R26E; thence west two miles to the northwest corner of Section 24, T6N, R25E; thence south one-half mile along section line; thence west two miles to the common boundary of Sections 21 and 22, T6N, R25E; thence north one-half mile to the northeast corner of Section 21, T6N, R25E; thence west three miles to the northwest corner of Section 19, T6N, R25E; thence south three miles to the southwest corner of Section 31, T6N, R25E; thence east three miles to the southeast corner of Section 33, T6N, R25E; thence south three miles to the southeast corner of Section 16, T5N, R25E; thence west one mile to the northwest corner of Section 21, T5N, R25E; thence south one mile to the southwest corner of Section 21, T5N, R25E; thence east two miles to the southeast corner of Section 22, T5N, R25E; thence north one mile to the northeast corner of Section 22, T5N, R25E; thence east two miles to the southeast corner of Section 13, T5N, R25E; thence north one mile to the northeast corner of Section 13, T5N, R25E; thence east one mile to the point of origin.

(2) Area 3 restrictions.

(a) Application by air of use restricted herbicides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of the use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-850 (~~What are the~~) Boundaries and restrictions for Benton County Area 4(?), (1) Area 4 description.

(a) Tri-Cities northwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence north two miles along section lines to the northwest corner of Section 13, T10N, R26E; thence east one mile along the section line to the northeast corner of Section 13, T10N, R26E; thence north approximately one-half mile along the section line to the United States Department of Energy Hanford Site south boundary line; thence easterly approximately ten miles and

south approximately two and one-half miles along the south boundary line to the south section line of Section 27, T10N, R28E; thence west approximately six and three-fourths miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(b) Tri-Cities northeast buffer zone. An area including all lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River; thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly approximately seven miles along the power line to its intersection with SR 124 in Section 32, T9N, R31E; thence easterly approximately two and one-half miles along SR 124 to the east section line of Section 34, T9N, R31E near the intersection of SR 124 and the Union Pacific Railroad; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad to its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along I-182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the U.S. Department of Energy Hanford Site south boundary line in Section 14, T10N, R28E; thence east approximately one-half mile across the Columbia River to its east shoreline; thence northerly approximately one-half mile to the point of beginning.

(2) Area 4 restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year all applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE

standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of the use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-855 ((What are the)) Boundaries and restrictions for Benton County Area 5(?), (1) Area 5 description.

(a) Cold Creek buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence easterly approximately two miles along the Columbia River to the east section line of Section 6, T13N, R25E, near the Vernita Bridge; thence south approximately eight and one-half miles along section lines to the southeast corner of Section 18, T12N, R25E; thence west seven miles along section lines to the Benton-Yakima County line at the southwest corner of Section 18, T12N, R24E; thence north one mile along the county line to the point of beginning.

(b) Roza buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence north two miles along the county line to the northwest corner of Section 18, T10N, R24E; thence east four miles along section lines to the northeast corner of Section 15, T10N, R24E; thence south one mile along the section line to the southeast corner of Section 15, T10, R24E; thence east seven miles along section lines to the southwest corner of Section 13, T10N, R25E; thence north one mile along the section line to the northwest corner of Section 13, T10N, R25E; thence east six miles along section lines to the northwest corner of Section 13, T10N, R26E; thence south two miles along section lines to the point of beginning.

(c) Horse Heaven Hill southwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 13, T6N, R24E; thence south five miles along section lines to the southwest corner of Section 1, T5N, R24E; thence east three miles along the section lines to the northeast corner of Section 8, T5N, R25E; thence south one mile along the section line to the southeast corner of Section 8, T5N, R25E; thence west one mile along the section line to the southwest corner of Section 8, T5N, R25E; thence south approximately five miles to the Washington

Oregon border; thence northeasterly along the Washington Oregon border until its intersection with the eastern section line of Section 8, T5N, R26E; thence north approximately six miles along section lines to the northeast corner of Section 17, T6N, R26E; thence west nine miles to the point of beginning.

(2) Area 5 restrictions.

(a) Application by air of use restricted herbicides as defined by WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited on and after April 5th through October 31st of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year all applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of the use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-860 ((What are the) Boundaries and restrictions for Benton County Area 6((?)), (1) Area 6 description. All remaining lands in the area under order.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of use restricted herbicides is prohibited on and after April 5th through October 31st of each year: Provided, That phenoxy hormone-type sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5th through October 31st of each year all applications of use restricted herbicides are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset restrictions:

Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset restrictions.

(c) On and after April 5th through October 31st of each year, aerial applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-861 ((What are the) Restrictions on applications in Benton County due to wind conditions((?)), The use or application of all herbicides and class 1 and 2 insecticides are prohibited in the area under order listed in WAC 16-230-800 when the mean sustained wind velocity is over ten miles per hour throughout the year(~~Provided, That applications shall be allowed in higher velocity winds when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data~~): Provided further, That applications of granular and pellet formulations of use restricted pesticides defined in WAC 16-230-810 as well as applications made to structures are exempt from the wind restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-868 ((What are the) Restrictions on applications in Benton County due to weather((?)), Use restricted herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops, and plantings through physical drift or volatilization: Provided, That applications of use restricted herbicides are exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre (~~while using no greater than fifteen pounds of pressure per square inch at the nozzle~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-230-440 What are the boundaries and restrictions for Area 4?
- WAC 16-230-450 What information does an aerial applicator need from the landowner?
- WAC 16-230-460 Does a commercial greenhouse need to be notified?
- WAC 16-230-510 Definition.

- WAC 16-230-625 What are the restrictions on mixing and loading use restricted herbicides?
- WAC 16-230-630 What are the restrictions for storage of use restricted herbicides?
- WAC 16-230-635 What are the restrictions on petroleum and vegetable oil carriers and spray adjuvants?
- WAC 16-230-660 Can an aircraft turn or fly low over cities and towns?
- WAC 16-230-673 Use restricted herbicides—Eastern Washington—Application through irrigation systems.
- WAC 16-230-675 Use restricted herbicides—Eastern Washington—Minimum nozzle orifice and core plate sizes for aircraft application.
- WAC 16-230-813 When are oil-type carriers prohibited in Benton County?
- WAC 16-230-863 Application of pesticides in Benton County—Use restricted herbicides ground apparatus nozzle requirements.
- WAC 16-230-864 Application of pesticides in Benton County—Use restricted herbicides, aircraft boom length, pressure, and nozzle requirements.
- WAC 16-230-866 Application of pesticides in Benton County—Use restricted herbicides—Temperature conditions.

NEW SECTION

WAC 16-231-085 Adoption of national consensus code. Adoption of provisions under the American Society of Agricultural and Biological Engineers (ASABE) standards in this chapter is adoption of the provisions in the July 2018 version.

NEW SECTION

WAC 16-231-090 Order of precedence. If there is a conflict between the spray droplet spectrum size required in these rules and that which is required by the pesticide label, the applicator must use the largest droplet spectrum size required.

NEW SECTION

WAC 16-231-095 Definitions. "Ready-to-use" means a pesticide that is applied directly from its original container consistent with label directions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-100 ((~~What are the~~) Restrictions for pesticide use in Franklin County((?)). (1) The area under

order includes all lands lying within the boundaries of Franklin County. WAC ((~~16-231-110~~)) 16-231-115 through 16-231-183 applies to the area under order.

(2) The distribution, use, and application of use restricted pesticides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ((~~16-230-680~~)) 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-105 ((~~What are~~) Use restricted herbicides in Franklin County((?)). All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-107 ((~~What are~~) Use restricted pesticides in certain areas of Franklin County((?)). The following pesticides are declared to be use restricted pesticides in Areas 2A, 4A, and 6:

(1) Use restricted herbicides*:

(a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort);

(b) Desiccants and defoliant (such as Paraquat, Diquat, Endothall);

(c) Glyphosate (such as Roundup, Landmaster);

(d) Phenoxy hormone-type herbicides (such as 2,4-D, MCPA);

(e) Dicamba (such as Banvel);

(f) Bromoxynil except that the cutoff dates of April 5th, April 15th and May 16th do not apply.

* This is to be used only as a guide and may not include all brand or trade names under which these chemicals are distributed.

(2) All aerial applications of Category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-115 ((~~What are the~~) Boundaries and restrictions for use restricted herbicides((—)) in Franklin County((—)) Area 1((?)). (1) Area 1 description.

(a) This area includes all lands lying within a boundary line starting at the northwest corner of Section 6, T14N,

R28E; thence east along the Adams-Franklin County line thirteen miles more or less to the intersection with State Route 17; thence southeasterly along State Route 17, including the right of way, to the intersection with Highway 395 at the town of Mesa; thence southerly along Highway 395, including the right of way, seven miles more or less to the intersection with the common boundary between Sections 2 and 11, T11N, R30E at the town of Eltopia; thence east along the section line, one mile more or less to the northeast corner of Section 12, T11N, R30E; thence south along the section lines twelve miles more or less to the southeast corner of Section 1, T10N, R30E; thence west two miles along section lines to the southeast corner of Section 3, T9N, R30E; thence north one mile along section lines to the northeast corner of Section 3, T9N, R30E; thence west along section lines three miles to the southeast corner of Section 31, T10N, R30E; thence north two miles along Highway 395 to the intersection with the Selph Landing Road near the northeast corner of Section 30, T10N, R30E; thence seven miles west along Selph Landing Road to the northwest corner of Section 30, T10N, R29E; thence north along section lines and portions of Fraser Drive until the intersection with Road 68, thence northwesterly along Road 68 until its intersection with the Esquatzel Channel; thence west along the Esquatzel Channel until its intersection with the Columbia River; thence northwesterly along the Columbia River to the Grant-Franklin County line at the north section line of Section 29, T14N, R27E; thence east along the Grant-Franklin County line four miles more or less to the northwest corner of Section 30, T14N, R28E; thence north along the Grant-Franklin County line four miles to the point of beginning.

(b) Also including Levey (Ice Harbor Dam area): This area includes all lands lying within a two-mile radius of Levey within Franklin County.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 5th through October 31st of each year: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1st through April 30th of the following year.

(b) ~~((On and after April 5 through October 31,))~~ Ground applications of use restricted herbicides ((shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of use restricted herbicides)) on asparagus shall ((be made using nozzles having minimum nozzle orifice diameter of 0.072 inches)) conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the coarse (or larger) range as defined by the ASABE standards.

(c) On and after April 5th through October 31st, aircraft applications of use restricted herbicides are prohibited except by written permit issued by the department: Provided, That on and after November 1st through April 4th of the following year, aircraft applications of use restricted herbicides are allowed ~~((using the caution area restrictions (see WAC 16-230-675)).~~

~~(d) On and after April 5 through October 31, aircraft applications of use restricted herbicides are prohibited within~~

~~one mile of any commercial vineyard: Provided, That on and after April 5 through October 31, written requests to apply MCPA to peas and corn located one half to one mile from commercial vineyards will be considered: Provided further, That on and after April 5 through April 30 written requests to apply 2,4-DB on alfalfa and red clover seed crops located one half to one mile from commercial vineyards will be considered))~~ when the application conforms to the manufacturer's specified combination of nozzles, pressure (psi), plates, nozzle orientation, and aircraft speed that produces a droplet class that falls within the coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-119 ((What are the)) Boundaries and restrictions on use restricted herbicides((—)) in Franklin County((—)) Area 1A(??). (1) Area 1A description. This area includes all lands lying within a boundary line starting at the intersection of State Route 17 and the Adams-Franklin County line at the north section line of Section 5, T14N, R30E; thence east along the Adams-Franklin County line five miles more or less to the Burlington Northern Railroad; thence southeasterly along the railroad, including the right of way, four miles more or less to the intersection with Moon Road; thence southerly along Moon Road, including the right of way, two miles more or less to the intersection with State Route 260 at the southeast corner of Section 27, T14N, R31E; thence west along State Route 260, including the right of way, five miles more or less to the intersection with State Route 17; thence northwesterly along State Route 17, excluding the right of way, to the point of beginning.

(2) Area 1A restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1st through April 30th of the following year.

(b) ~~((On and after April 15 through October 31,))~~ Ground applications of use restricted herbicides ((shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of use restricted herbicides)) on asparagus shall ((be made using nozzles having minimum orifice diameter of 0.072 inches.

~~(c) On and after November 1 through April 14 of the following year, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).~~

~~(d) On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using the danger area restrictions (see WAC 16-230-675))~~ conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-125 ~~((What are the))~~ **Boundaries and restrictions on use restricted herbicides**~~((—))~~ **in Franklin County**~~((—))~~ **Area 2**~~((?))~~. (1) Area 2 description. This area includes all of the lands lying inside a boundary line starting at the intersection of State Routes 17 and 260 located at the northwest corner of Section 36, T14N, R30E; thence east along State Route 260, excluding the right of way, five miles more or less to the northeast corner of Section 34, T14N, R31E; thence south along the section lines fifteen miles more or less to the Eltopia and Eye Road; thence easterly along the Eltopia and Eye Road, including the right of way, to the Brass Road; thence easterly along the Brass Road, including the right of way, to the Bannenburg Road; thence southeasterly along the Bannenburg Road, including the right of way, to the northwest corner of Section 6, T10N, R33E; thence south along the section line one mile more or less to the Snake River; thence southwesterly along the Snake River to the east section line of Section 23, T9N, R31E; thence northerly along section lines approximately two miles until the intersection with the Pasco Kahlotus Road at the northeast corner of Section 11, T9N, R31E; thence west approximately five miles along section lines and a portion of the Pasco Kahlotus Road to the intersection of the southeast corner of Section 1, T9N, R30E; thence north along the section lines twelve miles more or less to the southeast corner of Section 1, T11N, R30E; thence west along the section line one mile more or less to Highway 395; thence northerly along Highway 395, excluding the right of way, seven miles more or less to its intersection with State Route 17 at the town of Mesa; thence northerly along State Route 17, excluding the right of way, seven miles more or less to the point of beginning, excluding lands in Franklin County within a two-mile radius of the town of Levey.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 5th through October 31st of each year.

~~((b))~~ ~~((On and after April 5 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~((e))~~ On and after April 5th through October 31st, aircraft applications of use restricted herbicides are prohibited except by written permit issued by the Washington state department of agriculture.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-130 ~~((What are the))~~ **Boundaries and restrictions on use restricted herbicides**~~((—))~~ **in Franklin County**~~((—))~~ **Area 3**~~((?))~~. (1) Area 3 description. (Dry land area south and east of Connell.) An area beginning at the northeast corner of Section 3, T14N, R33E and the Reeder Road; thence south along the Reeder Road to and along the Black Road to the Swanson Road; thence east and south along the Swanson Road to state Highway 260; thence southerly along state Highway 260 to the Munt Road; thence south along the Munt Road to the Largent Road; thence east along

the Largent Road to the Pasco-Kahlotus Highway to the Walker Road; thence southerly along the Walker Road to the Snake River; thence southerly along the Snake River to the east boundary line of Area 2; thence northerly along the east boundary line of Area 2 and Area 1A to the Franklin-Adams County line; thence east fifteen miles more or less along the county line to the point of beginning.

(2) Area 3 restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after May 16th through October 31st of each year.

~~((b))~~ ~~On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~((e))~~ ~~On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-135 ~~((What are the boundaries and restrictions on use restricted herbicides))~~ **Boundaries in Franklin County Area 4**~~((?))~~. ~~((+))~~ Area 4 description. (Dry land area.) All of the remaining lands in Franklin County lying east of Area 3.

~~((2))~~ Area 4 restrictions.

~~((a))~~ ~~On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((b))~~ ~~On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-145 ~~((What are the))~~ **Wind restrictions for use restricted herbicides**~~((—))~~ **in Franklin County**~~((?))~~. The use or application of use restricted herbicides shall be prohibited in Areas 1, 1A, 2, 3, and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such applications shall be prohibited in Area 1 on and after April 1st through October 31st when the mean sustained wind velocity is over ten miles per hour~~((: Provided further, That applications of use restricted herbicides shall be allowed in winds up to and including twenty miles per hour when an approved hooded boom sprayer is used and allowed by the label. Hooded boom sprayers shall be approved by the department of agriculture. The department shall consider the recommendations of the pesticide advisory board 2,4-D ad hoc committee in determining the criteria of what constitutes an approved hooded boom sprayer. Approval shall be based on research data))~~.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-149 ~~((What are the))~~ **Boundaries and restrictions on use restricted herbicides**~~((—))~~ **in Franklin County**~~((—))~~ **Area 2A**~~((?))~~. (1) Area 2A description. An

area including all lands lying in a boundary line beginning at the Columbia River and Interstate 182 near the east section line of Section 13, T9N, R28E; thence along Interstate 182 until its intersection with U.S. Highway 12; thence southeasterly along Highway 12 until its intersection with the Snake River in Section 35, T9N, R30E; thence southwesterly along the Snake River until its intersection with the Columbia River; thence northwesterly along the Columbia River to the point of beginning.

(2) Area 2A restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-231-107 is prohibited.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~(at twenty pounds of pressure or less at the nozzle)~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-153 (~~What are the~~) Boundaries and restrictions on use restricted herbicides(—) in Franklin County(—) Area 4A(?) (1) Area 4A description. An area including all lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River; thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly along the power line until its intersection with the Snake River near the east line of Section 25, T9N, R30E; thence southwesterly along the Snake River until its intersection with U.S. Highway 12 in Section 35, T9N, R30E; thence northwesterly along Highway 12 until its intersection with Interstate 182; thence westerly along Interstate 182 until its intersection with the Columbia

River along the east section line of Section 13, T9N, R28E; thence northerly along the Columbia River to the point of beginning.

(2) Area 4A restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-231-107 may be made by written permit only.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, all applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~(at twenty pounds of pressure or less at the nozzle)~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of the use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-156 (~~What are the~~) Boundaries and restrictions on use restricted herbicides(—) in Franklin County(—) Area 6(?) (1) Area 6 description. An area including all lands lying within a boundary line beginning at the northwest corner of Section 30, T10N, R29E; thence east seven miles along Selph Landing Road until its intersection with Highway 395 near the northeast corner of Section 30, T10N, R30E; thence south two miles along Highway 395 to the southeast corner of Section 31, T10N, R30E; thence east three miles along section lines to the northeast corner of Section 3, T9N, R30E; thence south one mile along section lines to the southeast corner of Section 3, T9N, R30E; thence east seven miles along section lines and a portion of the Pasco-Kahlotus Road until its intersection with the Ice Harbor Dam Road at the northeast corner of Section 11, T9N, R31E; thence southerly approximately two miles along section lines until the intersection with the Snake River; thence southwesterly along the Snake River until its intersection with the Bonneville Power Administration power line in Section 25, T9N, R30E; thence northwesterly along the power line until its intersection with Foster Wells Road in Section 4, T9N, R30E; thence west approximately eight and one-half miles along section lines and portions of the Foster Wells Road to the southwest corner of Section 6, T9N, R29E; thence north along section lines approximately three miles to the point of beginning.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of use restricted herbicides are prohibited on and after April 5th through October 31st of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5th through October 31st of each year, all applications of use restricted herbicides are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre ((at twenty pounds of pressure or less at the nozzle)) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset restrictions.

(c) On and after April 5th through October 31st of each year, aerial applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-159 ((Can)) Application of Paraquat or Diquat ((be applied)) by air in Franklin County((?)). Aerial application of Paraquat and Diquat is prohibited in Areas 2A, 4A, and 6.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-162 ((Can)) Application of sulfonylurea herbicides ((be applied)) in Franklin County((?)). Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited in Areas 2A, 4A, and 6.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-165 ((What are)) Conditions applying to permits in Franklin County((?)). The following conditions will apply to all permits issued in Areas 2A, 4A, and 6.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 21 N. 1st Avenue Suite 236, Yakima, Washington 98902. Applications may also be taken in person or by facsimile. Permits will not be granted by telephone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any

time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-168 ((Can)) Application of use restricted pesticides ((be applied)) in an emergency ((clause?)) in Franklin County. In the event of an emergency, as declared by the director, the department may issue permits for the use of use restricted pesticides in variation of any restrictions contained in Areas 2A, 4A, and 6. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substantially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-171 ((What are the)) Restrictions on applications in Franklin County due to wind((?)). The use or application of all herbicides and class 1 and 2 insecticides are prohibited in Areas 2A, 4A, and 6 when the mean sustained wind velocity is over ten miles per hour throughout the year: Provided, That ((applications shall be allowed in higher velocity winds when an approved ground apparatus is used. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data. Provided further, That)) applications of granular and pellet formulations of use restricted pesticides defined in WAC 16-231-107 as well as applications made to structures are exempt from the wind restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-183 ((What are the)) Restrictions on application of pesticides in Franklin County due to weather conditions((?)). Use restricted herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops, and plantings through physical drift or volatilization: Provided, That applications of use restricted herbicides are exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre ((while using no greater than fifteen pounds of pressure per square inch at the nozzle)) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within

the very coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-200 ((What are the)) Restrictions for herbicide use in Yakima County((?)). (1) The area under order includes all lands lying within the boundaries of Yakima County. WAC 16-231-205 through 16-231-235 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-205 ((What are)) Use restricted herbicides in Yakima County((?)). All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-215 ((What are the)) Boundaries and restrictions for Area 1 in Yakima County((?)). (1) Area 1 description. (An area south of the Yakima firing center including the upper and lower Yakima Valley.) An area starting at the Yakima-Benton County line and the northeast corner of Section 1, T11N, R23E; thence west along section lines seventeen miles more or less to the southeast corner of Section 31, T12N, R21E; thence north eight miles along section lines to the northeast corner of Section 30, T13N, R21E; thence west along section lines eleven miles to the Yakima River; thence northwesterly along the Yakima River four miles more or less to the junction of the Yakima and Naches Rivers; thence northwesterly along the Naches River for seven miles more or less to the northwest corner of Section 31, T14N, R18E; thence south one mile along the section line to the southwest corner of Section 31, T14N, R18E; thence west along section lines six miles to the northwest corner of Section 6, T13N, R17E; thence south twenty-four miles along section lines to the southwest corner of Section 31, T10N, R17E; thence east twenty-four miles along section lines to the southeast corner of Section 36, T10N, R20E; thence south six miles along section lines to the southwest

corner of Section 31, T9N, R21E; thence east six miles along section lines to the northwest corner of Section 6, T8N, R22E; thence south six miles along section lines to the southwest corner of Section 31, T8N, R22E; thence east twelve miles along section lines to the Benton County line; thence north twenty-four miles to the point of beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 5th through October 31st: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops at any time.

(b) ~~((On and after April 5 through October 31,))~~ Ground applications of use restricted herbicides ((shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of use restricted herbicides)) on asparagus shall ((be made using nozzles having minimum nozzle orifice diameter of 0.072 inches)) conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the coarse (or larger) range as defined by the ASABE standards.

(c) Aircraft applications of use restricted herbicides are allowed only on nonirrigated lands on and after November 1st through April 4th of the following year ~~((and shall be made using the caution area restrictions (see WAC 16-230-675)))~~. Aircraft applications of use restricted herbicides are prohibited on and after April 5th through October 31st: Provided, That hormone sprays may be applied to orchards to prevent fruit drop: Provided further, That aircraft applications are allowed by written permit issued by the Washington state department of agriculture in those dry land wheat growing areas east of Moxee and on the Rattlesnake Ridge and the area south of Horse Heaven Hills Ridge contained in Sections 25, 26, 27, 28, 32, 33, 34, 35 and 36, T8N, R23E up to within one mile of commercial grape plantings and to within one-quarter mile of other susceptible crops.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-220 ((What are the)) Boundaries and restrictions for Yakima County Area 1A ((in Yakima County?)). (1) Area 1A description. (Tieton-Naches Area.) That portion of T14N, R17E and those portions of Sections 31, 32 and 33, T15N, R17E, lying southwest of the Naches-Selah Canal; and that portion of T14N, R16E, and those portions of Sections 35 and 36 lying southeast of the Tieton and Naches rivers.

(2) Area 1A restrictions. On and after April 15th through October 31st, the use and application of low volatile formulations of use restricted herbicides is prohibited. On and after April 15th through October 31st, aircraft applications of use restricted herbicides are allowed ~~((using the warning area restrictions (see WAC 16-230-675)))~~ on dry land wheat up to within one-quarter mile of susceptible crops.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-225 ((What are the)) Boundaries and restrictions for Yakima County Area 2 ((in Yakima County?)). (1) Area 2 descriptions. All remaining lands in Yakima County.

(2) Area 2 restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 5th through October 31st.

~~((b)) On and after April 5 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c)) On and after April 5 through October 31, aircraft applications of use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-235 ((What are the)) Restrictions due to wind conditions(?) in Yakima County. The use or application of use restricted herbicides are prohibited in Areas 1, 1A and 2 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such applications are prohibited in Areas 1 and 1A on and after April 1st through October 31st when the mean sustained wind velocity is over ten miles per hour~~((: Provided further, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data))~~.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-300 ((What are the)) Restrictions for herbicide use in Adams County((?)). (1) The area under order includes all lands lying within the boundaries of Adams County. WAC 16-231-305 through 16-231-340 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order must comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-305 ((What are)) Use restricted herbicides in Adams County((?)). All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA,

MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-315 ((What are the)) Boundaries and restrictions for Adams County Area 1((?)). (1) Area 1 description. (Lands generally lying within the Columbia Basin irrigation project east of Warden and in the Othello area.) An area starting at the intersection of the East Low Canal and Grant-Adams County line in Section 18, T18N, R31E; thence southerly along the East Low Canal to the intersection of the East Low Canal and the Grant-Adams County line near the southwestern corner of Section 17, T17N, R31E; thence north six miles more or less to the point of beginning; and also all lands within a line starting at the intersection of the East Low Canal and the Grant-Adams County line near the corner of Section 6, T16N, R30E; thence southeasterly along the East Low Canal to the Adams-Franklin County line and the southwest corner of Section 31, T15N, R28E; thence north along the Grant-Adams County line beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1st through April 30th of the following year.

(b) ~~((On and after April 15 through October 31,))~~ Ground applications of use restricted herbicides ~~((shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of use restricted herbicides))~~ on asparagus shall ~~((be made using nozzles having minimum nozzle orifice diameter of 0.072 inches.~~

~~((c)) On and after November 1 through April 14 of the following year, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).~~

~~((d)) On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using the danger area restrictions (see WAC 16-230-675))~~ conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-320 ((What are the)) Boundaries and restrictions for Adams County Area 2((?)). (1) Area 2 description. (Buffer area east of Area 1.) Beginning at the Grant-Adams County line Section 6, T18N, R31E; thence east six miles more or less along the Burlington Northern Railroad tracks to Kulm Road; thence south three miles more

or less along Kulm Road to Franz Road; thence east one mile along Franz Road to Roxboro Road; thence south fourteen miles along the Roxboro Road to Cunningham Road; thence southeasterly one mile more or less along Cunningham Road to Lind-Hatton Road; thence southerly three miles more or less along Lind-Hatton Road to Roxboro Road; thence southerly three miles more or less to the Adams-Franklin County line; thence west seven miles more or less along Adams-Franklin County line to the East Low Canal; thence northwesterly along the East Low Canal to the Grant-Adams County line; thence east five miles more or less and three miles north more or less along the Grant-Adams County line to the East Low Canal; thence northeasterly along East Low Canal to the Grant-Adams County line; thence north two miles more or less along Grant-Adams County line to the point of beginning.

(2) Area 2 restrictions. ~~((a))~~ On and after May 1st through October 31st, the use or application of low volatile formulations of use restricted herbicides is prohibited.

~~((b) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~(c) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-325 ~~((What are the))~~ Boundaries and restrictions for Adams County Area 3((?)), (1) Area 3 description. An area starting at the northwest corner of Section 6, T20N, R31E, on the Lincoln-Adams County line; thence east twenty-three miles more or less on the Davis Road to Paha-Packard Road; thence south seventeen miles more or less along the Paha-Packard Road to the intersection of Paha-Packard Road and SR 395; thence southwesterly twenty-six miles more or less along SR 395 to the Adams-Franklin County line; thence west one mile more or less along Muse Road to the Roxboro Road; thence northerly and westerly thirty-one miles more or less along the east and north boundary of Area 2 to the Grant-Adams County line; thence north twelve miles more or less along the Grant-Adams County line to the point of beginning.

(2) Area 3 restrictions. ~~((a))~~ On and after May 16th through October 31st, the use and application of low volatile formulations of use restricted herbicides is prohibited.

~~((b) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~(c) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-330 ~~((What are the boundaries and restrictions for))~~ Boundaries for Adams County Area 4((?)), ~~((+))~~ Area 4 description. Outlying area east of Area 3.

~~((2) Area 4 restrictions. On and after May 16 through October 31, aircraft applications or use restricted herbicides shall be made using caution area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-340 ~~((What are the))~~ Restrictions on applications due to wind conditions((?)) in Adams County. (1) Area 1 and 2.

(a) The use or application of use restricted herbicides shall be prohibited on and after April 16th through October 31st when the mean sustained wind velocity is over ten miles per hour.

(b) The use or application of use restricted herbicides is prohibited on and after November 1st through April 15th of the following year when the mean sustained wind velocity is over twelve miles per hour: Provided, That application of allowable use restricted herbicides is exempt from these wind restrictions when applying fifty gallons or more per acre in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards.

(2) Area 3 and 4. The use or application of use restricted herbicides is prohibited when the mean sustained wind velocity is over twelve miles per hour: Provided, That ground applications of use restricted herbicides are ~~((allowed when using No. 2RD or 2RA Raindrop nozzles when the mean sustained wind velocity is fifteen miles per hour or less: Provided further, That application of allowable use restricted herbicides is))~~ exempt from these wind restrictions when applying fifty gallons or more per acre~~((: And provided further, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data))~~ in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-400 Use restricted herbicides—Columbia County—Area under order. (1) The area under order includes all lands lying within the boundaries of Columbia County. WAC 16-231-405 through 16-231-425 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-405 ~~((What are))~~ Use restricted herbicides in Columbia County ~~((?))~~. All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-413 ~~((What are the))~~ Boundaries and restrictions for Columbia County Area 1 ~~((in Columbia County?))~~. (1) Area 1 description. That area within a distance of one-half mile of the city limits of Dayton.

(2) Area 1 restrictions. Aircraft applications of use restricted herbicides are prohibited on and after April 5th through October 31st; Provided, That upon written request to the Washington state department of agriculture, aircraft applications by permit shall be considered for purposes of critical weed control.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-415 ~~((What are the))~~ Boundaries and restrictions for Columbia County Area 2 ~~((in Columbia County?))~~. (1) Area 2 description. (Huntsville, Dayton, Bailyburg, and vicinity.) Sections 1 through 12, T9N, R38E; Sections 24, 25, 26 and 30 through 36, T10N, R38E; Sections 19, 20 and 28 through 33, T10N, R39E; Sections 2 through 11, 15 through 17, 21 and 22 and that portion of Section 20 lying east of the Payne Hollow Road in T9N, R39E in Columbia County.

(2) Area 2 restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after May 1st through October 31st.

~~((b) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches. On and after November 1 through April 30, ground application shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~(c) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675). On and after November 1 through April 30, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-420 ~~((What are the boundaries and restrictions))~~ Boundaries for Columbia County Area 4 ~~((for Columbia County?))~~. ~~((+))~~ Area 4 description. This area includes all remaining lands in Columbia County not included in WAC 16-231-413 and 16-231-415.

~~((2) Area 4 restrictions.~~

~~(a) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~(b) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-425 ~~((What are the use))~~ Restrictions due to wind conditions for Columbia County ~~((?))~~. The use or application of use restricted herbicides is prohibited in Area 2 and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such application is prohibited in Area 2 on and after May 1st through October 31st when the mean sustained wind velocity is over seven miles per hour ~~((: Provided further, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval shall be based on research data).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-500 ~~((What are))~~ Restrictions for herbicide use in Whitman County ~~((?))~~. (1) The area under order includes all lands lying within the boundaries of Whitman County. WAC 16-231-505 through 16-231-530 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-505 ~~((What are))~~ Use restricted herbicides in Whitman County ~~((?))~~. All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-510 ~~((What are the))~~ **Boundaries and restrictions for Whitman County**~~((—))~~ **Area 1**~~((?))~~. (1) Area 1 description. (Cities and/or towns and Pullman vicinity.) The areas within a distance of one mile of the city limits of any incorporated city or town and the same distance from the center of any unincorporated town comprised of ten or more inhabited, closely grouped residences within Whitman County: Provided, That the area under this section shall also include all of the lands in Section 28 through 33, T15N, R45E; Sections 25, 26, 27, 34, 35, and 36, T15N, R44E; Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, and 21, T14N, R45E; Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, T14N, R44E.

(2) Area 1 restrictions. ~~((a))~~ The use or application of low volatile ester formulations of use restricted herbicides is prohibited throughout the year: Provided, That the low volatile formulation of MCPA is allowed on and after November 1st through April 15th of each year.

~~((b) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~((c) On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-515 ~~((What are the))~~ **Boundaries and restrictions for Whitman County Area 3**~~((?))~~, ~~((+))~~ Area 3 description. (Eastern portion of Whitman County.) An area east of a north-south line starting at the Whitman-Spokane County line and State Highway 195; thence southerly along Highway 195 to Colfax; thence southerly along County Roads No. 478 and No. 141 to the junction of County Roads No. 141 and No. 451; thence southerly on County Road No. 451 to County Road No. 143; thence southerly along County Road No. 143 to Almota and the Snake River.

~~((2) Area 3 restrictions.~~

~~((a) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((b) On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-520 ~~((What are the boundaries and restrictions))~~ **Boundaries for Whitman County Area 4**~~((?))~~, ~~((+))~~ Area 4 description. (Outlying area west of Area 3.) All remaining lands in Whitman County west of Area 3.

~~((2) Area 4 restrictions.~~

~~((a) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((b) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-530 ~~((What are))~~ **Restrictions due to wind conditions**~~((?))~~ **in Whitman County.** (1) Areas 1 and 3. ~~((a) On and after April 15 through October 31, the use or application of use restricted herbicides is prohibited when the mean sustained wind velocity is over seven miles per hour.~~

~~((b) On and after November 1 through April 14 the following year.))~~ The use or application of use restricted herbicides is prohibited when the mean sustained wind velocity is over twelve miles per hour.

(2) Area 4. The use or application of use restricted herbicides is prohibited when the mean sustained wind velocity is over twelve miles per hour: Provided, That ground applications of use restricted herbicides in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards are allowed ~~((when using No. 2RD or No. 2RA raindrop nozzles))~~ when the mean sustained wind velocity is fifteen miles per hour or less and allowed by the label.

~~((3) All areas. Applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data.))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-600 ~~((What are))~~ **Restrictions for herbicide use in Klickitat County**~~((?))~~. (1) The area under order includes all lands lying within the boundaries of Klickitat County. WAC 16-231-605 through 16-231-620 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-605 ~~((What are))~~ **Use restricted herbicides in Klickitat County**~~((?))~~. All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-613 ((What are the) Boundaries and restrictions for Klickitat County Area 2((?)). (1) Area 2 description. (Southeast corner of Klickitat County.) Sections 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36, Township 5 north, Range 23 east; Sections 21, 22, south half of Section 23, Sections 26, 27, 28, 33, 34, west half of Section 35, Township 5 north, Range 22 east; Sections 1, 2, 11, 12, Township 4 north, Range 23 east.

(2) Area 2 restrictions. ((~~(a)~~)) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st: Provided, That upon written request to the Washington state department of agriculture, a permit may be issued for purposes of critical weed control.

~~((b) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~((c) On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using danger area restrictions (see WAC 16-230-675): Provided, That aircraft applications shall be prohibited within one mile of commercial vineyards and within one half mile of other susceptible crops: Provided further, That upon written request to the Washington state department of agriculture, aircraft applications from one half mile to one mile of commercial vineyards and within one half mile of other susceptible crops by permit shall be considered for purposes of critical weed control. On and after November 1 through April 14 of the following year, aircraft applications shall be made using caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-615 ((What are the) Boundaries and restrictions for Klickitat County Area 3 ((in Klickitat County?)). (1) Area 3 description. All remaining lands within the boundaries of Klickitat County not included in WAC 16-231-613.

(2) Area 3 restrictions. ((~~(a)~~)) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after May 1st through September 30th of each year: Provided, That on and after May 1st through May 14th of each year, low volatile formulations shall be considered through written request to the department of agriculture.

~~((b) On and after May 1 through September 30, ground applications of use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c) On and after May 1 through September 30, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-620 ((What are) Restrictions due to wind conditions((?) in Klickitat County. The use or application of use restricted herbicides is prohibited in the area under order when the mean sustained wind velocity is over twelve miles per hour throughout the year(~~: Provided, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data).~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-700 ((What are) Restrictions for herbicide use in Okanogan County((?)). (1) The area under order includes all lands lying within the boundaries of Okanogan County. WAC 16-231-705 through (~~(16-231-725)~~) 16-231-720 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through (~~(16-230-675)~~) 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-705 ((What are) Use restricted herbicides in Okanogan County((?)). All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-710 ((What are the) Boundaries and restrictions for Okanogan County Area 1((?)). (1) Area 1 description. (Okanogan County) An area starting at the intersection of the east boundary line of Section 24, T29N, R25E,

and the Columbia River; thence north 19 miles more or less to the southwest corner of Section 7, T32N, R26E; thence east three miles to the southeast corner of Section 9; thence north two miles to the northeast corner of Section 4; thence east three miles more or less to the southeast corner of Section 36, T33N, R26E; thence north four miles to the southwest corner of Section 7, T33N, R27E; thence east two miles to the southeast corner of Section 8; thence north six miles to the northeast corner of Section 17, T34N, R27E; thence west eight miles to the northwest corner of Section 18, T34N, R26N; thence south four miles to the southwest corner of Section 31; thence west three miles to the northwest corner of Section 3, T33N, R25E; thence south four miles to the southwest corner of Section 22, T33N, R25E; thence west three miles to the northwest corner of Section 30; thence south two miles to the southwest corner of Section 31; thence west two miles to the northwest corner of Section 2, T32N, R24E; thence south ten miles to the southwest corner of Section 23, T31N, R24E; thence west four miles to the northwest corner of Section 30; thence south seven miles more or less to the north bank of the Columbia River; thence easterly along the north bank of the Columbia River to the point of beginning.

(2) Area 1 restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th ~~((though))~~ through October 31st of each year.

~~((b) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c) On and after April 15 through October 31, aerial applications of use restricted herbicides shall be made using caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-720 ~~((What are the))~~ Restrictions due to wind conditions(?) in Okanogan County. The use or application of use restricted herbicides is prohibited in the area under order when the mean sustained wind velocity is over twelve miles per hour throughout the year ~~((Provided, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data)).~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-800 ~~((What are))~~ Restrictions for herbicide use in Douglas and Chelan counties(?). (1) The area under order includes all lands lying within the boundaries of Douglas and Chelan counties. WAC 16-231-805 through 16-231-840 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-805 ~~((What are))~~ Use restricted herbicides in Douglas and Chelan counties(?). All formulations of phenoxy hormone-type herbicides, (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-810 ~~((What are the))~~ Boundaries and restrictions for Area 1(?) in Douglas and Chelan counties.

(1) Area 1 description - Chelan County. An area starting at the southeast corner of Section 32, T21N, R22E; thence west one mile to the southwest corner of Section 32; thence north five miles more or less to the right of way of the Malaga Road; thence along and including the Malaga Road right of way to the city limits of Wenatchee; thence east to the Columbia River, and along the west bank of the Columbia River to the point of beginning.

(2) Area 1 description - Douglas County. An area on the east bank of the Columbia River, beginning at the southwest corner of Section 33, T21N, R22E; thence east one mile to the southeast corner of Section 33; thence north one mile to the southwest corner of Section 27; thence east one mile to the southeast corner of Section 27; thence north one mile to the southwest corner of Section 23, thence east one mile to the southeast corner of Section 23; thence north one mile to the northeast corner of Section 23; thence west one mile to the northwest corner of Section 23; thence north one mile to the northeast corner of Section 15; thence west one mile to the northwest corner of Section 15; thence north two miles to the northeast corner of Section 4; thence west one mile more or less to and including the right of way of State Road 28; thence northwest along the highway right of way to the east section line of Section 25, T22N, R21E; thence north five miles more or less to the northeast corner of Section 1, T22N, R21E; thence west eight miles more or less to the east bank of the Columbia River; thence southeasterly along the east bank of the Columbia River to the point of beginning.

(3) Area 1 restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st.

~~((b) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~((c) On and after April 15 through October 31, aerial applications of use restricted herbicides shall be made using the danger area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-815 ~~((What are the))~~ **Boundaries and restrictions for Area 2(?) in Douglas and Chelan counties.** (1) Area 2 description. (Buffer area ~~((--))~~ - A protective area around Azwell, Manson, and the mouth of the Moses-Coulee.)

(a) Chelan County - Those areas lying within a one mile radius from the center of the towns of Azwell and Manson. Sections 13, 14, 15 and 16, T28N, R21E.

(b) Douglas County - (Moses-Coulee and Bridgeport area.) Section 1, 2, 3, 10, 11, 12, 13, 14, 24, 25, 26, 34, 35, and 36, N21N, R22E, and Sections 1, 2, 3, 4, 9, 10, 11, 12 and those portions of Sections 13, 14, 15 and 16, T20N, R22E.

(2) Area 2 restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after May 1st through October 31st.

~~((b) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~((c) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-820 ~~((What are the))~~ **Boundaries and restrictions for Area 3(?) in Douglas and Chelan counties.** (1) Area 3 description. (Buffer area between Rock Island and Palisades.) An area starting at the northwest corner of Section 6, T22N, R22E; thence east along the township line twelve miles to the Douglas-Grant county line; thence southwesterly along the county line to the east boundary line of Area 2; thence north and west along the Area 2 boundary line to the Area 1 boundary line; thence northerly along the Area 1 boundary line to the point of beginning.

(2) Area 3 restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after May 1st through October 31st.

~~((b) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-825 ~~((What are the))~~ **Boundaries and restrictions for Area 4(?) in Douglas and Chelan counties.** ~~((+))~~ Area 4 description. All remaining lands in Douglas County not included in WAC 16-231-810, 16-231-815 and 16-231-820.

~~((2) Area 4 restrictions. On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-840 ~~((What are))~~ **Restrictions due to wind conditions(?) in Douglas and Chelan counties.** The use or application of use restricted herbicides is prohibited in Areas 2, 3 and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year and in Area 1 when the mean sustained wind velocity is over twelve miles per hour on and after November 1st through April 15th of the following year, and over seven miles per hour from April 16th through October 31st ~~((Provided, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data)).~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-900 ~~((What are))~~ **Restrictions for herbicide use in Grant County(?)**. (1) The area under order includes all lands lying within the boundaries of Grant County. WAC 16-231-905 through 16-231-935 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-905 ~~((What are))~~ **Use restricted herbicides in Grant County(?)**. All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-910 ~~((What are the))~~ **Boundaries and restrictions for Grant County Area 1(?)**. (1) Area 1 description. (Lands generally within the Columbia Basin irrigation project.) An area starting at the southwest corner of Section 21, T14N, R27E; thence east along the county line four miles more or less to the southeast corner of Section 24, T14N, R27E; thence north along the county line sixteen miles

to the southwest corner of Section 31, T17N, R28E; thence east along the county line thirteen miles more or less to the East Low Canal; thence northerly and easterly along the East Low Canal to the Adams County line; thence north along the Grant-Adams County lines six miles more or less to the East Low Canal; thence northwesterly along the East Low Canal to the southeast boundary of Block 70; thence easterly, northerly, and westerly, encompassing Block 70, Soap Lake and Block 701, to the West Main Canal; thence southwest along the West Main Canal to the north boundary line of Unit 1, Block 73; thence westerly along the northern boundary line of Block 73 to the northwest corner of Unit 278; then due west to the Willow Springs Draw; thence down Willow Springs Draw to the Columbia River; thence southerly along the Columbia River to the south boundary line of Section 11, T15N, R23E; thence east along the crest of the Saddle Mountains approximately eighteen miles to the northwest boundary of the atomic energy reservation; thence southwest along the atomic energy reservation boundary to Highway 24; thence south and west along Highway 24 to Vernita Bridge; thence easterly along the Columbia River to the point of beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1st through April 30th of the following year.

(b) ~~((On and after April 15 through October 31,))~~ Ground applications of use restricted herbicides ((shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of use restricted herbicides)) on asparagus shall ((be made using nozzles having minimum nozzle orifice diameter of 0.072 inches.

(c) ~~On and after November 1 through April 14 of the following year, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16 230 675).~~

(d) ~~On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using the danger area restrictions (see WAC 16 230 675).~~

(e) ~~On and after April 15 through October 31, aircraft applications of use restricted herbicides are prohibited within one mile of any commercial vineyard: Provided, That on and after April 15 through October 31, written requests to apply MCPA to peas and corn located one half to one mile from commercial vineyards will be considered: Provided further, That on and after April 15 through April 30 written request to apply 2,4-DB on alfalfa and red clover seed crops located one half to one mile from commercial vineyards will be considered)~~ conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-912 ((What are the)) Boundaries and restrictions for Grant County Area 1A((?)), (1) Area 1A description. Lands generally in the Mattawa area in the southwestern part of the county starting at the west end of the crest of Saddle Mountain at the Columbia River, south boundary line of Section 11, T15N, R23E; thence east along the crest of the Saddle Mountains approximately eighteen miles to the northwest boundary of the atomic energy reservation; thence southwest along the atomic energy reservation boundary to Highway 24; thence following Highway 24 to the Vernita Bridge at the Columbia River; thence northwesterly along the Columbia River to the point of beginning.

(2) Area 1A restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 5th through October 31st: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1st through April 30th of the following year.

(b) ~~((On and after April 5 through October 31,))~~ Ground applications of use restricted herbicides ((shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of use restricted herbicides)) on asparagus shall ((be made using nozzles having a minimum nozzle orifice diameter of 0.072 inches.

(c) ~~On and after November 1 through April 4 of the following year, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16 230 675.)~~

~~(d)~~ conform to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the coarse (or larger) range as defined by the ASABE standards.

(e) On and after April 5th through October 31st, aircraft applications of use restricted herbicides are prohibited except by written permit issued by the Washington state department of agriculture.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-915 ((What are the)) Boundaries and restrictions for Grant County Area 2((?)), (1) Area 2 description. (Buffer area.) An area lying north and east of Area 1 starting at the junction of the Grant-Douglas County line and the Columbia River near Trinidad; thence north and easterly along the county line to the southwest corner of Section 35, T23N, R26E; thence east along section lines twelve miles to Grant County Road J/NW; thence south one mile along Grant County Road J/NW to the Burlington Northern Railroad tracks; thence east fourteen miles more or less to the Grant-Lincoln County line; thence south twenty-five miles more or less along the Grant-Lincoln and Grant-Adams County line to the northern boundary line of Area 1 (East Low Canal); thence northerly and westerly along the northern boundary line of Area 1 to the point of beginning; and also an area near Warden starting at the East Low Canal near the

southeast corner of Section 13, T17N, R30E; thence westerly and southerly along the East Low Canal to the Grant-Adams County line near the corner of Section 32, T17N, R30E; thence east five miles and north three miles along the Grant-Adams County line to the point of beginning.

(2) Area 2 restrictions. ~~((a))~~ On and after May 1st through October 31st, the use or application of low volatile formulations of use restricted herbicides is prohibited.

~~((b) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.~~

~~((c) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-920 ~~((What are the))~~ Boundaries and restrictions for Grant County Area 3((?)), (1) Area 3 description. (Outlying area.) An area starting at the intersection of the Burlington Northern Railroad tracks near the northeast corner of Section 13, T22N, R30E; thence north nineteen miles more or less along the Grant County line to Highway 2; thence westerly along Highway 2 to the Douglas County line; thence southwesterly along the Douglas County line to the southwest corner of Section 35, T23N, R26E; thence east along section lines twelve miles to Grant County Road J/NW; thence south one mile along Grant County Road J/NW to the Burlington Northern Railroad tracks near Stratford; thence easterly along the Burlington Northern Railroad tracks fourteen miles more or less to the point of beginning.

(2) Area 3 restrictions. ~~((a))~~ On and after May 16th through October 31st, the use and application of low volatile formulations of use restricted herbicides is prohibited.

~~((b) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-925 ~~((What are the boundaries and restrictions))~~ Boundaries for Grant County Area 4((?)), ~~((+))~~ Area 4 description. All remaining lands in Grant County lying north of Highway 2.

~~((2) Area 4 restrictions. On and after May 16 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-935 ~~((What are))~~ Restrictions due to wind conditions((?)) in Grant County. The use or application of use restricted herbicides is prohibited in Areas 2, 3, and 4 when the mean sustained wind velocity is over twelve

miles per hour throughout the year and in Area 1 and 1A when the mean sustained wind velocity is over twelve miles per hour on and after November 1st through March 31st of the following year, and over ten miles per hour from April 1st through October 31st: Provided, That applications of allowable use restricted herbicides are exempt from these wind restrictions when applying fifty gallons or more per acre ~~((=~~ Provided further, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data)) in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-231-110 When are oil-type carriers prohibited?
- WAC 16-231-140 What are the restrictions on mixing or loading aircraft?
- WAC 16-231-174 Application of pesticides in Franklin County—Areas 2A, 4A, and 6—Use restricted herbicides ground apparatus nozzle requirements.
- WAC 16-231-177 Application of pesticides in Franklin County—Areas 2A, 4A, and 6—Use restricted herbicides, aircraft boom length, pressure, and nozzle requirements.
- WAC 16-231-180 What are the restrictions on applications of pesticides in Franklin County—Areas 2A, 4A, and 6—Use restricted herbicides due to temperature conditions?
- WAC 16-231-210 When are oil-type carriers prohibited in Yakima County?
- WAC 16-231-230 What are the restrictions on mixing or loading for aircraft?
- WAC 16-231-310 When are oil-type carriers prohibited in Adams County?
- WAC 16-231-335 What are the restrictions on applications near vineyards?
- WAC 16-231-410 When are oil-type carriers prohibited in Columbia County?
- WAC 16-231-525 What are the notification requirements of farm operators for use restricted herbicides in Whitman County?
- WAC 16-231-610 When are oil-type carriers prohibited in Klickitat County?

- WAC 16-231-715 What are the boundaries and restrictions for Okanogan County Area 4?
- WAC 16-231-725 What are the restrictions on mixing or loading aircraft?
- WAC 16-231-830 What are the restrictions on mixing and loading aircraft?
- WAC 16-231-835 What are restrictions for aerial applications near vineyards?
- WAC 16-231-930 What are the restrictions on mixing and loading aircraft?

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-001 ((What are)) Restrictions for pesticide use in Walla Walla County((?)). (1) The area under order includes all lands lying within the boundaries of Walla Walla County. WAC 16-232-005 through 16-232-077 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to the use of use restricted herbicides in WAC 16-230-600 through ((16-230-675)) 16-230-670.

NEW SECTION

WAC 16-232-0010 Adoption of national consensus code. Adoption of provisions under the American Society of Agricultural and Biological Engineers (ASABE) standards in this chapter is adoption of the provisions in the July 2018 version.

NEW SECTION

WAC 16-232-002 Order of precedence. If there is a conflict between the spray droplet spectrum size required in these rules and that which is required by the pesticide label, the applicator must use the largest droplet spectrum size required.

NEW SECTION

WAC 16-232-003 Definitions. "Ready-to-use" means a pesticide that is applied directly from its original container consistent with label directions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-005 ((What are)) Use restricted herbicides in Walla Walla County((?)). All formulations of phenoxy hormone-type herbicides, (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCP (mecoprop)) and dicamba except as listed below:

- (1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;
- (2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA,

MCPB, MCP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 09-21-006, filed 10/8/09, effective 11/8/09)

WAC 16-232-007 ((What are)) Use restricted pesticides in certain areas of Walla Walla County((?)). The following pesticides are declared to be use restricted pesticides in areas 2B, 4, and 6:

- (1) Use restricted herbicides*:
 - (a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort);
 - (b) Desiccants and defoliants (such as Paraquat, Diquat, Endothal);
 - (c) Glyphosate (such as Roundup, Landmaster);
 - (d) Phenoxy hormone-type herbicides (such as 2,4-D, MCPA);
 - (e) Dicamba (such as Banvel);
 - (f) Bromoxynil except that the cutoff dates of April 5th, April 15th and May 15th do not apply.

* This is to be used only as a guide and may not include all brand or trade names under which these chemicals are distributed.

(2) All aerial applications of Category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-010 ((What are the)) Boundaries and restrictions on use restricted herbicides((—))in Walla Walla County((—)) Area 1((?)). (1) Area 1 description. (Columbia River Buffer area.) An area starting at the intersection of the common boundary line between Sections 14 and 15, T6N, R32E and the Washington-Oregon state line; thence north along the section lines ten miles more or less to the southeast corner of Section 22, T8N, R32E; thence east along the section lines two miles to the southeast corner of Section 24, T8N, R32E; thence north along the section lines five miles more or less to the intersection with the Northern Pacific Railroad; thence northeasterly seven miles more or less along the railroad, including the right of way, to the intersection with State Route 124 and C.M. Rice Road at the northeast corner of Section 2, T9N, R33E; thence northerly along C.M. Rice Road, including the right of way, to the Snake River; thence southwesterly along the Snake River to a point near the east section line of Section 23 T9N, R31E; thence south approximately twelve miles to the Walla Walla River; thence west along the Walla Walla River until its intersection with the Columbia River and the Walla Walla-Benton County line; thence southwesterly along the Columbia River approximately three and one-half miles to the intersection of the Washington-Oregon state line; thence east along the Washington-Oregon state line to the point of beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile ester formulations of use restricted herbicides is prohibited on and after April 5th through October 31st.

(b) ~~((On and after April 5 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of .052 inches or a LP8002 or equivalent nozzle.~~

(e)) On and after April 5th through October 31st, aerial applications of use restricted herbicides are prohibited except by written permit issued by the department.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-015 ~~((What are the))~~ Boundaries and restrictions on use restricted herbicides~~((—))~~in Walla Walla County~~((—))~~Area 2~~((?)~~; (1) Area 2 description. (Walla Walla and vicinity, Dixie, Waitsburg, and Prescott areas.) Those areas lying within a one mile radius from the center of the town of Dixie and within one mile of the city limits of the towns of Waitsburg and Prescott and an area starting at the intersection of the common boundary line between Sections 15 and 16, T6N, R36E and the Washington-Oregon state line; thence north along the section line one mile more or less to the southwest corner of Section 3, T6N, R36E; thence east along the section lines two miles to the southeast corner of Section 2, T6N, R36E; thence north along the section lines three miles to the southwest corner of Section 24, T7N, R36E; thence east along the section line one mile to the southeast corner of Section 24, T7N, R36E; thence north along the section line one mile to the southwest corner of Section 18, T7N, R37E; thence east along the section line one mile to the southeast corner of Section 18, T7N, R37E; thence north along the section line one mile to the northeast corner of Section 18, T7N, R37E; thence west along the section lines nine miles to the northwest corner of Section 14, T7N, R35E; thence south along the section line one mile to the northeast corner of Section 22, T7N, R35E; thence west along the section line one mile to the northwest corner of Section 22, T7N, R35E; thence south along the section lines one mile more or less to State Route 12; thence westerly along State Route 12, including the right of way, three miles more or less to the intersection with Detour Road; thence southwesterly along Detour Road, including the right of way, one-half mile more or less to the intersection with Forest Road; thence south along Forest Road, including the right of way, one mile more or less to the intersection with Frog Hollow Road at the southwest corner of Section 6, T6N, R35E; thence east along Frog Hollow Road, including the right of way, one mile more or less to the intersection with Locher Road; thence south along Locher Road, including the right of way, one mile more or less to the Washington-Oregon state line; thence east along the state line eight miles more or less to the point of beginning.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st.

(b) ~~((On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

(e) ~~On and after November 1 through April 14 of the following year, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).)~~ Aircraft applications shall be prohibited on and after April 15th through October 31st; Provided, That:

(i) The aerial application of MCPA shall be allowed ~~((using warning area restrictions (see WAC 16-230-675))).~~

(ii) Aerial applications of nonvolatile formulations of use restricted herbicides from one-half to one mile of the center of the town of Dixie and from the city limits of Waitsburg, Prescott and Walla Walla shall be considered through written request to the Washington state department of agriculture.

(iii) Those portions of the city of Walla Walla which fall within Sections 13, 14, 22, 23 and 24, T7N, R35E of Walla Walla County are not considered as part of the city limits of Walla Walla for purposes of issuing permits by the department for aerial application of nonvolatile formulations of restricted use pesticides.

~~((d) Restrictions on the use of airstrips. The loading and/or mixing of use restricted herbicides is prohibited on any airstrip, airfield or any location within Area 2. Provided, That the municipal airport located northeast of Walla Walla shall not be subject to this provision.))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-020 ~~((What are the))~~ Boundaries and restrictions on use restricted herbicides~~((—))~~in Walla Walla County~~((—))~~Area 2A~~((?)~~; (1) Area 2A description. (Buffer area surrounding Dixie and Walla Walla.) An area, excluding a one mile radius from the center of the town of Dixie, starting at the intersection of the common boundary line between Sections 14 and 15, T6N, R32E and the Washington-Oregon state line; thence north along the section lines six miles more or less to the northwest corner of Section 14, T7N, R32E; thence east along the section lines ten miles to the southwest corner of Section 9, T7N, R34E; thence north along the section line one mile to the northwest corner of Section 9, T7N, R34E; thence east along the section lines two miles to the southwest corner of Section 2, T7N, R34E; thence north along the section line one mile to the northwest corner of Section 2, T7N, R34E; thence east along the section lines two miles to the southwest corner of Section 31, T8N, R35E; thence north along the section lines six miles to the northwest corner of Section 6, T8N, R35E; thence east along the section lines and the Columbia-Walla Walla County line twenty-four miles to the northeast corner of Section 1, T8N, R38E; thence south along the Columbia-Walla Walla County line fourteen miles more or less to the Washington-Oregon state line; thence west along the state line fifteen miles to the common boundary line between Sections 15 and 16, T6N, R36E; thence north along the section line one mile more or less to the northwest corner of Section 10, T6N, R38E; thence east along the section lines two miles to the southwest corner of Section 1, T6N, R36E; thence north along the section lines three miles to the northwest corner of Section 25, T7N,

R36E; thence east along the section line one mile to the southwest corner of Section 19, T7N, R37E; thence north along the section line one mile to the northwest corner of Section 19, T7N, R37E; thence east along the section line one mile to the northeast corner of Section 19, T7N, R37E; thence north along the section line one mile to the southwest corner of Section 8, T7N, R37E; thence west along the section lines nine miles to the northeast corner of Section 15, T7N, R35E; thence south along the section line one mile to the southeast corner of Section 15, T7N, R35E; thence west along the section line one mile to the southwest corner of Section 15, T7N, R35E; thence south along the section lines one mile more or less to State Route 12; thence westerly along State Route 12, excluding the right of way, three miles more or less to the intersection with Detour Road; thence southwesterly along Detour Road, excluding the right of way, one-half mile more or less to the intersection with Forest Road; thence south along Forest Road, excluding the right of way, one mile more or less to the intersection with Frog Hollow Road at the southwest corner of Section 6, T6N, R35E; thence east along Frog Hollow Road, excluding the right of way, one mile more or less to the intersection with Locher Road; thence south along Locher Road, excluding the right of way, one mile more or less to the Washington-Oregon state line; thence west along the state line fifteen miles more or less to the point of beginning.

(2) Area 2A restrictions. ~~((a))~~ The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st: Provided, That 2,4-DB is allowed on alfalfa seed crops at any time.

~~((b) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c) On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-025 ~~((What are the))~~ Boundaries and restrictions on use restricted herbicides~~((—))~~ in Walla Walla County~~((—))~~ Area 3~~((?))~~. (1) Area 3 description. All of the remaining lands within the border of Walla Walla County.

(2) Area 3 restrictions. ~~((a))~~ The use and application of low volatile formulations of use restricted herbicides is prohibited on and after May 15th through October 31st.

~~((b) On and after May 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c) On and after May 15 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-027 ~~((What are the))~~ Boundaries and restrictions on use restricted herbicides~~((—))~~ in Walla

Walla County~~((—))~~ **Area 3A**~~((?))~~. (1) Area 3A description. An area beginning at the southwest corner of Section 11, T7N, R32E; thence east along the section lines six miles more or less to the intersection with the Touchet North Road at the southeast corner of Section 10, T7N, R33E; thence northerly along the Touchet North Road, including the right of way, to the intersection with State Route 124; thence west one-half mile more or less along State Route 124, excluding the right of way, to the intersection with the Northern Pacific Railroad at the northwest corner of Section 1, T9N, R33E; thence southwesterly seven miles more or less along the railroad, excluding the right of way, to the intersection with the common boundary line between Section 25, T9N, R32E and Section 30, T9N, R33E; thence south along the section lines five miles more or less to the northeast corner of Section 25, T8N, R32E; thence west along the section lines two miles to the northwest corner of Section 26, T8N, R32E; thence south along the section lines four miles to the point of beginning.

(2) Area 3A restrictions. ~~((a))~~ The use and application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st.

~~((b) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~((c) On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-035 ~~((What are the))~~ Restrictions on use restricted herbicides in Walla Walla County due to wind conditions~~((?))~~. The use or application of use restricted herbicides is prohibited in Areas 1, 2, 2A, 3, and 3A when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such applications are prohibited in Areas 1 and 2 on and after April 1st through October 31st when the mean sustained wind velocity is over seven miles per hour (~~:-Provided further, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when allowed by the label and when an approved hooded boom sprayer is used. Hooded boom sprayers shall be approved by the department of agriculture. The department will consider the recommendations of the pesticide advisory board 2,4-D ad hoc committee in determining the criteria of what constitutes an approved hooded boom sprayer. Approval will be based on research data~~)).

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-041 ~~((What are the))~~ Boundaries and restrictions on use restricted herbicides~~((—))~~ in Walla Walla County~~((—))~~ Area 2B~~((?))~~. (1) Area 2B description. An area including all lands lying within a boundary line beginning at the intersection of the Union Pacific Railroad and U.S. Highway 12 in Section 10, T7N, R31E; thence southerly along Highway 12 approximately three miles until its intersection with the Walla Walla River; thence west

along the Walla Walla River until its intersection with the Columbia River and the Walla Walla-Benton County line; thence northwesterly along the Columbia River approximately ten miles until its intersection with the Snake River; thence northeasterly along the Snake River until its intersection with Highway 12 in Section 35, T9N, R30E; thence southeasterly along Highway 12 to the point of beginning.

(2) Area 2B restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-232-007 is prohibited.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-044 (~~What are the~~) Boundaries and restrictions on use restricted herbicides(—)in Walla Walla County(—)Area 4(2), (1) Area 4 description. An area including all lands lying within a boundary line beginning at the intersection of the Snake River and the Bonneville Power Administration power line near the east section line of Section 25, T9N, R30E; thence southeasterly along the Bonneville Power Administration power line until its intersection with SR 124 in Section 32, T9N, R31E; thence approximately two and one-half miles along SR 124 to the east section line of Section 34, T9N, R31E; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad until its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to the point of its intersection with the Snake River in Section 35, T9N, R30E; thence northeasterly along the Snake River to the point of beginning.

(2) Area 4 restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-232-007 may be made by written permit only.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5th through October 31st of each year, all applications of use restricted herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of the use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-047 (~~What are the~~) Boundaries and restrictions on use restricted herbicides(—)in Walla Walla County(—)Area 6(2), (1) Area 6 description. An area including all lands lying within a boundary line beginning at the Snake River and the east section line of Section 23, T9N, R31E; thence south approximately twelve miles along section lines to the Walla Walla River; thence west along the Walla Walla River until its intersection with the Columbia River and the Walla Walla-Benton County line; thence northwesterly along the Columbia River approximately two miles to the southern section line of Section 8, T7N, R31E; thence east approximately two miles along the section line until its intersection with U.S. Highway 12 in Section 10, T7N, R31E; thence northwesterly along U.S. Highway 12, approximately three-quarters of a mile until its intersection with the Union Pacific Railroad; thence northerly approximately four miles along the railroad until its intersection with the southern section line in Section 15, T8N, R31E; thence east approximately one-quarter mile along the section line to the southeast corner of Section 15, T8N, R31E; thence north approximately three miles until its intersection with SR 124; thence west along SR 124 approximately two and one-half miles until its intersection with the Bonneville Power Administration power line in Section 32, T9N, R31E; thence northwesterly along the power line until its intersection with the Snake River in Section 25, T9N, R30E; thence northeasterly along the Snake River to the point of beginning.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of use restricted herbicides shall be prohibited on and after April 5th through October 31st of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5th through October 31st of each year, all applications of use restricted herbicides are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre (~~at twenty pounds of pressure or less at the nozzle~~) in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset restrictions.

(c) On and after April 5th through October 31st of each year, aerial applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-053 (~~(Can)~~) Application of Paraquat or Diquat (~~be applied~~) by air in Walla Walla County(?), Aerial application of Paraquat and Diquat is prohibited in areas 2B, 4, and 6.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-056 (~~(Can)~~) Application of sulfonylurea herbicides (~~be applied~~) in Walla Walla County(?), Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited in areas 2B, 4, and 6.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-059 (~~(What are the)~~) Conditions apply to permits in Walla Walla County(?), The following conditions will apply to all permits issued in areas 2B, 4, and 6.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 21 N. 1st Avenue Suite 236 Yakima, Washington 98902. Applications may also be taken in person or by facsimile. Permits will not be granted by telephone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of

day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit will be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-062 (~~(Can)~~) Application of use restricted pesticides (~~be applied~~) in an emergency(?) in Walla Walla County. In the event of an emergency, as declared by the director, the department may issue permits for the use of use restricted pesticides in variation of any restrictions contained in areas 2B, 4, and 6. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substantially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-065 (~~(What are the)~~) Restrictions on applications in Walla Walla County due to wind(?), The use or application of all herbicides and class 1 and 2 insecticides are prohibited in areas 2B, 4, and 6 when the mean sustained wind velocity is over ten miles per hour throughout the year: Provided, That (~~applications are allowed in higher velocity winds when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data: Provided further, That~~) applications of granular and pellet formulations of use restricted pesticides defined in WAC 16-232-007 as well as applications made to structures are exempt from the wind restrictions.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-077 (~~(What are the)~~) Restrictions on applications of pesticides in Walla Walla County due to weather conditions(?), Use restricted herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops, and plantings through physical drift or volatilization: Provided, That applications of use restricted herbicides shall be exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre (~~(while using no greater than fifteen pounds of pressure per square inch at the nozzle)~~) and conforming to the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-100 (~~What are~~) **Restrictions for herbicide use in Lincoln County**(~~?~~). (1) The area under order includes all lands lying within the boundaries of Lincoln County. WAC 16-232-105 through (~~16-232-120~~) 16-232-115 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through (~~16-230-675~~) 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-105 (~~What are~~) **Use restricted herbicides in Lincoln County**(~~?~~). All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-115 (~~What are the~~) **Boundaries and restrictions for Lincoln County Area 3**(~~?~~). (1) Area 3 description. (Southwestern Lincoln County.) Beginning at the Grant-Lincoln County line and state Highway 2; thence northeasterly two and one-half miles more or less along state Highway 2 to the Almira South Road; thence south seven miles more or less along the Almira South Road to the Monson Road; thence east six miles more or less along the Monson Road to state Highway 21; thence south twenty-seven miles more or less along state Highway 21 to the Lincoln-Adams County line; thence west thirteen and one-half miles more or less along the common boundary line between Lincoln and Adams counties to the Grant County line; thence north twenty-nine and one-half miles more or less along the common boundary line between Grant County and Lincoln County to the point of beginning.

(2) Area 3 restrictions. (~~(a)~~) The use or application of low volatile formulations of use restricted herbicides shall be prohibited on and after May 16th through October 31st of each year.

~~((b) On and after May 16 through October 31 of each year, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~(c) On and after May 16 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-200 (~~What are the~~) **Restrictions for use restricted herbicides**(~~(—)~~)**in Garfield County**(~~?~~). (1) The area under order includes all lands lying within the boundaries of Garfield County. WAC 16-232-205 through 16-232-225 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through (~~16-230-675~~) 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-205 (~~What are~~) **Use restricted herbicides in Garfield County**(~~?~~). All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-210 (~~What are the~~) **Boundaries and restrictions for Garfield County Area 2**(~~?~~). (1) Area 2 description. The city of Pomeroy and those sections and partial sections lying within one mile east, one mile south and one mile west of the city limits of Pomeroy.

(2) Area 2 restrictions. (~~(a) On and after May 1 through October 31, ground applications shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~(b)) Aerial applications of use restricted herbicides are prohibited.~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-215 (~~What are the~~) **Boundaries and restrictions for Garfield County Area 3**(~~?~~). (1) Area 3 description. An area starting at the intersection of the Snake River and the west boundary of Section 18, T14N, R43E; thence south to and along the Lambie Grade Road to and along the Casey Creek Road to the southeast corner of Section 8, T13N, R43E; thence east along section lines one and

one-half miles more or less to the Snake River; thence north-westerly along the Snake River to the point of beginning.

(2) Area 3 restrictions. ~~((a))~~ The use and application of low volatile formulations of use restricted herbicides is prohibited on and after April 16th through August 31st.

~~((b) On and after April 16 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~(c) On and after April 16 through October 31, aerial applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-220 ((What are the boundaries and restrictions)) Boundaries for use restricted herbicides((—))in Garfield County((—))Area 4((?)). ~~((+))~~ Area 4 description. This area includes all remaining lands in Garfield County not included in WAC 16-232-210 and 16-232-215.

~~((2) Area 4 restrictions.~~

~~(a) On and after May 1 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.~~

~~(b) On and after May 1 through October 31, aircraft applications of use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).)~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-225 ((What are the)) Restrictions on applications of use restricted herbicides in Garfield County due to wind conditions((?)). The use or application of use restricted herbicides are prohibited in Areas 2, 3, and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such applications are prohibited in Areas 2 and 3 on and after May 1st through October 31st when the mean sustained wind velocity is over seven miles per hour~~(; Provided further, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data)).~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-300 ((What are the)) Restrictions for use restricted herbicides in Kittitas County((?)). (1) The area under order includes all lands lying within the boundaries of Kittitas County. WAC 16-232-305 through 16-232-315 applies to the area under order.

(2) The distribution, use, and application of use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to use restricted herbicides in WAC 16-230-600 through ~~((16-230-675))~~ 16-230-670.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-305 ((What are)) Use restricted herbicides in Kittitas County((?)). All formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(3) Ready-to-use liquid formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba distributed in quantities of five gallons or less.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-310 ((What are the)) Boundaries and restrictions for Kittitas County Area 1((?)). (1) Area 1 description. An area starting at the intersection of Canyon Road and Thrall Road on the south line of Section 30, T17 N, R19E, thence east along Thrall Road three and one-half miles more or less to ~~((Billeter))~~ Denmark Road; thence south approximately one-half mile and follow the curve in Denmark Road to the point where the road continues in an easterly direction; thence continue east approximately one and one-half miles ~~((to Wilson))~~ until this line intersects Badger Pocket Road; thence south on ~~((Wilson))~~ Badger Pocket Road for one-half mile to intersection of Fourth Parallel Road; thence east on Fourth Parallel Road for approximately three-fourths mile to ~~((Anderson))~~ Lawrence Road; thence south on ~~((Anderson))~~ Lawrence Road for one-half mile more or less to E. Kern Road; thence east on E. Kern Road for approximately one-half mile; thence south approximately one and one-half miles to the north boundary of Section 18, T16, R20; thence west for two and one-half miles to intersection of I82; thence northwest for approximately ~~((three))~~ one and one-half miles to the ~~((northeast))~~ southeast corner of Section ~~((5))~~ 4, T16, R19; thence west for two and one-half miles more or less to the Canyon Road; thence north for ~~((one))~~ two and one-half miles more or less on the Canyon Road to the point of beginning.

(2) Area 1 restrictions.

(a) ~~((On and after April 15 through October 31, aircraft applications of use restricted herbicides shall be made using danger area restrictions (see WAC 16-230-675).))~~ On and after April 15th through October 31st, aircraft applications are prohibited within 500 feet of all orchards: Provided, That aircraft applications may be allowed when written permission is received from the owner of the orchard.

(b) The use or application of low volatile formulations of use restricted herbicides is prohibited on and after April 15th through October 31st of each year on all lands within 500 feet of all orchards: Provided, That low volatile ester formulations may be used when written permission is received from the owner of the orchard.

~~((e) On and after April 15 through October 31, ground applications of use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches on all lands within 500 feet of all orchards.))~~

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-315 ~~((What are the))~~ Restrictions on applications of use restricted herbicides in Kittitas County due to wind conditions(?). The use or application of use restricted herbicides is prohibited in Area 1 when the mean sustained wind velocity is over twelve miles on and after April 15th through October 31st: Provided, That applications of allowable use restricted herbicides are exempt from these wind restrictions when applying fifty gallons or more per acre ~~((: Provided further, That applications of use restricted herbicides are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval will be based on research data))~~ in conformance with the manufacturer's specified combination of nozzle type/size and pressure in pounds per square inch (psi) at the nozzle that produces a spray droplet size that falls within the very coarse (or larger) range as defined by the ASABE standards.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-400 ~~((What areas of))~~ Grays Harbor and Pacific counties ~~((are))~~ areas under order for use restricted pesticides(?). The area under order shall include all lands in Grays Harbor and Pacific counties lying within Township 15 North, Range 11 West, Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32; Township 16 North, Range 11 West, Sections 19, 30, 31, and 32; and Township 16 North, Range 12 West, Sections 24 and 25.

AMENDATORY SECTION (Amending WSR 13-21-040, filed 10/9/13, effective 1/1/14)

WAC 16-232-410 ~~((What pesticides are restricted in the area under order?))~~ Use restricted pesticides in Grays Harbor and Pacific counties. All formulations containing the active ingredient O,O-diethyl O-(3,5,6-trichloro-2-pyridinyl) phosphorothioate, commonly known as chlorpyrifos (CAS Number 2921-88-2) or the active ingredient O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate, commonly known as diazinon (CAS Number 333-41-5) are use restricted pesticides when applied to cranberries in the area under order.

AMENDATORY SECTION (Amending WSR 13-21-040, filed 10/9/13, effective 1/1/14)

WAC 16-232-420 ~~((What))~~ Standards ~~((are))~~ adopted by WSDA(?). (1) The department adopts the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Practices Standards "Drainage Water Management" CODE 554 (Nov. 2011);

"SubSurface Drain" CODE 606 (Sept. 2011); "Surface Drain, Main or Lateral" CODE 608 (Nov. 2010); and "Underground Outlet" CODE 620 (Nov. 2010) as requirements for and restrictions on the use of pesticides containing chlorpyrifos or diazinon when applied to cranberries in the area under order.

(2) Copies of the adopted USDA NRCS Practice Standards can be requested by mail from: U.S. Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250 or from your local NRCS Office or can be found on the WSDA web site at: <http://agr.wa.gov/pestfert/>.

AMENDATORY SECTION (Amending WSR 13-21-040, filed 10/9/13, effective 1/1/14)

WAC 16-232-430 ~~((What are the))~~ Restrictions in Grays Harbor and Pacific counties on the use of pesticides containing chlorpyrifos or diazinon for protection of ditches(?). (1) Chlorpyrifos or diazinon shall not be applied to cranberries unless all ditches immediately adjacent to the application and all other ditches that will be contacted by the application are adequately protected to prevent entry of chlorpyrifos or diazinon at the time of application.

(2) For the purpose of subsection (1) of this section, "adequately protected" means:

(a) Ditches are cribbed and covered according to USDA NRCS Practice Standards "Drainage Water Management" CODE 554 (Nov. 2011); "SubSurface Drain" CODE 606 (Sept. 2011); "Surface Drain, Main or Lateral" CODE 608 (Nov. 2010); and "Underground Outlet" CODE 620 (Nov. 2010), or one of the functional equivalents below.

(i) A functional equivalent for ditch side walls is the installation of side walls with rigid material capable of maintaining ditch integrity for a period of no less than ten years.

(ii) A functional equivalent for ditch coverings is the installation of ditch coverings using rigid material capable of preventing entry of chlorpyrifos or diazinon either through chemigation activities or run-off from irrigation activities into ditches as described in subsection (1) of this section.

(b) Drainage culverts are installed and constructed according to USDA NRCS Practice Standard "Underground Outlet" CODE 620 (Nov. 2010).

(3) All ditches and culverts shall be maintained and kept in good repair as needed in order to achieve the requirements of subsection (1) of this section.

(4) Upon request, the department shall be provided with all available information related to the design, construction, and materials used to protect the ditch as described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-440 ~~((What are the))~~ Restrictions in Grays Harbor and Pacific counties on the use of pesticides containing chlorpyrifos or diazinon near source water(?). (1) All source water used for chemigation including, but not limited to, open reservoirs, ponds, or sumps must be protected from contact with chlorpyrifos or diazinon during an application unless the source water is demonstrated to have no hydraulic connection with drainage ditches or culverts.

(2) For the purpose of subsection (1) of this section, "hydraulic connection" means, water can flow between one source (either ground or surface water) to another source (either ground or surface water). Connection can be natural or manmade.

(3) For the purpose of subsection (1) of this section, "protected" means:

(a) Placement of a barrier or covering system over the source water in a manner that ensures spray from the nozzles do not contact the source water; or

(b) Design, placement, operation, and maintenance of irrigation sprayheads or nozzles in a manner that ensures spray from the nozzles does not contact the source water.

(4) Hydraulic connections will be determined as needed, by the department upon review of the source water system design.

AMENDATORY SECTION (Amending WSR 13-21-040, filed 10/9/13, effective 1/1/14)

WAC 16-232-450 ((Can)) Obtaining a variance to the requirements of this order ((be obtained)) in an emergency(?) in Grays Harbor or Pacific counties. (1) In the event of an emergency, as determined by the director, the department may issue permits for the use of chlorpyrifos or diazinon in the use restricted area in variation of any restrictions as defined in WAC 16-232-430 or 16-232-440. An emergency under this section may be declared if the director determines that the situation is:

(a) Urgent and unexpected; and

(b) The risk and amount of economic harm to the crop substantially outweighs the risk and amount of damage likely to occur to the environment if a variance permit is issued.

(2) Application for a permit may be made by email to compliance@agr.wa.gov or by mail, fax, or in person to the Washington State Department of Agriculture, Pesticide Management Division, Natural Resources Building (NRB), Second Floor, 1111 Washington St. S.E., P.O. Box 42560, Olympia, WA 98504-2560, FAX: 360-902-2093. Permits will not be granted by telephone.

(3) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk. In determining whether the situation at the application site creates an unreasonable risk, the representative may consider all relevant factors such as temperature, tides, precipitation, application type, pesticide formulation and application equipment, ditch cover condition, endangered species restrictions, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
16-232-001	16-232-004

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-232-030 What are the restrictions on aerial applications near vineyards?
- WAC 16-232-050 When are oil-type carriers prohibited in Walla Walla County?
- WAC 16-232-068 Application of pesticides in Walla Walla County—Areas 2B, 4, and 6—Use restricted herbicides ground apparatus nozzle requirements.
- WAC 16-232-071 Application of pesticides in Walla Walla County—Areas 2B, 4, and 6—Use restricted herbicides, aircraft boom length, pressure, and nozzle requirements.
- WAC 16-232-074 What are the restrictions on applications in Walla Walla County due to temperature?
- WAC 16-232-110 When are oil-type carriers prohibited in Lincoln County?
- WAC 16-232-120 What are the boundaries and restrictions for Area 4?

WSR 18-22-134

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 7, 2018, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-15-018.

Title of Rule and Other Identifying Information: Specifying commercial driver licenses (CDL) training provider requirements.

CDL training and examination requirements, amending chapter 308-100 WAC: WAC 308-100-005, 308-100-033, 308-100-035, 308-100-040, 308-100-100, 308-100-110, 308-100-140, 308-100-150, 308-100-160, 308-100-170 and 308-100-180; new WAC 308-100-036; and repealing WAC 308-100-031 and 308-100-038.

Hearing Location(s): On December 11, 2018, at 9:00 a.m., at the Highway[s]-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507. Check in at the first floor counter.

Date of Intended Adoption: December 12, 2018.

Submit Written Comments to: Tandy Alexander, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, phone 360-902-3893, email tal Alexander@dol.gov, by December 10, 2018.

Assistance for Persons with Disabilities: Contact Tandy Alexander, phone 360-902-3893, email tal Alexander@dol.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments bring the department into compliance with federal CDL regulations.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.010, 46.25.060, and 46.25.140.

Rule is necessary because of federal law, 49 C.F.R. Parts 380, 383 and 384.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tandy Alexander, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-3893.

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

A cost-benefit analysis is not required under RCW 34.05.328. No additional cost to the stakeholders.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 49 C.F.R. Parts 380, 383 and 384.

November 7, 2018

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-017, filed 7/25/08, effective 8/25/08)

WAC 308-100-005 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) ~~("Agribusiness" means a private carrier who in the normal course of business primarily transports:~~

~~(a) Farm machinery, farm equipment, implements of husbandry, farm supplies and materials used in farming;~~

~~(b) Agricultural inputs, such as seed, feed, fertilizer and crop protection products;~~

~~(c) Unprocessed agricultural commodities as defined in RCW 17.21.020, where such commodities are produced by farmers, ranchers, vineyardists, or orchardists; or~~

~~(d) Any combination of (a) through (c).~~

~~(2)) "Behind-the-wheel (BTW) range training" means training provided by a BTW instructor when a student has actual control of the power unit during a driving lesson conducted for backing, street driving, and proficiency development. BTW range training does not include time a student spends observing the operation of a CMV when he or she is not in control of the vehicle.~~

~~(2) "Behind-the-wheel (BTW) instructor" means an individual who provides BTW training involving the actual operation of a CMV by a student on a range or a public road and meets one of these qualifications:~~

~~(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which~~

training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) Exception applicable to (a) and (b) of this definition: A BTW instructor who provides training solely on a range which is not a public road is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, as long as the instructor previously held a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in BTW instruction for two years following the date his or her CDL is reinstated.

(3) "Certified test route" means:

(a) Test route that is approved and assigned by the department.

(b) The areas for completing the pretrip inspection, basic controls and road test as approved by the department for the administration of a commercial driver license skills test.

(4) "Classroom/theory instruction" means ((training provided)) knowledge instruction on the operation of a CMV and related matters provided by a theory instructor through lectures, demonstrations, audiovisual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom is included if it does not involve actual operation of a commercial motor vehicle and its components by the student.

~~((3))~~ (5) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer.

~~((4))~~ (6) "Employer" means a person or entity that hires one or more individuals to operate a commercial motor vehicle on a regular basis during their normal course of employment and whose primary purpose is not to train operators of commercial motor vehicles.

~~((5))~~ (7) "Hour," as used in connection with training requirements, means no less than fifty minutes of training or instruction.

~~((6))~~ (8) "Lab" means a teaching environment involving a nonmoving vehicle for hands on instruction supported by classroom material.

~~((7))~~ (9) "Observation" means the careful watching, as a passenger in a commercial motor vehicle, of street driving during the hours of course instruction, recording lessons learned and applying classroom material.

~~((8))~~ (10) "Proficiency development" means driving exercises that will allow more time to develop the skills needed to demonstrate proficiency, competence, and confidence in the street driving and backing maneuvers portions of a course.

~~((9))~~ (11) "Range" means an area closed from the public where driving activities are practiced, free of obstructions, enables the driver to maneuver safely and free from interference from other vehicles and hazards, and has adequate sight lines.

~~((10))~~ (12) "Street driving" means driving a commercial motor vehicle on a public road, where the traffic laws are enforced, consisting of city street, country road, and freeway driving.

~~((11))~~ (13) "Theory instructor" means an individual who provides knowledge instruction on the operation of a CMV and meets one of these qualifications:

(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same (or higher) class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) **Exceptions applicable to (a) and (b) of this definition:** An instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, if the instructor previously held a CDL of the same (or higher) class and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in theory instruction for two years following the date his or her CDL is reinstated.

(14) "Training institute/provider" means an entity that is approved by the department, to provide training as required by RCW 46.25.060 (1)(a)(ii):

(a) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(b) A licensed private vocational school as that term is defined by RCW 28C.10.020(7); or

(c) An entity in another state that the department has determined provides training or instruction equivalent to that required under WAC 308-100-033 or 308-100-035.

AMENDATORY SECTION (Amending WSR 08-16-017, filed 7/25/08, effective 8/25/08)

WAC 308-100-033 Minimum training requirements.

(1) ~~((To ensure the quality of the training given, a training course acceptable to the director must:~~

~~(a) Be))~~ Approval for a course of instruction in the operation of a commercial motor vehicle will only be granted if the course of instruction:

(a) Is provided by, and under the direct supervision of, a training ~~((institute))~~ provider that has an application with the department approving the course of instruction offered by the training provider. Beginning on February 7, 2020, the training provider must also be listed on the Federal Motor Carrier Safety Administration's Training Provider Registry that is established under 49 C.F.R. 380.700; and

(b) ~~((Be not less than:~~

~~(i) One hundred sixty hours if the applicant is applying for a class A commercial driver's license, including))~~ **Class A course - Minimum requirements for approval:** A course of instruction for students seeking a class A CDL must follow the class A training curriculum defined in C.F.R. Appendix A to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

~~((A))~~ (i) Forty hours of classroom instruction;

~~((B))~~ (ii) Eighteen hours of street driving training;

~~((C))~~ (iii) Sixteen hours of training in backing maneuvers;

~~((D))~~ (iv) Sixteen hours of proficiency development; and

~~((E))~~ (v) Seventy hours of combined lab training, range training, and observation(;

~~(ii) Forty eight hours if the applicant is applying for a class B commercial driver's license, including)).~~

(c) **Class B course - Minimum Requirements:** A course of instruction for students seeking a class B CDL must follow the class B training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

~~((A) Twenty))~~ (i) Forty hours of classroom instruction;

~~((B))~~ (ii) Fourteen hours of street driving training;

~~((C) Four))~~ (iii) Eight hours of training in backing maneuvers;

~~((D) Four))~~ (iv) Eight hours of proficiency development; and

~~((E) Six))~~ (v) Ten hours of combined lab training, range training, and observation(;

~~(iii) Thirty six hours if the applicant is applying for a class C commercial driver's license, including)).~~

(d) **Class C course - Minimum requirements:** A course of instruction for students seeking a class C CDL must follow the class B training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

~~((A) Twenty))~~ (i) Forty hours of classroom instruction;

~~((B) Eight))~~ (ii) Fourteen hours of street driving training;

~~((C) Two))~~ (iii) Eight hours of training in backing maneuvers;

~~((D) Two))~~ (iv) Eight hours of proficiency development; and

~~((E) Four))~~ (v) Ten hours of combined lab training, range training, and observation.

~~((2) A licensed private vocational school must maintain individual student records. Student records shall document for each student:~~

- (a) Course attendance, starting, and ending dates;
- (b) The dates and times for each session;
- (c) The number of hours spent on each category of instruction covered; and
- (d) The name and signature of the instructor who provided each session of instruction or training.

(3) Student records must be maintained by a licensed private vocational school for the past five years from the date instruction or training has ended and must be made available for inspection at the request of the department.

(4) A licensed private vocational school may issue a certificate of completion on a form provided by the department to a student who has received the training required under subsection (1) of this section. An accredited institution of higher learning may issue a certificate of completion to a student who has received appropriate training. A certificate issued under this subsection must be used by a student to demonstrate to the department that he or she has met the minimum requirements required under this section.)

(e) Upgrade from either class B or C to class A - Minimum requirements: A course of instruction for students seeking to upgrade from a class B or C to a class A must follow the class A behind the wheel training curriculum defined in C.F.R. Appendix A to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Eighteen hours of street driving training;
- (ii) Sixteen hours of training in backing maneuvers;
- (iii) Sixteen hours of proficiency development; and
- (iv) Thirty hours of combined lab training, range training, and observation.

(f) Upgrade from a class C to class B - Minimum requirements: A course of instruction for students seeking to upgrade from a class C to a class B must follow the class B behind the wheel training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Fourteen hours of street driving training;
- (ii) Eight hours of training in backing maneuvers;
- (iii) Eight hours of proficiency development; and
- (iv) Ten hours of combined lab training, range training, and observation.

(g) Passenger endorsement - Minimum requirements: A course of instruction for students seeking a passenger endorsement must follow the passenger endorsement training curriculum defined in C.F.R. Appendix C to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Four hours of classroom/theory instruction;
 - (ii) Ten hours of proficiency development.
- (h) School bus endorsement - Minimum requirements:** A course of instruction for students seeking a school bus endorsement must follow the school bus endorsement training curriculum defined in C.F.R. Appendix D to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Twenty hours of classroom/theory instruction;
 - (ii) Ten hours of proficiency development.
- (i) Passenger and school bus endorsement - Minimum requirements:** A course of instruction for students seeking a passenger and school bus endorsement must follow the pas-

senger and school bus endorsement training curriculum defined in C.F.R. Appendix C and D to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Twenty hours of classroom/theory instruction;
- (ii) Ten hours of proficiency development.

(j) Hazardous material endorsement - Minimum requirements: A course of instruction for students seeking a HAZMAT endorsement must follow the hazardous material endorsement training curriculum defined in C.F.R. Appendix E to Part 380 as it existed on the (effective date of the WAC). The course must include not less than: Twenty hours of classroom/theory instruction;

(k) In addition to the class A, B, and C curriculum as defined above, each class room training must include a minimum thirty minute section on "Truckers Against Trafficking."

(2) Students must complete all portions of the training within one year of completing the first portion.

AMENDATORY SECTION (Amending WSR 08-16-017, filed 7/25/08, effective 8/25/08)

WAC 308-100-035 Employer certification. (1) An employer may certify ((an applicant for a commercial driver's license as having)) that one of its employees has the skills and training necessary to operate a commercial motor vehicle safely by certifying the employee has demonstrated proficiency in the elements of the course of instruction required in WAC 308-100-033, with the exception of the minimum required hours, on a form provided by the department. The certification must include the classification or endorsements of commercial motor vehicle that the employee ((or prospective employee)) is competent to operate.

(2) The certification must be provided to the department electronically. Beginning on February 7, 2020, an employer may only certify that an applicant for a CDL has the skills and training necessary to operate a commercial motor vehicle safely if the employee has successfully completed training with a training provider listed on FMCSA's Training Provider Registry established under 49 C.F.R. 380.700.

(3) The department must receive an electronic notification of successful completion prior to an employee taking a skills test.

NEW SECTION

WAC 308-100-036 Reporting training results. (1) A training provider and employer must provide electronic notification to the department when a student successfully completes a course of instruction described in WAC 308-100-033 for schools and WAC 308-100-035 for employers.

(2) The notification of course completion must consist of:

- (a) A certification that the student/employee demonstrated proficiency in all elements of the curriculum required in subsection (1) of this section;
- (b) Driver license number;
- (c) Phone number;
- (d) Type of training;
- (e) Classroom hours completed;

- (f) Backing hours completed;
- (g) Street driving hours completed;
- (h) Proficiency hours completed;
- (i) Range hours completed;
- (j) Course start date;
- (k) Course completion date; and
- (l) Instructor.

(3) The department must receive an electronic notification of successful completion prior to a student/employee taking a skills test.

AMENDATORY SECTION (Amending WSR 07-24-025, filed 11/28/07, effective 12/29/07)

WAC 308-100-040 Examination requirement for commercial driver's license. ~~((+))~~ Persons applying for a commercial driver's license will be required to pass a written examination testing their knowledge of motor vehicle laws, rules of the road, and of the class of vehicle for which they are seeking the commercial driver's license. They will also be required to demonstrate successfully their operating skills for the class of vehicle and endorsement(s) for which they seek the commercial driver's license. ~~((Skill examinations under this subsection shall consist of three components:~~

- ~~(a) Pretrip inspection;~~
- ~~(b) Basic controls; and~~
- ~~(c) Road test.~~

~~(2) The department may conduct written examinations in a group setting. Group examinations may be conducted at job sites, union halls, or other locations deemed appropriate by the department. If the department is conducting the written examination in a group setting, the payment of the basic fee and knowledge examination fee may be deferred until the applicant completes his or her application for a commercial driver's license.)~~ The department will conduct knowledge and skills examinations that at a minimum meet the requirements of 49 C.F.R. 383.133, as it existed on (effective date of WAC).

AMENDATORY SECTION (Amending WSR 00-18-068, filed 9/1/00, effective 10/2/00)

WAC 308-100-100 Intrastate waiver. A person who is not physically qualified to drive a commercial motor vehicle under section 391.41 of the Federal Motor Carrier Safety Regulations (49 C.F.R. 391.41), and who is otherwise qualified to drive a motor vehicle in the state of Washington, may apply to the department of licensing for an intrastate waiver. Upon receipt of the application for an intrastate waiver, the department shall review and evaluate the driver's physical qualifications to operate a motor vehicle in the state of Washington, and shall issue an intrastate waiver if the applicant meets all applicable licensing requirements ~~((and is qualified to operate a motor vehicle within the state of Washington)).~~

AMENDATORY SECTION (Amending WSR 00-18-068, filed 9/1/00, effective 10/2/00)

WAC 308-100-110 ~~((Expiration [date]—Extension or renewal by mail.))~~ Renewal online. Except as otherwise provided by this section, any person who is outside the state

at the time his or her commercial driver's license expires may request ~~((an extension or))~~ a renewal by mail or online as permitted by RCW 46.20.120(3). The department shall not renew an endorsement to a commercial driver's license for the operation of a vehicle transporting hazardous materials by mail ~~((, and any extension granted for such endorsement shall be for no more than forty-five days after the date the commercial driver's license would normally expire))~~ or online.

AMENDATORY SECTION (Amending WSR 02-04-076, filed 2/1/02, effective 3/4/02)

WAC 308-100-140 Third-party tester. (1) The department may enter into an agreement with third-party testers to conduct the commercial driver's license classified skill examination.

(a) An agreement will only be made where the department has determined that a need for a third-party tester exists in the location covered by the third-party tester, and that the third-party tester is otherwise qualified. In counties where there are no third-party testers, or where not extending or renewing an agreement would result in no third-party testers, the department will not base the determination of need solely on the expected number of applicants for a commercial driver's license in those locations. The department may suspend an agreement with a third-party tester for any length of time upon a showing of good cause.

(b) An agreement between the department and a third-party tester will be valid for no more than two years, provided that the department may extend an agreement for up to an additional two years at its discretion.

(c) The department may renew an agreement if it has determined that a need for a third-party tester still exists in the location covered by the third-party tester.

(2) Allow the department and/or FMCSA to conduct announced and unannounced audits.

(3) Allow the department and/or FMCSA co-score along with the third-party examiner during a CDL skills test.

(4) Must initiate and maintain a bond in an amount determined by the department. Not required for a third-party tester that is a government entity.

(5) Must only use third-party examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the state and have been certified by the state to conduct skills test.

(6) Must only use third-party examiners with an active status maintained by the department.

(7) Must submit skills testing appointments to the state no later than three days prior to conducting test.

(8) Must maintain copies of the following records at its principal place of business.

(a) A copy of the state certificate authorizing to administer CDL skills tests for the classes and types of CMVs listed;

(b) A copy of the current third-party agreement;

(c) A copy of each completed CDL skills test scoring sheet for the current year and the past two calendar years;

(d) A copy of the state approved test route(s); and

(e) A copy of each third-party examiner's training record.

(9) Must submit skills test scores within the same day as the test conducted.

(10) Prohibit a third-party examiner from:

(a) Testing other third-party examiners.

(b) Testing a driver who has been trained by the examiner, regarding commercial vehicle operation or skills test practice.

(c) Testing any family member, relative or friend.

(d) Having another examiner who is a family member conduct tests for your school or organization.

(e) Testing a driver who has attended a school owned or operated by the same ownership organization you work for except for government owned and operated organizations.

AMENDATORY SECTION (Amending WSR 00-18-068, filed 9/1/00, effective 10/2/00)

WAC 308-100-150 Third-party ((~~tester~~) examiner—
Qualifications. ~~((A third-party tester is a person meeting the minimum qualifications who is trained, tested and certified by the department to conduct a standardized behind-the-wheel test of a commercial driver, such test to be used in determining the driver's qualification to obtain a commercial driver's license.))~~ A person applying to be a third-party ~~((~~tester~~)~~) examiner must meet the following requirements:

~~(1) ((Be qualified and licensed to operate and have no less than two years of experience operating vehicles representative of the class of vehicle for which he or she would conduct testing and has no less than five years of total driving experience;~~

~~(2))~~ Hold an active CDL;

(2) Have two years or more experience operating commercial motor vehicles representative of the class of vehicle for which he or she would conduct testing;

(3) Have five years of total driving experience;

(4) A check of the person's driving record shows: ((~~(a)~~))
The person has not been convicted or found to have committed any of the following offenses within the three year period preceding the date of application:

~~((~~(i)~~))~~ (a) Driving a motor vehicle while under the influence of alcohol or any drug;

~~((~~(ii)~~))~~ (b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction;

~~((~~(iii)~~))~~ (c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

~~((~~(iv)~~))~~ (d) Using a commercial motor vehicle in the commission of a felony; ((~~and~~

~~(~~v~~))~~

(e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle((~~;~~

(b) No more than one conviction or finding that the person committed a serious)); and

(f) Convicted of and found to have committed any of the following felony offenses or any crime involving fraud, moral turpitude, dishonesty, or corruption.

(5) The applicant has not been convicted of no more than one conviction or finding that the person committed two or more serious traffic violations, as defined in WAC 308-100-130, within three years preceding the date of application;

(6) The applicant has not been convicted of four or more moving traffic violations, as defined in WAC 308-104-160, within three years preceding the date of application;

(7) The applicant has not been convicted of two or more moving traffic violations, as defined in WAC ((308-100-130 (~~Serious traffic violations~~), within three years)) 308-104-160, within one year preceding the date of application;

~~((~~(8)~~))~~ (8) No driver's license suspension, cancellation, revocation, disqualification, or denial within three years preceding the date of application; ((~~and~~

~~(d) No more than one conviction or finding that the person committed a moving traffic violation within one year or more than three convictions or findings that the person committed moving traffic violations within three years preceding the date of application. Defective equipment violations shall not be considered moving traffic violations for the purpose of determining the applicant's qualification;~~

(3) Complete an acceptable application on a form prescribed by the department;

(4) Have no conviction of a felony or any crime involving violence, dishonesty, deceit, indecency, degeneracy, or moral turpitude;

~~(5))~~

(9) Maintain or be employed by a business or agency in which driver testing records would be maintained and available to the state or federal representatives for announced or unannounced inspections and audits;

~~((~~(6)~~))~~ (10) Be or be employed by a licensed business or government agency within the state of Washington or within fifty miles of state boundaries;

~~((~~(7)~~))~~ (11) Submit to announced or unannounced audits; ((~~and~~

~~(8))~~

(12) Attend all training required by the department of licensing((-);

(13) Must test a minimum of ten different applicants per calendar year or at the discretion of the department, complete recertification requirements; and

(14) Failure to maintain the above qualifications will result in the termination of a third-party ((~~tester agreement~~) examiner.

AMENDATORY SECTION (Amending WSR 89-18-003, filed 8/24/89, effective 9/24/89)

WAC 308-100-160 Test requirements. ~~((Any test conducted by a third party tester shall conform to the testing requirements established by the department. If the test includes additional requirements, the performance of an applicant for a commercial driver's license on the additional portions shall not be considered for commercial driver license skill testing purposes.))~~ The skills test given by a third party are the same as those that would otherwise be given by the state using the same version of the skills test, the same written instructions for test applicants, and the same score sheets as those prescribed by the department. Any applicant aggrieved by the outcome of a test conducted by a third-party ((~~tester~~) examiner may petition the department for review of the scoring procedure used by the third-party ((~~tester~~) examiner.

AMENDATORY SECTION (Amending WSR 89-18-003, filed 8/24/89, effective 9/24/89)

WAC 308-100-170 Test route approval. (1) The test route used by a third-party (~~tester~~) examiner must be approved by the department prior to its use for commercial driver license skill testing purposes.

(2) Skills testing is prohibited at a training facility or route except for transit organizations and educational school districts that are owned and operated by a government entity.

AMENDATORY SECTION (Amending WSR 17-22-074, filed 10/27/17, effective 11/27/17)

WAC 308-100-180 Third-party testing fee. (1)(a) Except as provided in WAC 308-100-190 or (~~subsection (1))~~(b) of this (~~section~~) subsection, the base fee for each classified skill examination or combination of skill examinations conducted by a third-party tester shall not be more than two hundred fifty dollars and entitles the applicant to take the examination up to two times in order to pass.

(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by a third-party tester shall not be more than two hundred twenty-five dollars and entitles the applicant to take the examination up to two times in order to pass:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(c) If the applicant's primary use of a commercial driver's license is to drive a school bus, the applicant shall pay a fee of no more than one hundred dollars for the classified skill examination or combination of classified skill examinations conducted by the department and entitles the applicant to take the examination up to two times in order to pass.

(2) The base fee shall apply only to the conducting of the examination, and is separate from any additional fees, such as vehicle use fees, which may be charged by the third-party tester. Any additional fees to be charged shall be reported to the department.

(3) Fees owed to a third-party tester under this section must be paid by the applicant as provided in the third-party tester agreement entered into under WAC 308-100-140.

(4) Fees paid for a test that is deemed invalid by the department must be reimbursed immediately to the applicant.

(5) The fees in this section are in addition to the regular drivers' licensing fees.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-100-031 Skill and training requirements for commercial driver's license.

WAC 308-100-038 Commercial driver's license—Additional restrictions.